



California State Board of Equalization



BOARD MEETING REFERENCE MANUAL

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BOARD MEMBERS

TED GAINES
First District
Sacramento

MALIA M. COHEN
Second District
San Francisco

ANTONIO VAZQUEZ
Third District
Santa Monica

MIKE SCHAEFER
Fourth District
San Diego

BETTY T. YEE
State Controller

EXECUTIVE DIRECTOR
BRENDA FLEMING

FOREWORD

THE CALIFORNIA STATE BOARD OF EQUALIZATION

In 1879, the California State Board of Equalization (BOE) was established under the California Constitution to regulate county assessment practices, equalize county assessment ratios, and assess properties of intercounty railroads. In subsequent constitutional and statutory amendments, the Board was directed to administer tax, fee, and appellate programs to support state and local government.

Today, the BOE focuses on its Constitutional responsibilities: Property Tax, Alcoholic Beverage Tax, and Tax on Insurers.

The Property Tax program is concentrated in the following areas:

- Valuation of state-assessed public utility and railroad property. The total value for the state-assessed roll is in excess of \$110,500,000,000 annually.
- Administration of the Private Rail Car Tax program and collection of taxes. The total tax is in excess of \$10,500,000 annually.
- Mapping and assigning tax rate area numbers to each geographical area in the state with a different distribution of revenues among taxing jurisdictions.
- Co-administration of the welfare exemption with county assessors.
- Administration of the Legal Entity Ownership Program.
- Providing guidance to county assessors to promote uniformity and consistency in assessment throughout the state; and
- Conducting assessment practices surveys (compliance audits) to ensure county assessors' practices and procedures comply with all statutory and regulatory provisions, utilizing proper appraisal practices. County Assessors produce an assessment roll for locally assessed property in each of the 58 California counties. The total value for the locally assessed roll exceeds \$6.4 trillion.

In addition, the BOE is constitutionally responsible for the Alcoholic Beverage Tax and Tax on Insurers. By way of agreement, the California Department of Tax and Fee Administration (CDTFA), performs billing and audit services for those programs.

Members of the Board meet monthly in Sacramento to adopt regulations, perform ministerial functions, and set policy for the direction of BOE staff with regard to the foregoing programs. The Board also sets the taxable value of property owned by California's public utilities and railroads and the assessable value of private railroad cars operated in California. The Board hears and decides specified taxpayer appeals related to the Property Tax, Alcoholic Beverage Tax, and Tax on Insurers Programs. The Board appoints an Executive Director to head the agency and manage the activities of BOE staff.

PURPOSE OF THIS BOARD MEETING REFERENCE MANUAL



This *Board Meeting Reference Manual* is intended to be a working guide and useful tool for Board Members and BOE staff who participate in Board meetings. It covers Board meeting-related processes, procedures, and practices. It is based on the controlling constitutional provisions, statutes, and regulations. The Board Proceedings Division will periodically revise this *Board Meeting Reference Manual*, with assistance from the Legal Department, to keep it current. All suggestions and revision requests should be directed to the Board Proceedings Division.

Executive Director

Brenda Fleming

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CHAPTER 1

BOARD ORGANIZATION

BOARD

The five Members of the Board, who serve concurrent four-year terms, constitute the nation's only elected tax commission. Four Members are elected directly from constitutionally defined districts within the state. The State Controller, who is elected at large, serves as the Board's fifth Member.¹

CHAIR

Generally, the Board elects a Chair and a Vice Chair to serve a one-year term.² A majority vote of a quorum is required to elect the Chair and the Vice Chair. In February 2016, the Board implemented a rotating Chair policy, where the Chair and Vice Chair positions changed each February. In January 2019, the Board re-adopted this policy, implementing a rotation policy of 1-year terms for the Chair and Vice Chair positions that begin each January meeting, rotating by district number each January thereafter.³

While the Board generally adopts a meeting calendar for the following calendar year, the Chair may add additional meetings to the Board's meeting calendar if needed.⁴ Prior to the Board meeting and once the item has been noticed to the public, the Chair may remove from the calendar an oral hearing on an adjudicatory matter in which the parties themselves have requested that the matter be removed. The Chair convenes and adjourns Board meetings and calls agenda items. The Chair conducts hearings on agenda items, including taxpayers' appeals, and conducts the subsequent Board vote. During an oral hearing on a taxpayer's appeal, the Chair may grant parties additional time to complete their presentations and the Chair may limit the time for a presentation that has no other purpose than to delay the Board's proceedings.⁵

The Chair serves as a member of the Franchise Tax Board along with the State Controller and the Director of Finance. The Chair may designate his or her Deputy to serve at meetings of the Franchise Tax Board.⁶ In contrast with the California State Board of Equalization's constitutional origins, the Franchise Tax Board was established by statute.⁷

BOARD COMMITTEES

Due to the changes and modified responsibility of the California State Board of Equalization (BOE) by The Taxpayer Transparency and Fairness Act of 2017⁸, committees were discontinued by a unanimous vote of the Board at its September 26, 2017, Board Meeting.⁹

BOARD MEMBER DEPUTY PARTICIPATION IN BOARD ACTIONS

Except for the State Controller, a Board Member may not designate a Deputy to assume the Board Member's duties, including closed session duties. However, Board Members may designate individuals from their personal staff to represent them on advisory committees and task forces, subject to Bagley-Keene Open Meetings Act compliance and ex parte considerations.

DEPUTY CONTROLLER'S PARTICIPATION IN BOARD ACTIONS

The Controller may designate any Deputy to act on the Board to exercise the Board's statutory powers and duties.¹⁰ The written designation is maintained in the Board Proceedings Division. The Deputy Controller may not act on behalf of the Controller in the exercise of the Board's constitutionally imposed powers and duties. Therefore, the Deputy Controller may not participate in state assessee and private railroad car tax valuations or reassessments, appeals under section 11 of article XIII, or Tax on Insurers or Alcoholic Beverage Tax appeals. The Deputy Controller may participate in the adoption and issuance of written findings and decisions on reassessments, petitions, or claims previously heard and decided by the State Controller.¹¹

BOARD MEMBER VACANCY

If a Member leaves office before his or her term expires, the Member's Chief Deputy is authorized to discharge the constitutional and statutory duties of the office until a successor assumes office.¹²

POWERS CONFERRED ON THE EXECUTIVE DIRECTOR BY RESOLUTION ADOPTED BY THE BOARD ON FEBRUARY 26, 2019

"Resolved, That Brenda Fleming, as Secretary of this Board, has been designated to act as its Chief Executive Officer on and after January 29, 2019, with the title "Executive Director,"

"Resolved, That the Executive Director shall have full authority to exercise, perform and discharge any and all duties, powers and functions vested in or imposed upon the Board, including those not imposed in previous years, by any provision of law or otherwise, including; but not limited to, AB 102, The Taxpayer Transparency and Fairness Act of 2017: California Department of Tax and Fee Administration: Office of Tax Appeals: State Board of Equalization (2017-2018), AB 131, Chapter 252, Committee on Budget. Taxation (9/16/2017) and AB 97, Ting. Budget Act of 2017 (6/27/2017), unless (1) the duty, power or function is one that can only be exercised, performed or discharged by the Board in session expressly for that purpose or (2) the Board expressly reserves the delegation of the duty, power or function subject to the approval of the Board; and be it further

"Resolved, That all of the authority hereby delegated is to be exercised under the general direction of the Board and in accordance with policies enunciated by the Board, and that such delegation shall not constitute the relinquishment of any power, jurisdiction or responsibility of the Board; and be it further

"Resolved, That the authority hereby granted to the Executive Director shall include, but shall not be limited to, the following:

- (a) Execution of any and all budgetary and fiscal documents for and on behalf of the Board, with the exception of Budget Change Proposal (BCP) because the Board has no authority over BCPs and the Executive Director has the sole authority over BCPs for the BOE;
- (b) Execution of any and all contracts for materials, services and supplies. Prior to the execution of such documents, the Executive Director shall obtain Board approval for any contract in which the amount of the contract exceeds \$500,000, but once such approval is received, no further approvals of the Board is necessary, unless specifically requested by the Board;
- (c) Execution of any and all leases with respect to real and personal Property. The Executive Director shall regularly report on significant changes to the use of existing lease space and, prior to the execution of such documents for any new office space for a Member, the Executive Director shall obtain approval of that Member, and notify the Board for all new office space;
- (d) Execution of any and all releases of liens for which provision is made in those parts of the Revenue and Taxation Code wherein the Board is named as the administrative agency; this shall include the subrogation of such liens to other liens or encumbrances, as well as the determination for or on behalf of the Board of whether or not the taxes, interest and penalties secured by liens on property as to which liens are to be released or subordinated are sufficiently secured by a lien or liens on other property, as well as the determination for and on behalf of the Board that a release or subordination of any lien for which provision is made in the Revenue and Taxation Code will not endanger or jeopardize the collection of taxes, interest, and penalties;
- (e) Execution on behalf of the Board of any certificates for which provision is made by any part of the Revenue and Taxation Code with respect to the amount of taxes, interest, and penalties that are due thereunder;

"Resolved, That in the absence of the Executive Director, the authority vested in the Executive Director by this resolution, or any other resolution now in effect or adopted hereafter by the Board, shall be exercised by the Executive Director's designee, or by the person named by the Board as Acting or Interim Executive Director."

DESIGNATION OF ACTING EXECUTIVE DIRECTOR¹³

When the Executive Director is absent or otherwise unavailable to perform the duties of the office, the Chief Counsel may perform any and all of those duties. When performing those acts, the Chief Counsel will be designated as Acting Executive Director.

In addition, the Executive Director may designate one or more other persons to be Acting Executive Director and may designate the order in which the designees are to serve. An Acting Executive Director may also designate another Acting Executive Director, if necessary.

CHIEF COUNSEL¹⁴

The Chief Counsel reports to the Executive Director and is the principal legal advisor to the Board, the Board Members, the Executive Director, and BOE management. The Chief Counsel oversees the BOE's Legal Department and plans, organizes, and directs the Legal Department's activities.

The Chief Counsel formulates and develops policies for implementing the laws administered by and applicable to the Board. The Chief Counsel issues legal opinions, drafts regulations, and makes recommendations on proposed legislation and regulations, including matters on the Board's administrative agenda. The Chief Counsel also communicates with the Attorney General.

ATTORNEY GENERAL

LITIGATION

The Attorney General is the chief law officer of the state.¹⁵ The Attorney General is required by law to represent the Board in all actions brought against it for the recovery of taxes. The Attorney General may also represent the Board in legal actions the Board files in the performance of its official duties.¹⁶ All requests for the Attorney General's representation are made by the Chief Counsel on behalf of the BOE or the Board.

OPINIONS

The BOE may ask the Attorney General to provide an opinion regarding a BOE or Board matter.¹⁷ Informal opinions may be oral or in the form of an informal letter. Formal opinions are initiated by a written request from the Executive Director on behalf of the BOE. A formal opinion is issued in the form of a letter directed to the BOE or the Board and is published if it concerns a question of general importance.

CONSULTATIONS¹⁸

The BOE's staff confers with the Attorney General's representatives concerning current litigation and other important legal issues on a regular basis and may obtain informal oral or written opinions from the Attorney General's representatives. At the request of the BOE, a representative of the Attorney General may appear before and consult with the BOE or the Board. On occasion, at the request of the BOE, BOE staff and the Attorney General's representatives may also consult with taxpayers concerning pending questions of importance.

CLERK OF THE BOARD

The Chief of the Board Proceedings Division (hereafter Chief of Board Proceedings) typically serves as the Clerk of the Board. The Chief of Board Proceedings is responsible for all of the Board Proceedings Division's duties and functions, and establishes policy for the management of Board matters, including, but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.¹⁹

The Board and the Executive Director have delegated the following duties to the Chief of Board Proceedings:

- Review and adopt regulations and approve rulemaking calendars.²⁰
- Sign Notices of Public Hearing, Interested Party letters, fiscal impact statements to the Department of Finance, and Orders to Adopt Regulations.²¹
- Prepare Board meeting open session minutes for Board approval.²²
- Prepare Board meeting closed session minutes for the Executive Director's approval.²³
- Set Board hearing and decision dates, assign deadlines for necessary staff work in the Legal Department, the Property Tax Department, or regarding Alcoholic Beverage Tax or Tax on Insurers, and create a priority protocol for Board cases.²⁴
- Manage the appeals conference planning function.²⁵
- Specify deadlines in compliance with Board orders for post-hearing submissions from taxpayers, other state agencies, and BOE staff; monitor those deadlines; grant extensions of time upon approval of the Board Chair; submit on the record those cases in which a party fails to file submissions by the specified deadline and specify the earliest possible date for Board consideration of those recommended decisions.²⁶
- Report contribution disclosures on the record of a Board meeting if a hearing is held, or into the written record of a Board meeting if no hearing is held.²⁷ (This delegation specifies the term "board staff" in Contribution Regulation 7009(d).)
- Postpone Board hearings.²⁸ (This delegation specifies the authority described in Regulation 5522.8(b).)

Additional duties of the Chief of Board Proceedings are specified in the *Rules for Tax Appeals*.²⁹

REFERENCE NOTES

- 1 California Constitution, article XIII, section 17.
- 2 State Board of Equalization Administrative Manual (BEAM), section 0102.
- 3 State Board of Equalization, Meeting Minutes, January 29, 2019.
- 4 California Code of Regulations, title 18, sections 5521 and 5521.5.
- 5 California Code of Regulations, title 18, section 5523.5.
- 6 Government Code, section 7.6.
- 7 Government Code, section 15700.
- 8 Assembly Bill No. 102 (2017-2018 Reg. Sess.).
- 9 State Board of Equalization, Meeting Minutes, September 26, 2017.
- 10 Government Code, section 7.9.
- 11 County of Los Angeles, et al. v. State Board of Equalization (2003) 105 Cal.App.4th 1.
- 12 Government Code, section 1775 and Attorney General Opinion 96-1106, December 31, 1996.
- 13 BEAM, section 0106.
- 14 BEAM, section 0301.
- 15 California Constitution, article V, section 13; Government Code, sections 12510 and 12511.
- 16 Government Code, sections 11040 through 11043.
- 17 Government Code, sections 12519 and 15608.
- 18 Government Code, section 15610.
- 19 California Code of Regulations, title 18, section 5511.
- 20 Delegated May 1, 2001.
- 21 Delegated February 2, 1998.
- 22 Delegated 1977.
- 23 Delegated 1992.
- 24 Delegated May 12, 1998.
- 25 Delegated July 1, 1998.
- 26 Delegated April 2, 2001.
- 27 Delegated April 2, 2001.
- 28 Delegated April 2, 2001.
- 29 See California Code of Regulations, title 18, sections 5270, 5324, 5324.4, 5324.8, 5327.6, 5335.6, 5336, 5336.5, 5345, 5423, 5424, 5440, 5461, 5521.5, 5522.2, 5522.4, 5522.8, 5523.5, 5561, 5562, and 5603.

CHAPTER 2

LEGISLATION

BOE LEGISLATION WORKPLAN

Once the Legislative recess begins in the fall, Board Members and BOE staff may submit proposals for Board-sponsored legislation to the Board's Chief of Legislative, Research & Statistics Division (LRSD), and Chief Counsel. The Chief of LRSD, Chief Counsel and the managers of the relevant program area will review each proposal. All Board Member proposals and the viable staff proposals are generally scheduled for the November and December meetings.

The agenda typically includes a brief (one or two sentence) impact statement. If insufficient time is available to prepare an impact statement before staff sends out the original agenda, an updated agenda may be distributed with the staff recommendations to show the impact. For legislation that would result in a significant administrative impact to the agency's existing workload, staffing, policies, etc., the agenda may also include a statement of the amount of that impact.

BOE staff will prepare summaries of proposals that have been agendized. These summaries are intended to give an impartial perspective on the underlying legislation and context as to how the proposal would affect existing law.

If an individual Member has a proposal added to the agenda as a Board Member Requested Item, that Member's personal staff will coordinate with the Board Proceedings Division to agendize the item; in this case, the Member and Member's staff will provide background research and information to facilitate discussion.

FUNCTIONS OF BOE STAFF-LEGISLATIVE, RESEARCH & STATISTICS DIVISION (LRSD)

The LRSD staff is tasked with authoring legislative and revenue analyses on pending bills before the Legislature. These analyses provide an impartial analysis of the possible legal, fiscal, and administrative affects a proposed bill may have and may be used as technical advice by legislators, Senate and Assembly Committees, the Governor, or other interested parties. Similarly, if a final LRSD analysis is available, it may be attached to the Board Meeting Agenda to facilitate discussion and consideration of the Board's Position on pending Legislation.¹

The Chief of LRSD is also tasked with coordinating BOE agency attempts to secure a legislative author should BOE agency staff determine the need to secure an author for a BOE legislative proposal.

BOARD POSITIONS ON LEGISLATION

At a Board meeting, the BOE staff may recommend a formal Board position on each legislative proposal. The Board reviews the staff recommendations as part of its monthly Administrative Agenda. A Member may also elect to add a legislative proposal to the agenda for consideration of a formal Board Position as a Board Member Requested Item.

As a collective body, the BOE Members may vote to take a position on a particular piece of legislation. The Board may take one of three basic positions on legislation: *support*, *oppose*, or *neutral*. *Variations of these positions may include support concept; support, if amended; neutral, point out problems; and oppose, unless amended.*

If the BOE Members jointly choose to take a neutral position or determine they will not collectively take a position on a bill, an individual BOE Member may write a letter voicing their individual support or opposition to a measure. In this case, the BOE Member's staff will prepare the letter for the BOE Member's signature and distribute the letter.

If a Board Member objects to the position recommended by staff on a bill or to the position taken by the full Board, the Board Member may submit a written objection for the record stating the Board Member's position. The objection will be included in the Board Meeting Minutes.

Once the BOE Members have voted to support or oppose legislation, the Chair may direct the Executive Director to request LRSD to prepare a letter, which conveys the formal position of the Board.² These letters are signed by the Executive Director and reflect the basis of the BOE's position, based on discussions of Members at the BOE Board meeting. The letters are sent, as appropriate, to the author of the legislation, the Senate and Assembly committee chairs and members, or other appropriate parties.

Once the Board's position on a bill is established, the bill is not placed on future agendas, unless: 1) the Chief of LRSD is providing an update on the pending legislation; 2) A Member adds the item as a Board Member Requested Item; or 3) the bill is amended in such a manner that the BOE's position could change, as determined by BOE Agency staff.

REFERENCE NOTES

- ¹ Government Code, section 15600, subd. (j).
- ² Government Code, section 15600, subd. (h).

CHAPTER 3

BOARD MEETINGS

BOARD REGULATORY AUTHORITY AND PROCEDURAL CONSTRAINTS

The California State Board of Equalization is empowered to adopt rules and regulations for its own government and the transaction of its own business, to govern county boards of equalization when equalizing and county assessors when assessing, and to administer and enforce specified tax laws¹ and this power is generally regarded as a quasi-legislative function. The Board is also empowered to hear and decide individual cases.

There are two important laws that prescribe the manner in which the Board may adopt regulations, including regulations interpreting tax laws. The first law is the Bagley-Keene Open Meeting Act,² which requires the Board to consider the adoption, amendment, or repeal of regulations at properly noticed public meetings. The second law is the Administrative Procedure Act,³ which prescribes the procedural steps the Board must follow to adopt a regulation with the force and effect of law.

In addition, effective July 1, 2017, the Board Members are restricted from making ex parte communications in adjudicatory matters.⁴

QUORUM

Any three Board Members constitute a quorum. The Board cannot act unless a quorum is present.⁵

If a Board Member is disqualified from participating under the provisions of the Quentin L. Kopp Conflict of Interest Act of 1990 (Kopp Act),⁶ the conflict of interest provisions of the Political Reform Act of 1974 (PRA),⁷ or by any other conflict of interest, that Board Member may not be counted to establish a quorum. If the Deputy State Controller is not authorized to participate because the matter before the Board is a constitutional function,⁸ then the Deputy State Controller may not be counted to establish a quorum. If a disqualified Board Member or Deputy State Controller is present during a vote, he or she should state that he or she will “not participate” and must disclose the reason for the disqualification on the record.⁹ However, if a Board Member or Deputy State Controller is entitled to participate, but chooses not to, his or her reason for not participating need not be disclosed on the record. Whenever a Board Member or Deputy State Controller states that he or she is “not participating” on a particular matter, that Board Member or Deputy State Controller is not counted to establish a quorum and will not participate in the vote on the matter.

If a Board Member or Deputy State Controller is entitled to participate in a particular matter, but elects to abstain on the vote, the Board Member or Deputy State Controller is still counted for purposes of establishing a quorum, but is disregarded for purposes of determining whether the motion on such matter is carried. This is because the term “abstain” means that the Board Member or Deputy State Controller is present and entitled to participate, but has chosen not to vote on the motion.¹⁰

VOTING

MINIMUM VOTE FOR BOARD ACTION

A majority vote of a quorum is required to carry a motion. This means that a motion will not be carried, unless more than half of the votes cast are in the affirmative. This also means that there must be a minimum of two affirmative votes cast to comprise a majority of a quorum (three Board Members).¹¹

For example, a motion could carry if all five Board Members were present and they voted as follows: two abstaining, two voting yes, and one voting no. This is because abstentions are not counted in determining how the majority voted, although abstaining Board Members may be counted as part of a quorum.

Other examples of situations in which two yes votes would carry a motion

Five Board Members present:

- Two yes, two abstain, one no.
- Two yes, three abstain.

Four Board Members present:

- Two yes, one abstain, one no.
- Two yes, two abstain.

Three Board Members present:

- Two yes, one no.
- Two yes, one abstain.

MOTIONS FAIL ON TIE VOTE

Since a majority vote is required for all decisions or actions of the Board, motions fail on a tie vote. The Board must hear and decide all petitions for reassessment of unitary values and corrections of allocated values by December 31 of the year in which the petitions are filed, and all petitions for reassessment of private railroad car values by January 31 of the year following the year in which the petitions are filed.¹² If the Board is unable to grant either type of petition by the applicable statutory deadline, the petition will be effectively denied.

CONTRIBUTION DISCLOSURE¹³

In general, the Kopp Act disqualifies any Board Member, including the State Controller, from participating in an adjudicatory proceeding before the California State Board of Equalization if any single party, participant, or agent of either has contributed at least \$250 to the Board Member in the preceding 12 months. However, if the Board Member returns to the contributor all contributions over \$249 within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the Board, the Board Member may participate in the proceeding. The law also requires a Board Member, party, participant, or agent to disclose any such contribution on the record. The Board Proceedings Division must inquire from all parties, participants, and agents whether any such contributions have been made to the Board Members. The Board Proceedings Division then reports its findings to the Board. See the *Contribution Disclosure* section of this *Board Meeting Reference Manual* for more information about the Kopp Act and its requirements.

FINANCIAL CONFLICT OF INTEREST¹⁴

If a Board Member has a financial conflict of interest under the PRA, regardless of which calendar the matter appears, a Member would not be entitled to participate in that matter.

There are several possible sources of a financial conflict of interest under the PRA. A Board Member has an economic interest in a decision within the meaning of Government Code section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the Board Member, on a member of his or her immediate family, or on any one of the following economic interests:

- any business entity in which the Board Member has a direct or indirect investment worth \$2,000 or more;
- any real property in which the Board Member has a direct or indirect investment worth \$2,000 or more;
- any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to, or received by, the Board Member within 12 months prior to the time when the decision is made;

- any business entity in which the Board Member is a director, officer, partner, trustee, employee, or holds any position of management;
- any donor of, or any intermediary or agent for a donor of a gift or gifts aggregating \$500 or more in value provided to, received by, or promised to the Board Member within 12 months prior to the time when the decision is made;¹⁵ or,
- an economic interest in the Board Member's personal expenses, income, assets, or liabilities, as well as those of the Board Member's immediate family. This is known as the "personal financial effects" rule. The personal financial effect is material if there would be a measurable financial benefit or loss from the decision of the Board Member.¹⁶

In the absence of an economic interest at or above the disqualifying amounts listed above, a Board Member would not have a conflict of interest with regard to a matter involving that taxpayer, and would therefore, be eligible to participate in the discussion and vote of that taxpayer's matter.

PUBLIC DISCLOSURE AND DISQUALIFICATION¹⁷

A Board Member who has a financial conflict of interest under the PRA must do the following:

- Publicly identify, in enough detail to be understood by the public, the financial interest that causes the conflict of interest or potential conflict of interest.
- Recuse himself or herself from discussing or voting on the matter or from attempting to use his or her position to influence the decision.
- Leave the room until after the discussion, vote, or any other disposition of the matter is concluded, unless the matter is on an agenda reserved for uncontested matters.

ROLL CALL VOTE

A Board Member who is not present when the Chair calls the vote may not cast a vote unless the voting Board Members are tied. In this case, the Chair may leave the roll open until the conclusion of the Board meeting to allow the absent Board Member or Board Members to be present and vote. A Board Member's vote may not be added to the recorded vote after the roll call has ended.

It has been Board practice that a Board Member may ask the Chief of Board Proceedings to record in the minutes the way the Board Member would have voted if the Board Member had been present at the roll call. However, the recording of a Board Member's intention is not a vote and will not be recorded as such.

A matter may be decided by unanimous consent, except during a teleconferenced meeting. All votes taken during a teleconferenced meeting must be by roll call vote.¹⁸

PARTICIPATION IN A DECISION BY A MEMBER NOT AT THE HEARING

When a matter has been taken under submission for a later vote, a Board Member who was not at the hearing may participate in the decision if the Board Member has made a reasonable effort to gain a substantial understanding of the record.¹⁹ The Chief of Board Proceedings will provide the hearing record and transcript to any Board Member upon request.

REOPENING A VOTE

If the Chair has closed a vote, but a Board Member still wishes to vote, any Board Member may make a motion to reopen the vote. A majority vote is required to adopt a motion to reopen a closed vote.²⁰

RESCINDING A VOTE

If the Board adopts a motion to rescind a previous Board action, the motion, second, and vote to rescind are included in the meeting minutes. The action that is being rescinded remains recorded and is marked with a footnote that indicates the location of the final action recorded on the matter. Any Board Member may make a motion to rescind a prior Board action. A majority vote is required to adopt noticed motions to rescind a prior Board action and, if no prior notice is given, a two-thirds majority vote is required to adopt a motion to rescind a prior Board action.²¹

EXPUNGING A VOTE FROM THE RECORD

If the Board adopts a motion to rescind a vote and expunge the record of the Board's previous action, the motion, second, and vote to expunge are included in the meeting minutes. Also, a line is drawn through the expunged language in the Board meeting minutes, the statement "Rescinded and Ordered Expunged" is written across the expunged language, and the expunged language is omitted from published versions of the Board meeting minutes. A majority vote of all the Board Members is required to adopt a motion to rescind a vote and expunge the record of the Board's previous action.²²

RECONSIDERING A VOTE

A previously recorded vote that has not been rescinded may be reconsidered at the same meeting or a later meeting if all of the following apply:

- the decision is not final;
- a motion to reconsider is made by a Board Member who voted with the prevailing side;
- a majority of the Board Members vote affirmatively on the motion to reconsider; and,
- the matter has been properly noticed under the Bagley-Keene Open Meeting Act.

FORMS OF MOTION

The following are suggested standard forms of motion. These forms in no way limit a Board Member's right to present his or her own motion for consideration.

CLAIM FOR REFUND (ALCOHOLIC BEVERAGE TAX & TAX ON INSURERS)

- Submitted for Decision. If a Board Member wants the Board to take a claim under submission and decide the claim at a later time, the Board Member can state that:
I move that the claim for refund be submitted for decision.
- Submitted for Decision with Time to Provide Additional Information/Documents (30/30/30). If a Board Member wants the Board to take a claim under submission, but give the claimant 30 days to file additional documents, the Department 30 days to respond, and the Appeals Division 30 days to review the Department's response, the Board Member can state that:
I move that the claim for refund be submitted for decision and grant the claimant 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the claimant's supporting documents and the Department's response and provide its recommendation to the Board.
- Granting the Claim for Refund. If a Board Member wants the Board to grant a claim for refund in its entirety, the Board Member can state that:
I move that the claim for refund be granted.

- Granting the Claim for Refund for a Stated Amount. If a Board Member wants the Board to grant a certain amount of a claim for refund, the Board Member can state that:

I move that the claim for refund be granted in the amount of \$_____ and otherwise be denied.

- Denying the Claim for Refund. If a Board Member wants the Board to deny a claim for refund in its entirety, the Board Member can state that:

I move that the claim for refund be denied.

- California Victim Compensation and Government Claims Board. If a Board Member does not want the Board to grant a claim for refund, but does want the California Victim Compensation and Government Claims Board to consider granting the petitioner's request for relief, the Board Member can state that:

I move that the claim for refund be denied, but that staff be directed to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration if the taxpayer files a claim with that agency.

PROPERTY TAXES

- Submitted for Decision. If a Board Member wants the Board to take a petition or application (appeal) under submission and decide the appeal at a later time, the Board Member can state that:

I move that the appeal be submitted for decision.

- Granting the Appeal. If a Board Member wants the Board to grant an appeal, the Board Member can state that:

I move that the appeal be granted.

- Abating the Penalty. If a Board Member wants the Board to abate a penalty, the Board Member can state that:

I move that the penalty be abated.

- Denying the Appeal. If a Board Member wants the Board to deny an appeal, the Board Member can state that:

I move that the appeal be denied.

“SECTION 40” MATTERS

- Revenue and Taxation Code section 40 generally requires publication on the Board's website of a written opinion where a matter involves an amount in controversy of \$500,000 or more and is decided on the Board's adjudicatory or oral hearing calendar.
- Oral Hearing Matter – Default Rule. Following an oral hearing in a Section 40 matter, a Member may use one of the standard motions set forth above by program area. If the motion does not otherwise specify, the general “default” rule is that the Board's vote to determine the appeal will not be held in abeyance and staff will prepare a proposed nonprecedential Section 40 decision for the Board's approval on a later calendar.
- Oral Hearing Matter – Exceptions Where Vote Held in Abeyance. If the Board directs preparation of a precedential opinion (referred to as a Memorandum Opinion) or wishes for the Board's vote to be held in abeyance pending its review of staff's proposed written opinion, its vote generally will be held in abeyance and will not become final during the time staff prepares the written opinion.ⁱ

FOOTNOTE

ⁱ The application of special statutory rules in the property tax valuation area may limit the ability of the Board to hold its vote determination in abeyance in property tax valuation matters.

If a Member wants the vote to be held in abeyance, the Member can state:

I move to grant [or, as applicable, deny] the appeal and hold the Board's determination in abeyance pending preparation and approval of the written Section 40 opinion.

If a Member wants staff to prepare a precedential opinion, the Member can state:

I move to grant [or, as applicable, deny] the appeal and request staff prepare a precedential Section 40 opinion for the Board's review.

Unless the motion otherwise specifies, a motion to request preparation of a precedential opinion would cause the Board's vote to be held in abeyance pending preparation and approval of that precedential opinion.

- Nonappearance Adjudicatory Matter. When a Section 40 Opinion is submitted for the Board's approval, a Member can use one of the following motions:

I move to adopt staff's proposed opinion.

I move to direct staff to revise the proposed opinion to [specify changes].ⁱⁱ

RULEMAKING

- Authorization to Initiate the Rulemaking Process. If a Board Member wants to authorize staff to initiate the rulemaking process by drafting proposed regulatory language and scheduling interested parties meetings, the Board Member can state that:

I move to authorize staff to initiate the rulemaking process, begin to draft language, and schedule interested parties meetings.

- Authorization for Public Hearing. If a Board Member wants the Board to authorize staff to begin the formal rulemaking process for adopting, amending, or repealing a regulation, the Board Member can state that:

I move that we authorize publication of this proposed regulation for a public hearing.

- Adoption of the Regulation. If a Board Member wants the Board to formally adopt, amend, or repeal a regulation and request staff complete the formal rulemaking process, the Board Member can state that:

I move that the regulation be adopted.

- Taking a Regulation under Submission at the End of the Public Hearing. If a Board Member wants the Board to take a proposed regulatory action under submission and consider it further at a later time, the Board Member can state that:

I move that the regulation be submitted for decision.

- Refer the Revised Language to the 15-Day File. If a Board Member wants the Board to adopt a proposed regulation with changes that are sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action, the Board Member can state that:

I move to approve the regulation with the recommended changes and refer the regulation to the 15-day file for additional notice and comment.

FOOTNOTE

ii Where the Board's vote in the matter was not held in abeyance and became final; the written Section 40 opinion must be consistent with the Board's prior vote in the matter.

- Approval of Rule 100 Changes to the Published Version.²³ If a Board Member wants the Board to approve Rule 100 changes to the text of a published regulation, the Board Member can state that:

I move that the changes to the published version of the regulation be approved.

- Adoption of an Emergency Regulation and Authorization to Publish. If a Board Member wants the Board to adopt an emergency regulation, the Board Member can state that:

I move that the emergency regulation be adopted and authorize its publication for public hearing.

BOARD MEETINGS

LOCATION OF BOARD MEETINGS

The Board holds regular meetings each month and the meetings are held in Sacramento.²⁴

OPEN MEETING LAW

The Bagley-Keene Open Meeting Act²⁵ provides that all meetings of the Board are open and public and that all persons shall be allowed to attend public meetings. However, there are statutory exceptions that permit the Board to hear certain matters during a closed session.

PUBLIC AGENDA NOTICE²⁶

Notice of any Board meeting must be given and made available on the Internet at least ten calendar days before the meeting. Any person who requests notice in writing must be sent a copy. The notice must include:

- the name, address, and telephone number of a person who can provide further information before the meeting;
- the address of the Internet site where notices are made available; and,
- a specific agenda for the meeting that contains a brief description of the items of business to be transacted or discussed in either open or closed session. A description of an item to be transacted or discussed in closed session must include a citation of the specific statutory authority under which a closed session is being held.

Items cannot be added to the agenda after the notice is issued.

Typically, the Board Proceedings Division posts the Public Agenda Notice on the BOE's website, www.boe.ca.gov, on a Friday, at least ten calendar days before the scheduled Board meeting. The Board Proceedings Division also emails or mails an announcement of the posting to interested parties who have requested the notice in writing.

AVAILABILITY OF BOARD MEETING MATERIALS²⁷

Agendas for public meetings and all other material distributed to the Board Members for discussion or consideration at a public meeting are public records subject to public disclosure, unless a recognized exemption applies. Examples of exemptions would be the attorney-client privilege or taxpayer confidentiality. See the Confidentiality and Disclosure section of this Board Meeting Reference Manual for more information about waivers of confidentiality and exceptions to waivers of confidentiality. Public Board meeting materials are made available to the public on the Internet as attachments to the Public Agenda Notice. The materials are also available in printed form on the day of the meeting.

With regard to the Board, the Bagley-Keene Open Meeting Act specifically provides that before taking final action on any item that does not involve a named taxpayer writings pertaining to the item that are public records and have been distributed by staff or individual Board Members to the Board Members prior to or during the meeting must be: (1) made available for public inspection at the meeting, (2) distributed to all persons who request or have requested copies of these writings, and (3) made available on the Internet.

CLOSED SESSIONS²⁸

The Board may hold closed sessions, which the public may not attend, for the following reasons:

- To consider matters pertaining to the appointment or removal of the BOE's Executive Director.
- To confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session would prejudice the Board's position in the litigation.
- To hear portions of confidential taxpayer appeals at the request of a party or to hear confidential taxpayer data when disclosing that data is prohibited by law.

The BOE's Chief Counsel prepares and submits to the Board a memorandum stating the specific reasons and legal authority for the closed session. Prior to holding a closed session, the Board shall convene and disclose in an open meeting the general nature of all items to be discussed in closed session and the Board may only consider those items during the closed session. After a closed session adjourns, the Board shall reconvene in open session and shall report any action taken, and any roll call vote thereon, to appoint, employ, or dismiss the Executive Director arising out of the closed session, prior to adjourning the Board meeting.

TELECONFERENCE MEETINGS

The Board may hold a meeting by teleconference as provided in the Bagley-Keene Open Meeting Act.²⁹ The Board Proceedings Division coordinates the meeting in conjunction with the California Department of Tax and Fee Administration's Space and Telecommunications Planning Section.

SPECIAL MEETINGS

The Bagley-Keene Open Meeting Act provides for special meetings. The special meeting requires that notice be provided at least 48 hours before the meeting to the members of the body and all national wire services, along with posting on the Internet. The purposes for which a body can call a special meeting are quite limited. Examples include pending litigation, legislation, licensing matters and certain personnel actions.

At the commencement of the special meeting, the body is required to make a finding that the 10-day notice requirement would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for the finding. The finding must be adopted by two-thirds vote and must contain articulable facts that support it. If all of these requirements are not followed, then the body cannot convene the special meeting and the meeting must be adjourned.

EMERGENCY MEETINGS

The Bagley-Keene Open Meeting Act provides for emergency meetings in rare instances when a crippling disaster or a work stoppage exists that would severely impair public health and safety. (Gov. Code, § 11125.5.) An emergency meeting requires a one-hour notice to the media and must be held in open session. The Act also sets forth a variety of other technical procedural requirements that must be satisfied.

PLANNING BOARD MEETINGS

BOARD PROCEEDINGS DIVISION

The Board Proceedings Division manages the workload of the Board meetings. The division forecasts, manages, and reports on Board hearing workload, plans and circulates Board meeting agendas and agenda materials, manages the contribution disclosure program, prepares Board meeting minutes and transcripts, and supervises the Board meeting support staff. The division manages the property tax appeals program. The division administers the *Rules for Tax Appeals* and manages the administrative aspects of the BOE's rulemaking program in partnership with the Legal Department.

BOARD WORKLOAD PLAN

In September of each year, the Chief of Board Proceedings prepares a Board workload plan for the following calendar year and submits it to the Board for adoption. The Chief of Board Proceedings then plans each meeting based upon the adopted Board workload plan, beginning 90 days before the meeting date. The Chief of Board Proceedings may cancel a Board meeting day for lack of workload, but generally other meeting date or location changes are made by majority vote of the Board in session. The adopted meeting calendar is published on the BOE's website.³⁰

Board Proceedings Division staff send planning memos to the Departments to notify them when Board meeting materials are due to the Executive Director for approval to be placed on the agenda for a scheduled Board meeting.

BOARD MEETING AGENDAS

The Board Proceedings Division determines the number of oral hearings to be heard by the Board during a Board meeting and sets the order of the agenda. The Chair approves all Board meeting agendas. (See the [Board Meeting Agenda Template](#) on the Public Meetings page of the BOE's website, www.boe.ca.gov.)

At its February 24, 2016, Board meeting, the Board adopted a process so that individual Members may add an item to the agenda by submitting it to the Executive Director, pursuant to the following process:

- Chief Counsel will review the item for legality
- If the item is legally proper, confirm that the Member and the Executive Director have consulted with the affected Department(s), which will provide their perspective on the item to the Member
- And that based on this Department input, the Member has affirmed the decision to have the item placed on a public agenda notice in accordance with the Bagley-Keene Open Meeting Act.

Items added to the agenda in this manner are typically heard under the L item section, "Board Member Requested Matters." Examples of L items include: miscellaneous Board Member requests, solutions to issues raised by oversight hearings, organization of the Board, operational issues.

In addition, any Board Member may place an item on the Board meeting agenda, subject to the Chair's approval or a majority vote of the Board in session. If the Chair denies a Board Member's request to place an item on the agenda, the Board Member may bring up the denied item during a Board meeting administrative session and request Board approval to place the item on a future agenda. When an item is brought before the Board in this manner for future agenda placement, the item does not need to be on the Public Agenda Notice of the current meeting. For information on scheduling items on Board meeting agendas or for information on Board actions on agenda items, contact the Board Proceedings Division.

ORAL HEARINGS

An oral hearing before the Board allows taxpayers to present unresolved tax issues to the Board Members for decision. The two major categories of oral hearings are:

- **Property Taxes.** The Board assesses certain public utility and other specified properties and allocates the assessed values among the counties where the properties are physically located for property tax purposes.³¹ The Board assesses the Private Railroad Car Tax private railcar owners pay on private railcars operated in California.³² Taxpayers may file appeals to contest their assessments and may request oral hearings to have their appeals decided by the Board.³³ The Board jointly administers the Veterans' Organization Exemption and Welfare Exemption with county assessors.³⁴ If the County-Assessed Properties Division determines that an organization is not eligible for either property tax exemption, the organization may file an appeal and may request an oral hearing to have its appeal decided by the Board.³⁵ The Board also hears local property tax appeals concerning the assessment of local government owned property by other local governments and county assessors' appeals of appraisals made by the BOE's County-Assessed Properties Division when conducting surveys of county assessors' assessment practices.³⁶ (B - items on the Public Notice Agenda).

- Special Taxes. The Board administers the Tax on Insurers and Alcoholic Beverage Tax Programs in cooperation with other state agencies. Taxpayers may request oral hearings and have their special tax appeals decided by the Board.³⁷ (A - items on the Public Notice Agenda.)

Contribution disclosure is required for all oral hearings.

NONAPPEARANCE MATTERS

Nonappearance tax matters require Board Member action, but do not require the taxpayer to appear. The Tax Programs Nonappearance Matters-“Consent” calendars (D - items on the Public Agenda Notice) are used to schedule and denote nonappearance tax matters that are not “adjudicatory proceedings pending before the Board” and not subject to the contribution disclosure requirements discussed in the *Contribution Disclosure* section of this *Board Meeting Reference Manual (Contribution Disclosure section)*, but which may become adjudicatory proceedings pending before the Board and subject to the contribution disclosure requirements under certain circumstances, as described in the *Contribution Disclosure* section. The Tax Programs Nonappearance Matters-“Adjudicatory” calendars (E - items on the Public Agenda Notice) are used to schedule and denote nonappearance tax matters that are already “adjudicatory proceedings pending before the Board” and subject to the contribution disclosure requirements discussed in *Contribution Disclosure* section.

The Tax Program Nonappearance Matters—Consent calendar is designed to be voted upon in one vote so that nonappearance matters on the “consent” calendar do not become “adjudicatory” nonappearance matters. The Board Members cannot make specific inquiries about consent matters and cannot vote on specific individual consent matters without converting them into adjudicatory proceedings.

If a matter included on the Tax Programs Nonappearance Matters-Consent calendar is made the subject of a separate discussion and vote, at that time, the matter becomes “adjudicatory” within the meaning of the Kopp Act³⁸ and cannot be properly voted upon without submission of contribution disclosure forms. Therefore, such a matter must be removed from the Tax Programs Nonappearance Matters-Consent calendar and must be noticed on the Tax Programs Nonappearance Matters-Adjudicatory calendar for a subsequent meeting to allow time for staff to obtain contribution disclosure forms and ensure that the vote meets the requirements of the Kopp Act.

Contribution disclosure is *not* required for matters that remain on the Tax Program Nonappearance Matters – Consent calendar.³⁹

Matters on the nonappearance adjudicatory calendar (E - items on the Public Agenda Notice) may be discussed and voted on separately. Adjudicatory matters must be mindful of the prohibition on ex parte communications, with any violations of the prohibition being disclosed for the record.⁴⁰ The adjudicatory portion of the Board meeting agenda may also be voted on in a single vote, if no Board Member objects. Any appeal previously heard by the Board, but not decided is always scheduled as an adjudicatory item. The Appeals Attorney will prepare a summary for each matter it presents to the Board as a nonappearance item, which is similar to the summary the Appeals Attorney prepares for each matter presented for Board hearing.

OTHER NONAPPEARANCE TAX MATTERS

Nonappearance tax matters pertaining to the Board’s assessment of state-assessed property, rate setting functions, and consideration of rules and regulations are not “adjudicatory proceedings.”⁴¹ These matters are not scheduled on the “consent” or “adjudicatory” calendars because they are never subject to contribution disclosure. (F - items on the Public Agenda Notice).

In addition, other nonappearance tax matters that do not pertain to assessments of taxes or claims for refund of taxes by specific taxpayers, cannot be “adjudicatory proceedings” and are not scheduled on the “consent” or “adjudicatory” calendars because they are never subject to contribution disclosure. For example, the following nonappearance matters are scheduled on the Tax Program Nonappearance Matters calendar and are not subject to the contribution disclosure statute:

- Property Tax Board Roll Corrections
- Board Roll Changes (if the decision is final and cannot be changed)

- Escaped Assessments
- Offers in Compromise

ADMINISTRATIVE MATTERS

Under the Board meeting agenda item heading J “Administrative Agenda” or K “Other Administrative Matters,” the Executive Director and staff present reports on policy matters and other matters of interest requiring Board approval. Matters of a routine nature, such as retirement resolutions, adoption of Board meeting minutes, or rate setting, may be grouped together on a consent agenda, but a Board Member may remove any of these matters for separate discussion.

Contribution disclosure is not required for Administrative Matters.

BOARD MEMBER AUTHORED MEMORANDUM

A serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body’s members. The term “meeting” does not necessarily mean that the quorum is gathered together at the same time and place. Use of letters, memoranda, electronic mail or the telephone will have the same consequence as communications conducted in person. Therefore, to avoid violation of Government Code section 11122.5, subdivision (b), of the Bagley-Keene Open Meetings Act, memoranda regarding matters within the jurisdiction of the agency by one Board Member to the other Board Members will be transmitted through the Board Proceedings Division with the Executive Director copied on communications as described below.

CURRENTLY SCHEDULED MATTERS

Member authored memoranda regarding matters on the agenda of an upcoming Board meeting will be submitted to the Chief of Board Proceedings by the Thursday prior to the first day of the Board meeting. The Chief of Board Proceedings will distribute any such memoranda in a timely manner to the other Board Members and appropriate staff members. The Board Members will not respond to these memoranda until the Board meeting.

NOT CURRENTLY SCHEDULED MATTERS

With regard to a member-authored memorandum on a matter not currently scheduled for a Board meeting, the Member will send the memorandum to the Chief of Board Proceedings with a cover note requesting that the matter be placed on a Board agenda. The Chief will discuss the placement of the matter on the agenda with the Chair and schedule the matter for the next appropriate Board meeting.

DECIDED MATTERS

A memorandum explaining the rationale for a Member’s decision on a matter which has already been decided by the Board may be sent directly to other Members. A copy of such a memorandum should be sent to the Chief of Board Proceedings for inclusion in the Board’s record of the matter.

ADDING AND DELETING ITEMS AFTER PUBLIC AGENDA NOTICE IS POSTED

After the Public Agenda Notice has been posted (10 days prior to the Board meeting), if it is discovered that an item needs to be added or deleted from the PAN the following procedures should be followed.

1. A formal e-mail request should be submitted directly from the department head or Chief Counsel to the Chief of Board Proceedings.
2. The formal request should include the following:

To Add an Item

- State what the item is.
- State the urgency of and specific reasons for adding the item.
- State whether or not Board material will be provided.
- State whether all parties have been notified and their position regarding the request.
- State what statutory requirements must be met in order to have the item placed on the agenda.
- State the staff's recommendation regarding the request.

To Delete an Item

- State the item name and item number.
- State the specific reasons why the item needs to be deleted.
- State whether all parties have been notified and their position regarding the request.
- State whether the item is to be postponed or deferred.
- State the staff's recommendation regarding the request.

Upon receipt of the request, the Chief of Board Proceedings will forward it to the Executive Director and Chief Counsel for confirmation that the information in the request is complete. Upon receipt of such confirmation, the Chief of Board Proceedings will then send the information to the Chair.

CONDUCT OF BOARD HEARINGS

FORMALITY

Board hearings are brief, to the point, and informal. Appellants may present the facts, issues, values, or other elements in dispute in their appeals. The Board Members may ask the parties questions and will afford the parties an opportunity to respond.⁴²

Appellants are not required to use legal or technical language. If facts are disputed, appellants may bring witnesses to testify or use documents or other exhibits to help explain their positions.⁴³ Appellants may be represented by any person they choose, including but not limited to an attorney, accountant, bookkeeper, employee, or business associate.⁴⁴

BOARD MEETING SIGN-IN

Appellants, representatives, and witnesses scheduled for oral hearings are asked to complete and sign an appearance sheet. However, completing and signing an appearance sheet is voluntary.⁴⁵ Anyone who signs an appearance sheet to speak on an adjudicatory matter will be asked to complete a contribution disclosure form.⁴⁶ Copies of the appearance sheet and contribution disclosure forms are given to the Board Members, the staff attorney presenting the case to the Board, the court reporters, and the vote recorder.

EXHIBITS

Parties to the hearing may provide exhibits to the Board Proceedings Division for distribution to the Board Members and staff before the oral hearing.⁴⁷ Exhibits may be used to present any relevant evidence, including declarations under penalty of perjury, but exhibits are not substitutes for timely filed briefs. Legal staff will review exhibits and if any part of an exhibit contains the elements of a brief, that part of the exhibit will not be accepted and will be returned to the submitting party.⁴⁸

Parties are encouraged to provide nine sets of copies of exhibits to the Board Proceedings Division for distribution to the Board Members and staff at least two weeks before the Board meeting.⁴⁹

TIME ALLOCATION FOR ORAL HEARINGS

Before the oral hearing, the Board Proceedings Division staff informs the appellant in writing about how much time will be allowed for the appellant's oral hearing. At the Board meeting, the Chief of Board Proceedings announces the time allocations and informs the Board Chair when each period has elapsed. In general, thirty-five minutes are allowed for each hearing: 10 minutes for the appellant, 10 minutes for the Department (California State Board of Equalization Department, and other state agencies), 5 minutes for the appellant's rebuttal, and 10 minutes for Board Members' questions.⁵⁰

Parties may submit written requests for more time before their oral hearings and the Chair may grant a party whatever additional time the Chair determines is necessary to present a complex case. Board Proceedings Division staff will inform the parties in writing when a written request for additional time has been granted. The Chair may also grant parties additional time to complete their presentations, including questioning witnesses, during their oral hearings.⁵¹ Questions from Board members during the oral hearing are not counted against the time allocated to the parties.

ORDER OF PRESENTATION

Generally, the party requesting the Board hearing is the appellant. Following the introduction by the Board's representative, the appellant or appellant's representative will present the arguments and testimony that support the appellant's position. Next, a representative for the Department will respond to the appellant's arguments and set forth the Department's position. The appellant will then be allowed to reply.

If an oral hearing was requested by a state agency other than the Board, the presentation order may be reversed.

EXAMINATION OF WITNESSES

The Board may consider oral testimony provided during Board hearings, but the Board is not required to base its decisions on any evidence, including oral testimony, that the Board considers irrelevant, untrustworthy, or unreliable. The Board may place all witnesses under oath.⁵² At the discretion of the Chair, the Chief of Board Proceedings swears in witnesses by administering this oath: "Do you swear to tell the truth in these proceedings?" After the witness is sworn, the Chief of Board Proceedings asks the witness to state his or her name for the record.⁵³ The Chair may allow additional time for witness testimony.

DECISIONS⁵⁴

At the close of a Board hearing, the Board Members will either make an immediate decision or take the matter under submission. The Board Members may also request the Appeals Attorney draft a Memorandum Opinion and submit the draft opinion to the Board for consideration and potential adoption at a subsequent Board meeting. Memorandum Opinions may be cited as precedent in any matter or proceeding before the Board.

The Appeals Attorney will promptly notify the taxpayer if the Board directs the Appeals Attorney to draft a Memorandum Opinion. If the Board subsequently votes to adopt a Memorandum Opinion, a Board Member who voted with the majority may submit a concurring opinion for publication as a supplement to the Memorandum Opinion. A concurring opinion must agree with the result reached in the Memorandum Opinion to which it relates and the reasons for that result, but may include additional reasons why a Board Member agrees with the result reached in the Memorandum Opinion to which it relates.⁵⁵ If the Board votes to adopt a Memorandum Opinion, a Board Member who did not vote with the majority may submit a dissenting opinion for publication as a supplement to the Memorandum Opinion to which it relates. A dissenting opinion explains a Board Member's reasons for disagreeing with a Memorandum Opinion.

The appellant will receive written notification of the Board's decision by mail.⁵⁶

PUBLIC COMMENT

Opportunity is provided for the public to address the Board on any agenda item, including any item on the administrative agenda.

Exception: If an opportunity for public comment was provided on the same item at a Board committee meeting or ad hoc meeting and the item has not been substantially changed since the committee heard the item, the Board is not required to hear additional public comment.⁵⁷

Board Proceedings Division staff will request that anyone planning to speak before the Board sign in and complete a public comment appearance sheet. However, signing in and completing a public comment appearance sheet are voluntary and a speaker who declines to sign in or fill out an appearance sheet will not be precluded from speaking to the Board Members.⁵⁸ Copies of the public comment appearance sheets are provided to the Chair, the court reporters, and the Chief of Board Proceedings.

USE OF INTERPRETERS⁵⁹

Persons participating in Board meetings who do not speak English or who have hearing impairments may contact the Board Proceedings Division before the Board meeting date to arrange for an interpreter. Appellants may also request interpreters in their response to notice of hearing forms.

Before the interpreter translates any sworn testimony given in a language other than English, the interpreter must take an oath that he or she will accurately and fully translate the questions from English to the other language and the appellant's answers from the other language to English.

To assist in making the record, the Chair should ask the appellant to respond to questions in his or her own language and not in English.

ACCESS TO BOARD MEETING SITES⁶⁰

Board meeting sites are accessible to people with disabilities. Those who need special assistance may contact the Board Proceedings Division. People who need hearing assistance devices may request them from the sergeant-at-arms at Board meetings.

BOARDROOM SECURITY PROTOCOL

Prior to entering the Boardroom in any of our meeting locations, all staff and visitors will be subject to security check. Effective July 1, 2017, security for meetings is coordinated with CDTFA.

RECORDS OF BOARD MEETINGS

BOARD MEETING MINUTES

Minutes are the summary record of what was done at each Board meeting. Draft copies are published on the Internet by the Board Proceedings Division and distributed to the Board Members, the Executive Director, and various staff for review. After review and Board approval, the final approved minutes are published and archived on the Internet. Each year's complete set of approved minutes is bound into volumes. The bound volumes of Board minutes are the permanent record of Board actions required by the Government Code.⁶¹ The bound volumes are available for viewing in the Board Proceedings Division for an undetermined amount of time, and then transferred to the State Archives for viewing and permanent storage.

CLOSED SESSION MINUTES

Closed session minutes are a record of topics discussed and decisions made at a closed session. The closed session minute book is not a public record and is kept confidential.⁶² The closed session minute book is available to Board Members, the Executive Director, and the Chief Counsel. The Chief of Board Proceedings writes these minutes and the Chief Counsel approves them.

INCORPORATED DATA AND PUBLIC DISCLOSURE

Selected supporting documents, known as incorporated data, are incorporated into the minutes by reference. Examples of incorporated data are public hearing materials, administrative matter materials, and reports and memorandums from BOE staff provided to the Board Members for discussion or consideration at a public meeting. Incorporated data is noted in parentheses in the text of the minutes and designated by exhibit numbers. Copies of incorporated data are available from the Board Proceedings Division.

The minutes and transcripts of the Board meetings, and any exhibits incorporated by reference into the public minutes, are public documents subject to disclosure.⁶³ Some additional appeal documents are disclosable before oral hearings are conducted and other appeal documents are not subject to disclosure.

- **Special Taxes (Alcoholic Beverage Tax and Tax on Insurers):** A Hearing Summary may be disclosed after the public agenda notice is issued for the Board meeting at which the appellant's oral hearing will be conducted.⁶⁴ However, audit reports, Appeals Attorney Decision and Recommendations, and briefs are not subject to disclosure since they may contain confidential taxpayer information, which will not be incorporated into the minutes of the taxpayer's oral hearing or disclosed on the transcript of an oral hearing.
- **Property Taxes:** After the public agenda notice is issued for the Board meeting at which a property tax oral hearing will be conducted, the following hearing related documents are subject to public disclosure: the appellant's petition or application and the documents the appellant files in support of its petition or application; any briefs filed in response to or support of the petition or application and any documents filed in support of such briefs; and, the Hearing Summary prepared for the oral hearing. Also, at the request of the parties, any materials marked as exhibits during the oral hearing, including briefs and supporting evidence, may be incorporated into the minutes by reference and disclosed to the public.⁶⁵ However, a state assessee's confidential information, including the state assessee's property statement, is not disclosable, unless the information is filed in support of a petition or brief, the Board takes official notice of the property statement, the property statement is marked as an exhibit and incorporated into the minutes of an oral hearing, or information on the statement is actually disclosed on the transcript of an oral hearing.

AUDIO AND VIDEO WEBCAST

Meetings are broadcast live to the public on the BOE's website via streaming audio and video webcast. After the meeting has ended, these webcasts are indexed, archived and stored on the BOE's website for easy access by Board Members, staff and the public. The archived files are generally available within 24 hours of the completed Board meeting. Meeting videos are archived in accordance with the agency's document retention policy.

TRANSCRIPTS⁶⁶

Transcripts are the written record of what was said at a Board meeting. They are prepared by agenda item and only upon request. Transcripts are public records and subject to public disclosure. Requests for transcripts must be directed to the Board Proceedings Division.

Completed transcripts and untranscribed shorthand notes are retained up to 12 years after the Board meeting date.⁶⁷

BOARD MEETING STAFF

CLERK OF THE BOARD

The Chief of Board Proceedings acts as the Clerk of the Board. The Chief of Board Proceedings' responsibilities are to plan, organize, and conduct Board meetings in accordance with the provisions of the Open Meeting Act, the Kopp Act, the PRA, the *Rules for Tax Appeals*, and the *Parliamentary Rules of Order*.

APPEALS ATTORNEY, LEGAL DEPARTMENT

The designated Appeals Attorney introduces the parties and summarizes the issues involved in the appeal. As needed, the Appeals Attorney provides advice to the Chair and other Board Members on the application of the law to the facts in the case and related procedural issues.

THE DEPARTMENT REPRESENTATIVE

The BOE's Departments are represented at oral Board hearings by an attorney from the Legal Department and, in some appeals, by a representative from the Property Tax, Tax on Insurers, or Alcoholic Beverage Tax Department. The role of the attorney or representative is to set forth the Department's position regarding the issues raised by the taxpayer, after reviewing the relevant facts and applying the applicable law, and answer questions for the Board Members. The Deputy Director of the Department (or designee) is also present at the hearing to represent the Department. The Deputy Director will comment and answer questions as necessary. The Chief Counsel is responsible for representing the Department on all legal issues and questions of law.

In cases involving taxes jointly administered by the Board and another state agency, an attorney or representative, or both, from that agency may be present and elect to make a presentation to support the agency's position.

HEARING REPORTER

All matters heard by the Board in open session are recorded by a certified shorthand reporter, also known as a hearing reporter, and are thereafter transcribed as required. Archived webcasts provide a backup to the hearing reporter's notes.

VOTE RECORDER

A Board Proceedings Division staff member acts as the meeting vote recorder during open session to record the Board's actions and requests during the Board meeting.

SERGEANT-AT-ARMS

The sergeant-at-arms is a Board Proceedings Division employee who acts in this capacity in addition to his or her regularly assigned duties.

The sergeant-at-arms performs miscellaneous duties such as making copies of documents, delivering messages to or from Board Members, setting up appropriate signs, and operating the Boardroom audiovisual system. During hearings, the sergeant-at-arms maintains order in the Boardroom.

Effective July 1, 2017, BOE staff coordinates with the CDTFA Physical Security Section responsible for arranging for the California Highway Patrol (CHP) to provide security officers at Board meetings and logging the CHP Officers in and out.

TAXPAYERS' RIGHTS ADVOCATE

The Taxpayers' Rights Advocate's (TRA) Office hosts the annual Taxpayers' Bill of Rights Hearing. A member of the TRA staff is often available before and during the Board meeting for any questions taxpayers may have regarding Board procedures or their rights as taxpayers. In addition, any Board Member may direct a taxpayer to confer with the Taxpayers' Rights Advocate on any matter.

REFERENCE NOTES

- 1 Property Tax: Cal. Const. art. 13, sections 11, 18 and 19; and Government Code, sections 15600 and 15606. Alcoholic Beverage Tax: Cal. Const. art. XX, section 22; and Rev. & Tax. Code sections 32001-32557. Tax on Insurers: Cal Const. art. 13, section 28; Rev. & Tax. sections 12001-13170; and Ins. Code sections 132, 685-685.4, 995.5, 1530, 1531, 1774-1780, 10089.44, 12976 and 12976.5.
- 2 Government Code, section 11120 et seq.
- 3 Government Code, section 11340 et seq.
- 4 Government Code, section 15609.5; See also Government Code, section 11430.10.
- 5 California Code of Regulations, title 18, section 5550.
- 6 Government Code, section 15626.
- 7 Government Code, section 81000 et seq.
- 8 Government Code, section 7.9.
- 9 Government Code, sections 15626 and 87105.
- 10 Parliamentary Rules of Order and Robert's Rules of Order Newly Revised.
- 11 Parliamentary Rules of Order and Robert's Rules of Order Newly Revised.
- 12 California Code of Regulations, title 18, section 5327.4.
- 13 Government Code, section 15626; and California Code of Regulations, title 18, sections 5523.2, 5540, and 7001-7011.
- 14 Government Code, sections 87100-87500.
- 15 Government Code, section 89503 provides for a biennial adjustment to the gift limit to reflect changes in the Consumer Price Index. For 2019-2020, the gift limit is \$500. (See also Cal. Code Regs., tit. 2, § 18940.2.)
- 16 California Code of Regulations, title 2, sections 18702.5.
- 17 Government Code, section 87105.
- 18 Government Code, section 11123, subdivision (b)(1)(D).
- 19 *Morgan v. U.S.* (1936) 298 U.S. 468 [80 L.Ed. 1288]; *Cooper v. State Board of Medical Examiners* (1950) 35 Cal.2d 242; *Allied Compensation Insurance Co. v. Industrial Accident Commission* (1957) 57 Cal.2d 115.
- 20 Robert's Rules of Order Newly Revised.
- 21 Robert's Rules of Order Newly Revised.
- 22 Robert's Rules of Order Newly Revised.
- 23 California Code of Regulations, title 1, section 100.
- 24 Government Code, section 15609 requires the Board to hold regular meetings each month and requires the Board to hold at least one meeting in Sacramento each quarter. Otherwise, the Chair has discretion to designate the location of meetings consistent with the budget and facility availability of the agency. (See also Cal. Code Regs., tit. 18, § 5521.)
- 25 Government Code, section 11120 et seq.
- 26 Government Code, section 11125.
- 27 Government Code, section 11125.1.
- 28 Government Code, sections 11125.2, 11126, and 11126.3.
- 29 Government Code, section 11123.
- 30 California Code of Regulations, title 18, section 5521.5.
- 31 California Constitution, article XIII, section 19.
- 32 Revenue and Taxation Code, section 11201 et seq.
- 33 California Code of Regulations, title 18, sections 5323.4, 5327.4, and 5522.
- 34 Revenue and Taxation Code, section 254.6.
- 35 California Code of Regulations, title 18, sections 5333.4 and 5522.
- 36 California Constitution, article XIII, section 11, subdivision (g), Government Code, section 15640 et seq.; and California Code of Regulations, title 18, sections 5334, 5343, and 5522.
- 37 California Code of Regulations, title 18, section 5266 and 5522.
- 38 Government Code, section 15626.
- 39 California Code of Regulations, title 18, section 7003.
- 40 Government Code, section 15609.5; See also Government Code section 11430.10.
- 41 California Code of Regulations, title 18, section 7003, subdivisions (c), (d), (e).
- 42 California Code of Regulations, title 18, section 5523.5.
- 43 California Code of Regulations, title 18, section 5523.6 and 5523.7.

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- 44 California Code of Regulations, title 18, section 5523 and 5523.1.
45 Government Code, section 11124.
46 Government Code, section 15626; and California Code of Regulations, title 18, section 7004-7006.
47 California Code of Regulations, title 18, section 5523.6.
48 California Code of Regulations, title 18, section 5270, 5326.2, 5326.6, 5337.4, 5337.6, 5430, 5431, and 5432.
49 California Code of Regulations, title 18, section 5523.6.
50 California Code of Regulations, title 18, section 5523.5.
51 California Code of Regulations, title 18, section 5523.5; Minutes of May 24, 2005, Customer Service and Administrative Efficiency Meeting.
52 Government Code, section 15617; California Code of Regulations, title 18, section 5523.7.
53 Authority delegated to the Chief of Board Proceedings on April 19, 2001.
54 California Code of Regulations, title 18, section 5551.
55 Minutes of May 28, 2008, Board meeting, Item M1, Adoption of Formal and Memorandum Opinions.
56 California Code of Regulations, title 18, section 5560.
57 Government Code, section 11125.7.
58 Government Code, section 11124.
59 Dymally-Alatorre Bilingual Services Act, Government Code, section 7290 et seq.; California Code of Regulations, title 18, section 5522.6.
60 The Americans with Disabilities Act of 1990.
61 Government Code, sections 15605 and 15606; California Code of Regulations, title 18, 5572.
62 Government Code, section 11126.1.
63 California Code of Regulations, title 18, section 5572.
64 California Code of Regulations, title 18, section 5573.
65 California Code of Regulations, title 18, section 5573.
66 California Code of Regulations, title 18, section 5572.
67 Retention criteria set by Chief Counsel.

CHAPTER 4

CONTRIBUTION DISCLOSURES

GENERAL¹

A Member of the California State Board of Equalization, including the State Controller, is disqualified from participating in an adjudicatory proceeding pending before the Board if any single party, participant, or agent of a party or participant has contributed at least \$250 to the Board Member in the preceding 12 months.² However, if the Board Member returns to the contributor all contributions over \$249 within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the Board, the Board Member may participate in the proceeding.³ The law also requires that a Board Member, party, participant, or agent of a party or participant disclose any such contribution on the record.⁴ BOE staff must inquire and report any contributions to the Board Members.

ADJUDICATORY AND CONSENT PROCEEDINGS

An “adjudicatory proceeding pending before the Board” is any matter pertaining to an assessment of taxes or a claim for a refund of taxes by a taxpayer that has been scheduled for a Board hearing and appears as an item on a Public Agenda Notice.⁵ For example, Board hearings on petitions for redetermination or appeals from denials of claims for refund on Alcoholic Beverage Tax and Tax on Insurers and Petitions for Assessment of State-Assessed Property are all adjudicatory proceedings.

A tax matter which has been submitted for a decision on the record without an appearance by a taxpayer or by a taxpayer’s representative and without Board discussion of the matter is a “nonappearance matter.” A nonappearance matter, which pertains to an assessment of taxes or claim for refund of taxes by a specific taxpayer, such as a petition for reassessment of state-assessed property, is not an adjudicatory proceeding pending before the Board, unless: (1) the matter has previously appeared on a Board meeting calendar as a contested matter; or (2) the matter has been removed from the Tax Programs Nonappearance Matters-Consent calendar for separate discussion and vote; or (3) the matter is one about which a Board Member has previously contacted BOE staff or a party.⁶ In addition, a petition for rehearing is not an adjudicatory proceeding unless it is removed from the Tax Programs Nonappearance Matters-Consent calendar for separate discussion and vote or the petition for rehearing is an item about which a Board Member has contacted BOE staff or a party.⁷

The term “contacted BOE staff or a party” includes any substantive inquiries from a Board Member and/or his or her staff to BOE staff. Substantive inquiries include inquiries which are not procedural inquiries and which request information or discussion of legal issues, staff positions, staff or taxpayer theories, or other substantive issues concerning a matter on a nonappearance agenda. The term “contacted BOE staff or a party” does not include procedural inquiries by a Board Member or a party, including, but not limited to, inquiries concerning: (A) when a case will be scheduled for Board consideration or decision; (B) the status of a particular case; or (C) whether the requirements of the Quentin L. Kopp Conflict of Interest Act (Gov. Code, § 15626) have been met.⁸

Furthermore, the Board’s assessments of state-assessed property pursuant to section 19 of article XIII of the California Constitution are not adjudicatory proceedings.⁹ Administrative hearings for the Board’s consideration and adoption of rules and regulations are not adjudicatory proceedings.¹⁰ Also, the Board’s rate setting functions are not adjudicatory proceedings.¹¹

If a matter is adjudicatory or becomes adjudicatory, the prohibition on ex parte communications must be considered.¹²

NONAPPEARANCE CONSENT CALENDARS

Nonappearance tax matters that pertain to assessments of taxes or claims for refund of taxes by specific taxpayers, but are not “adjudicatory proceedings pending before the Board,” are scheduled for Board action on one of the Tax Programs Nonappearance Matters-Consent calendars listed below and are not subject to the contribution disclosure requirements.

- Petitions for Reassessment of Unitary/Nonunitary Value and/or Abatement of Penalty matters for consideration.
- Special Taxes matters for consideration.

NONAPPEARANCE ADJUDICATORY CALENDARS

Nonappearance tax matters are scheduled for Board action on the Tax Programs Nonappearance Matters-Adjudicatory calendars if they pertain to assessments of taxes or claims for refund of taxes by specific taxpayers and they are “adjudicatory proceedings pending before the Board.” Adjudicatory, nonappearance tax matters include:

- All nonappearance matters that have been previously scheduled for Board hearing and that have previously appeared on the calendar as adjudicatory items.
- All nonappearance matters that have been removed from a consent calendar for separate discussion and vote.
- All nonappearance matters about which a Board Member has previously contacted the staff or a party.
- Adjudicatory nonappearance tax matters are subject to the contribution disclosure requirements.

HEARING CALENDAR (ADJUDICATORY)

Approximately 45 days before a scheduled Board hearing, Board Proceedings Division staff will mail contribution disclosure forms to all parties, participants, and agents inquiring as to whether contributions have been made to one or more Board Members. The contribution disclosure forms should be returned to the Board Proceedings Division prior to the Board hearing.

On the day of a Board hearing, taxpayers, representatives and witnesses who appear for items on Board hearing calendars are asked to update previously filed contribution disclosure forms. The Contribution Disclosure Analyst documents and secures any un-filed contribution disclosure forms before the hearings. Disclosure information is reported to the Board on the record of the oral hearing by the Chief of Board Proceedings.¹⁴

CONTRIBUTION DISCLOSURE REPORTS

In addition to forms related to scheduled Board hearings, approximately 45 days before a Board meeting, Board Proceedings Division staff will mail contribution disclosure forms to all parties, participants, and agents for all adjudicatory matters, including nonappearance matters, to be considered at that Board meeting, inquiring as to whether contributions have been made to one or more Board Members. The contribution disclosure forms should be returned to the Board Proceedings Division prior to the Board meeting for inclusion in the reports as described below.¹⁵ A contribution disclosure form filed by a party, participant, or agent is incorporated into the public record of the adjudicatory proceeding to which it relates and will be provided to the public upon request.¹⁶

CONTRIBUTION DISCLOSURE DETAILED REPORT

The information obtained on the returned contribution disclosure forms is compiled into a detailed report, which includes the names of all parties, participants and agents in connection with adjudicatory items on the meeting agenda, any contributions disclosed, and the returned contribution disclosure forms.

The detailed contribution disclosure reports are furnished to the Board Members one week prior to the scheduled Board meeting.

ALPHABETICAL LISTINGS

An alphabetical listing of all parties, participants, and agents is prepared for all adjudicatory matters on the meeting agenda. (As discussed earlier in this section, adjudicatory matters can include oral hearings and nonappearance adjudicatory matters.) Another alphabetical listing of all parties, participants, and agents is prepared for all tax nonappearance consent matters on the meeting agenda.

These reports are furnished to the Board Members one week prior to the scheduled Board meeting.

NOTIFICATION OF CONTRIBUTIONS MADE

Board Members are also notified by memorandum when a contribution disclosure statement discloses a contribution made to any Board Member, including the State Controller.

LEGALLY REQUIRED PARTICIPATION

When a Board Member's participation is legally required for an action or decision to be made, the Board may bring back as many disqualified Board Members as necessary to establish a quorum. The preferred means of selecting which disqualified Board Member should participate is by lot. Other means of random selection or other impartial and equitable means of selection may also be used.¹⁷

DEPUTY CONTROLLER

If a Deputy to the Controller sits at a Board meeting and votes on behalf of the Controller, the deputy shall disclose contributions made to the Controller and shall disqualify himself or herself from voting pursuant to the requirements of the contribution disclosure statute.¹⁸

CAMPAIGN STATEMENTS

Each Board Member, including the State Controller, is required to send to the Chief of Board Proceedings a copy of the Board Member's campaign statements at the time each of those statements is filed. Filing dates are set by statute.

DEFINITION OF TERMS

PARTY

A "party" is any person who is the subject of an adjudicatory proceeding pending before the Board.¹⁹

PARTICIPANT

A "participant" is any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the Board and who has a financial interest in the decision. A person actively supports or opposes a particular decision if he or she personally lobbies the Board Members or Board employees, testifies in person before the Board, or otherwise acts to influence the Board Members.²⁰

AGENT

An "agent" is any person who represents a party to or a participant in an adjudicatory proceeding pending before the Board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.²¹

CLOSE CORPORATION AGENT

A "close corporation" means a corporation in which any natural person, or any natural person who together with his or her spouse, owns or controls at least 50 percent of the corporation's voting stock. When a close corporation is a "party" to an adjudicatory proceeding pending before the Board, the majority shareholder is subject to the contribution disclosure requirements.²²

CONTRIBUTION

Contribution has the same meaning as in Government Code section 82015 and California Code of Regulations, title 2, section 18215. Generally, a "contribution" means a payment, a forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received,

unless it is clear from the surrounding circumstances that it is not made for political purposes.²³ For the full definition of contribution, see the text of Government Code section 82015 and California Code of Regulations, title 2, section 18215, which are available on the Public Meetings page of the BOE's website, www.boe.ca.gov. (See [Contribution Disclosure Statements](#).)

REFERENCE

LEGAL OPINION MEMORANDUMS

Contribution Disclosure Opinions are maintained in a reference binder and are available for review in the Legal Department and in the Board Proceedings Division. These opinions are prepared by the Legal Department in response to inquiries by Board Members and staff with respect to the contribution disclosure statute. Contribution Disclosure Opinions will also be provided to the public upon request.²⁴

REGULATIONS

In accordance with Government Code section 15626, the Board adopted Contribution Disclosure Regulations, which are found in California Code of Regulations, title 18, sections 7001-7011, effective August 20, 1994. (See [Contribution Disclosure Statements](#) on the Public Meetings page of the BOE's website, www.boe.ca.gov.)

REFERENCE NOTES

- 1 Quentin L. Kopp Conflict of Interest Act of 1990 (Government Code, section 15626).
- 2 Government Code, section 15626, subdivision (c).
- 3 Government Code, section 15626, subdivision (d); and California Code of Regulations, title 18, section 7010.
- 4 Government Code, section 15626, subdivisions (b) and (e); and California Code of Regulations, title 18, sections 5523.2, 7009, and 7011.
- 5 Government Code, section 15626, subdivision (h)(5); California Code of Regulations, title 18, section 7003, subdivision (a).
- 6 Government Code, section 15626, subdivision (h)(5); California Code of Regulations, title 18, section 7003, subdivision (b).
- 7 California Code of Regulations, title 18, section 7003, subdivision (f).
- 8 Government Code, section 15626, subdivision (h)(5); California Code of Regulations, title 18, section 7003, subdivision (b).
- 9 California Code of Regulations, title 18, section 7003, subdivision (c).
- 10 California Code of Regulations, title 18, section 7003, subdivision (e).
- 11 California Code of Regulations, title 18, section 7003, subdivision (d).
- 12 Government Code section 15609.5; See also Government Code section 11430.10.
- 13 California Code of Regulations, title 18, section 5523.2, subdivisions (b) and (c).
- 14 California Code of Regulations, title 18, section 7009, subdivisions (c) and (d).
- 15 California Code of Regulations, title 18, section 5523.2, subdivisions (b) and (c).
- 16 California Code of Regulations, title 18, section 7011, subdivision (c).
- 17 California Code of Regulations, title 18, section 7008, subdivisions (c) and (d), and Attorney General Opinion 95-324, November 17, 1995.
- 18 California Code of Regulations, title 18, section 7001, subdivision (b).
- 19 California Code of Regulations, title 18, section 7004, subdivision (a).
- 20 California Code of Regulations, title 18, section 7006.
- 21 California Code of Regulations, title 18, section 7005.
- 22 California Code of Regulations, title 18, section 7004, subdivision (b).
- 23 California Code of Regulations, title 18, section 7007, subdivision (a).
- 24 California Code of Regulations, title 18, section 7011, subdivision (d).

CHAPTER 5

PROPERTY TAXES

STATE ASSESSEES' VALUATION PROCEDURES

STATE-ASSESSED PROPERTY

Section 19 of article XIII of the California Constitution requires the Board to annually assess certain described types of property. This property is commonly referred to as state-assessed property and the taxpayers who own and use such property are commonly referred to as state assessees.

The first paragraph of section 19 divides state-assessed property into two categories: (1) pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties; and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in California, and companies transmitting or selling gas or electricity.² The first category of property consists of specific types of improvements lying within two or more counties, which are subject to Board assessment without regard to the nature of the property owner. The second category of property consists of all taxable property, excluding franchises, owned or used by certain enumerated types of companies, which are subject to Board assessment without regard to their business purpose.

FAIR MARKET VALUE ASSESSMENT

State-assessed property must be assessed at its fair market value or full value on January 1 of each year.³ In *ITT World Communications, Inc. v. City and County of San Francisco*, the California Supreme Court ruled that Proposition 13's assessment rollback, its two-percent limit on annual assessment growth, and its limit on current market value assessment did not apply to state-assessed property, only to locally assessed property.⁴

UNIT VALUATION CONCEPT

The Board is statutorily authorized to use the principle of unit valuation to value state-assessed property.⁵ The principle of unit valuation holds, in essence, that a collection of tangible assets functioning as an operating unit should be valued as a whole, without reference to the separate values of the assets constituting the operating unit. The general definition of unitary property is property owned or leased by a state assessee and used in its primary operations as part of the state assessee's integrated system. Nonunitary property is property that is owned by a state assessee, but not used in the assessee's primary operations. The State Assessment Manual (2016) contains detailed information on the principles and procedures used in the assessment of state-assessed property.

ANNUAL VALUATION CALENDAR

Each year the Board Proceedings Division, after consulting with the Property Tax Department, prepares a calendar for the valuation of state-assessed property during the following year, which the Executive Director presents to the Board for approval by November 30. After the Board adopts the calendar, but no later than the following January 30, the Board Proceedings Division will mail copies of the calendar to state assessees, county assessors, county supervisors, and BOE staff.⁶ The State-Assessed Properties Division (SAPD) of the Property Tax Department also publishes the calendar on the Property Taxes section of the BOE's website.

ASSESSMENT DEADLINES FOR REGULAR ASSESSMENTS

The Board must value all of the state assessees' unitary property during May of each year and SAPD staff must mail the state assessees notices of unitary assessed value by June 1 of each year.⁷ The Board must allocate the assessed values of the state assessees' unitary property among California's local tax jurisdictions and mail the state assessees notices of assessment allocation by June 15 of each year.⁸ The Board must value all of the state assessees' nonunitary property and mail the state assessees notices of nonunitary assessed value by July 31 of each year.⁹

PROPERTY STATEMENTS

State assessees are required to file property statements with the Board by 5:00 p.m. on March 1 of each year. The Board may grant a request for an extension of up to 30 days, if there is good cause and the request is made prior to March 1.¹⁰

VALUE INDICATORS AND ASSESSMENT FACTOR HEARINGS

SAPD annually develops fair market value indicators, including capitalization rates, for state-assessed property. A summary of the calculations of the value indicators is provided to state assessees upon request and SAPD staff will discuss the data with state assessees upon request.¹¹

State assessees will be afforded an opportunity to discuss capitalization rates and other factors affecting the value of their unitary property, including the SAPD's value indicators, with the Board. State assessees may also submit written presentations to the Board in lieu of making an oral presentation. Assessment Factor Hearings are generally conducted at the Board's February meeting in Sacramento.¹²

VALUATION HEARINGS

At the discretion of the Board, but generally at the Board's April meeting in Sacramento, each state assessee may present information to the Board regarding the value indicators to be used to value its unitary property and the value of its property. State assessees may also submit written presentations to the Board in lieu of making an oral presentation.¹³

ADOPTION OF UNITARY PROPERTY VALUES

SAPD recommends a specific value to the Board for each state assessee's unitary property. The Board considers the staff recommendations and the information provided by the state assessees during the Board's May meeting and sets unitary values by May 31.¹⁴ Once the values of state-assessed unitary properties have been set by the Board, each state assessee is notified of its respective Board-adopted unitary value and of its appeal rights; and, each state assessee is also provided a copy of the appraisal data sheet containing the value indicators staff used to value its unitary property and staff's value recommendation to the Board.¹⁵

ALLOCATION OF UNITARY VALUES

SAPD annually allocates the Board-adopted value for each state assessee's unitary property among the counties where the property is located. By June 15, state assessees are notified of the proposed allocated assessed values of their unitary properties and of their appeal rights.¹⁶

ADOPTION OF ALLOCATED VALUES AND NONUNITARY VALUES

SAPD submits the proposed allocated unitary assessed values and its recommendations for the valuation of all state-assessed nonunitary property to the Board for adoption and inclusion in the Board-adopted state-assessed property roll during the Board's July meeting. The Board adopts and transmits the allocated unitary values and nonunitary property values to the county auditors by July 31.¹⁷ Once the allocated unitary values and the values of nonunitary state assessed properties have been adopted by the Board, state assessees are notified of their respective nonunitary values and of their appeal rights.¹⁸

APPEAL PROCESS

PETITION FOR REASSESSMENT, PENALTY ABATEMENT, OR CORRECTION OF ALLOCATION

State assessees must file petitions for reassessment, penalty abatement, and correction of assessment allocations with the Board Proceedings Division at the BOE's Headquarters. The deadlines and extension information are as follows:

- For unitary property reassessment, penalty abatement, or correction of assessment allocation, the petition and supporting documents must be filed by July 20. The Chief Counsel (or designee) may extend the deadline for filing the petition once for a period not to exceed 15 days and may extend the deadline for filing supporting documents for a reasonable period.¹⁹
- For nonunitary property reassessment or penalty abatement, the petition and supporting documents must be filed by September 20. The Chief Counsel (or designee) may extend this deadline once for a period not to exceed 15 days and may extend the deadline for filing supporting documents for a reasonable period.²⁰

A petition will be considered timely filed if it is mailed to the Chief of Board Proceedings or received at BOE Headquarters within the time specified above including extensions. The mailing date is the post-mark date or date of delivery to a delivery service. The final date for mailing will be extended to the next business day if it falls on a Saturday, Sunday, or state holiday.²¹ A petitioner may withdraw its petition at any time up to the date of the scheduled Board hearing by notifying the Chief of Board Proceedings in writing.²²

A petition for reassessment, penalty abatement, or correction of assessment allocation must be in writing and state the name of the property owner/petitioner, and the Board-adopted value. A petition for reassessment must contain the petitioner's opinion of the property's value, the elements of the Board's valuation that is being contested, and the facts relied upon to support the requested change in value. The petition must also state whether it constitutes a claim for refund and whether an appeals conference, oral hearing, or Written Findings and Decision are requested. The petitioner's appraisal reports, financial studies, and other materials relevant to value and/or penalty abatement must be provided with the petition.²³

In addition, a petition for penalty abatement must state facts establishing that the petitioner had a reasonable cause for failing to file a timely property statement and that the delay in filing the petitioner's property statement occurred despite the petitioner's exercise of ordinary care and absence of willful neglect.²⁴ A petition for correction of assessment allocation must state the specific grounds upon which a correction or adjustment in the petitioner's allocation is founded. However, the value of the petitioner's unitary property may not be questioned in a petition for correction of an assessment allocation.²⁵

The original petition and supporting documents, plus ten full copies of these materials, must be submitted to the Chief of Board Proceedings. A compact disc containing an electronic file conforming to the Board Proceedings Division's technical requirements will be accepted in lieu of the copies if submitted with a petitioner's original petition.²⁶ In the event that a duplicate petition is filed, the Chief of Board Proceedings will contact the petitioner to determine which petition is authorized and will allow ten days for a written response.²⁷

If the Chief of Board Proceedings determines that the petition is valid, timely, and complete, it must be accepted and acknowledged in writing to the petitioner. If the Chief Counsel (or designee) determines that there is a genuine, material issue relating to whether the petition is valid, timely, and/or complete, the petition will be accepted and the issues relating to validity, timeliness, and/or completeness will be decided by the Board. However, absent such an issue, the Chief of Board Proceedings must reject a petition that is not valid, timely, and complete and must notify both the petitioner and respondent in writing.²⁸ A petition will be dismissed by the Chief of Board Proceedings with written notice to the petitioner if not filed timely or if defects in an invalid or incomplete petition are not timely cured.

A petitioner's supporting documents may be presented as evidence at the petitioner's Board hearing if:

- The documents were presented to the Chief of Board Proceedings with the petition or within the time provided by an extension; or
- The documents were requested by and timely provided to the State-Assessed Properties Division, Appeals Attorney, or a Board Member; or
- A Board Member or the Board granted the petitioner permission to present the documents.
- All of the petitioner's evidence must be accompanied by a signed declaration under penalty of perjury.²⁹

PREHEARING MEETING

The petitioner may request a prehearing meeting with SAPD to exchange relevant information. The division may also request additional information from the petitioner at this time.³⁰

BRIEFS

A valid and complete petition is the petitioner's Opening Brief. SAPD's analysis is SAPD's response to a petition. A petitioner may file a reply to SAPD's analysis, but is not required to file a reply.³¹ A reply may dispute SAPD's analysis, but a petitioner may not submit new or additional evidence with its reply, unless SAPD or the Appeals Attorney requests new or additional information from the petitioner,³² or SAPD indicates that the petition lacks sufficient evidentiary support in its analysis.

APPEALS CONFERENCES

An appeals conference can be held if requested by the petitioner in the petition, if requested by SAPD by August 15 for unitary petitions or October 15 for nonunitary petitions, or if requested by the Chief Counsel of the Legal Department or a Board Member at any time. The appeals conference will be conducted by an attorney from the Legal Department who will objectively consider all of the issues raised in the petition, obtain additional facts, evidence, and stipulations of fact, and try to narrow questions of law in order to facilitate a more efficient Board hearing or other Board action on the petition. The conference holder will conduct the appeals conference in an informal nonadversarial manner and with courtesy and professionalism.

Written notice of the time, place, and date of the appeals conference must be provided to the parties. The appeals conference may be conducted in person or by telephone. The Appeals Attorney does not record appeals conferences, but a party may make arrangements to record or report an appeals conference at its own expense if the party agrees to provide a transcript to all of the participants. However, any recording or transcript of the conference will become a disclosable public record if and when the petition itself becomes a disclosable public record.³³

BRIEFING SCHEDULES

An appeals conference is generally scheduled at least 30 days before the relevant Board meeting. If an appeals conference is scheduled, SAPD must submit its analysis to the Chief of Board Proceedings at least 35 days before the conference date. If multiple petitions have been consolidated for hearing or decision, SAPD will draft a single analysis.³⁴ The petitioner may submit a reply to the Chief of Board Proceedings within 15 days after the analysis is mailed to the petitioner. However, the Appeals Attorney may ask either the petitioner or SAPD to provide additional information before, during, or after the appeals conference, and has broad discretion to modify the appeals conference briefing schedule.³⁵

If an appeals conference is not scheduled, SAPD's analysis must be submitted to the Chief of Board Proceedings at least 45 days before the scheduled Board action on the petition. The petitioner may respond to the analysis within 15 days after the analysis is mailed to the petitioner. Also, the Chief Counsel (or designee) may extend the deadlines for submitting SAPD's analysis and the petitioner's reply upon a showing of reasonable cause.³⁶

PETITIONS RESOLVED BEFORE APPEALS ATTORNEY REVIEW

An attorney from the Legal Department will prepare SAPD's recommendation on a petition if the petitioner and SAPD agree on a resolution before the petitioner's appeals conference, or, if no appeals conference is scheduled, before the due date of the petitioner's reply brief. The recommendation will include a brief analysis of the petition and relevant supporting documents, as well as a statement confirming the petitioner's agreement with the recommendation. The recommendation will be submitted to the Chief of Board Proceedings for consideration by the Board on the Property Tax Matters section of the Tax Program Nonappearance Matters calendar. The Board is not required to adopt the recommendation.³⁷

HEARING SUMMARY OR SUMMARY DECISION

Once briefing is complete and, if requested, the appeals conference has been conducted, the Appeals Attorney will prepare a Hearing Summary or Summary Decision for the petition, which may be revised if there is a partial or complete resolution of additional issues after the summary has been issued. The Appeals Attorney must submit the Hearing Summary or Summary Decision to the Chief of Board Proceedings at least ten days before the scheduled Board meeting date. The Chief Counsel (or designee) may extend the due date of a Hearing Summary or Summary Decision for reasonable cause.³⁸

CONDUCT OF BOARD HEARING—STATE ASSESSEES

The Board hearing is an oral presentation before the Board Members. The Board hearing is the opportunity for each party to present its position and evidence regarding the remaining disputed issues and the Board Members' opportunity to ask the parties questions.³⁹

At the conclusion of a Board hearing, the Board may vote to decide the petition immediately, may order the parties to file additional briefing and evidence, may request the Appeals Attorney prepare a Memorandum Opinion and submit it to the Board for further consideration and potential adoption, or may take the petition under submission for later consideration. In addition, the Board may decide the petition by granting or denying the petition, in whole or in part. For example, the Board may order a specific adjustment to a petitioner's unitary value or may order that an adjustment be calculated based on its directions.⁴⁰

Petitions taken under submission may be decided later at the same meeting or at a subsequent meeting with or without allowing the filing of additional briefs. If the Board does not decide a petition during the same meeting as the Board hearing, the petition will be returned to the Board for a decision on its nonappearance calendar at a later Board meeting. However, the Board must hear and decide all petitions for reassessment of unitary and nonunitary values, except petitions of escaped assessments, and petitions for corrections of assessment allocations by December 31 of the year in which the petitions are filed.⁴¹ If the Board is unable to grant a petition by the applicable statutory deadline, the petition will be effectively denied.

If the Board has ordered the parties to submit additional post-hearing briefing or evidence, the Appeals Attorney will consider the submissions and advise the Board regarding its recommendations. If the Board adopts a Memorandum Opinion at a subsequent meeting, the Memorandum Opinion may be cited as precedent in any appeal or other proceeding before the Board.⁴² Also, after the Board decides an appeal, the state assessee will be notified of the Board's decision in writing.⁴³

More detailed information regarding the Board meeting is provided in the *Board Meetings* section of this *Board Meeting Reference Manual*.

DECISIONS ARE FINAL

The Board's decision on a property tax petition is final and the Board may not reconsider or rehear a petition, although it may modify a decision on a petition to correct a clerical error.⁴⁴

AUDITS AND ESCAPED ASSESSMENTS

AUDITS

The State-Assessed Properties Division (SAPD) audits the records of state assessees to determine whether the state assessees have accurately reported data regarding their properties on their property statements.⁴⁵ Staff then prepares an audit report. At any time after an audit begins, a state assessee may disagree with a particular conclusion reached by an SAPD auditor. To resolve the dispute, the assessee may either provide more information to support the assessee's position or request a meeting with the auditor and the auditor's supervisor to discuss the issue further.

After the audit, SAPD staff prepares a preliminary audit report and mails a copy to the state assessee. Staff will also mail a copy of its audit work papers to the state assessee upon request. If the state assessee disagrees with the conclusions

in the preliminary audit report, the state assessee may request a meeting to discuss the findings with the auditor and the auditor's supervisor and staff may revise the audit findings before completing the audit report.

Following the meeting with the auditor and the auditor's supervisor, BOE staff will mail the state assessee a revised audit report setting forth any unresolved issues. BOE staff will also enclose a notice advising the state assessee that it has 30 days in which to present any new information or evidence to support the assessee's positions before the audit report is completed.

When the audit report is completed, the audit findings are presented to the Board for consideration and potential adoption. If the audit findings indicate that any of the state assessee's property has escaped assessment or been underassessed, SAPD will recommend to the Board that an "escaped assessment" be made for the property.⁴⁶ If the audit findings indicate that any of the state assessee's property has been excessively assessed for a year within the audit period, the excessive assessments is offset against any proposed escape assessment.⁴⁷

APPEAL PROCESS AND BOARD HEARINGS

If the Board adopts an escaped or excessive assessment, a notice will be sent to the assessee along with detailed information regarding the assessment and an explanation of the assessee's appeal rights. State assessees must be given at least 50 days from the mailing of the notice to file a petition for reassessment or penalty abatement for escaped assessments made outside the regular assessment period.⁴⁸ A petition for reassessment of an escaped assessment must satisfy all of the same requirements as a petition for reassessment of a regular assessment. If a complete petition is not filed within the 50-day period the escaped assessment becomes final. If a timely, valid, and complete petition is filed within the 50-day period the petition will be reviewed the same as a petition for reassessment of a regular assessment. The appeals process and the procedures for the conduct of the Board hearing for escaped assessments are the same as those for regular assessments, except that the December 31 deadline for the Board decision does not apply.⁴⁹

PRIVATE RAILROAD CAR TAX⁵⁰ VALUATION PROCEDURES

PRIVATE RAILROAD CAR TAX

Section 19 of article XIII of the California Constitution requires the Board to annually assess property owned and used by regulated railway companies, and car companies operating on California railways, as explained above.

In general, the term "private railroad car" includes any railroad rolling stock that is operated on railroads within California, which is owned by an entity other than a railroad or the National Railroad Passenger Corporation and is intended to transport people, commodities, or materials, although there are a number of statutory exceptions.⁵¹ The Board is required to assess the value of private railroad cars operated upon railroads into, out of, or through California under the private railroad car tax.⁵² The private railroad car tax is in lieu of state, county, municipal and district property taxes on the value of private railroad cars.⁵³

ANNUAL VALUATION CALENDAR

Each year, after consulting with the Property Tax Department, the Board Proceedings Division prepares a calendar for the assessment of private railroad cars for the following year. The calendar shows deadlines and other important dates affecting the assessment, levy, and collection of the private railroad car tax. After the Board adopts the calendar, copies are mailed to private railroad car owners and BOE staff. SAPD also publishes the calendar on the Property Taxes section of the Board website.

VALUE SETTING

The Board is required to use the car-day method to assess the value of private railroad cars, and must generally assess all private railroad cars and notify the assessees on or before August 1 of each year.⁵⁴ Under the car-day method, the Board must:

- Determine the average number of car days that each class of railroad car was physically present in California during the calendar year preceding the fiscal year of the assessment; and

- Multiply the value of each class of railroad car by the average number of car days that class of car was in California during the preceding calendar year to arrive at the amount subject to tax for the current fiscal year.

Therefore, SAPD prepares a recommendation establishing the value of private railroad cars using the car-day method and submits that recommendation to the Board for its annual adoption of the private railroad car roll, which normally occurs at the Board's July meeting. Once the Board has set the values of private railroad cars, all the assesseees are notified of their respective values and appeal rights.

If the Board does not complete an annual assessment by August 1, the Board may still complete the assessment within the following calendar month. However, the Board will be required to add one calendar month to the period in which the assessee or owner may petition the assessment.⁵⁵

APPEAL PROCESS

PETITION FOR REASSESSMENT AND/OR PENALTY ABATEMENT

For an annual assessment completed by August, the owner or assessee must file a petition for reassessment or penalty abatement no later than September 20. If the petitioner makes a written request for an extension by September 20, the Board may extend the filing deadline to October 5.⁵⁶ For an annual assessment completed in the calendar month following August 1, the owner or assessee has an additional calendar month to file a timely petition. For any other assessment made outside the regular assessment period, the petition for reassessment must be filed by the 50th day following the date of the notice of the assessment.⁵⁷ If a petition for reassessment is not filed by the required deadline, the assessment becomes final.⁵⁸

A petition for reassessment must be in writing, include the same information as state assesseees' petitions for reassessment discussed above, and contain the petitioner's opinion of the value of the private railroad cars at issue.⁵⁹ A petition for penalty abatement must establish that the failure to timely file a property statement was due to reasonable cause and occurred despite the exercise of ordinary care and the absence of willful neglect.⁶⁰

A petition must also state whether it constitutes a claim for refund and whether an appeals conference, oral hearing, or Written Findings and Decision are requested. If an appeals conference and/or oral hearing are requested, the conference and hearing will be provided under the same procedures applicable to state assesseees. However, there are different deadlines for the Board to hear and decide private railroad car tax petitions:

- For assessments made by August 1, the hearing must be held before January 31 of the following calendar year;
- For assessments made within the following calendar month after August 1, the hearing must be held within one calendar month after January 31 of the following calendar year; and,
- For all other assessments, the hearing must be held within 90 days of the date the petition was filed.⁶¹

The Board's decision must be provided within 45 days after the hearing.⁶²

A petitioner may choose to have an appeal decided by the Board as a "written only" petition. A petitioner may initially request an oral hearing and later waive the oral hearing.⁶³ These petitions are scheduled for consideration by the Board on the Property Tax Matters section of the Board's Tax Program Nonappearance Matters calendar.

CLAIMS FOR REFUND

Taxpayers who wish to claim a credit or refund must file a written claim for refund by the later of:

- Four years from December 10 of the year in which the assessment is made; or,
- Six months from the date of overpayment.⁶⁴

The Board may not grant a late claim.

Claims for refund must state the specific grounds upon which they are founded.⁶⁵ Claims for refund may be included in petitions for reassessment or penalty abatement and are governed by the same procedures applicable to petitions for reassessment or penalty abatement.⁶⁶ If a claimant agrees with the Property Tax Department's recommendation to grant or deny a refund or fails to request an appeals conference or Board hearing to further appeal the Department's recommendation, the appeal process will end and the Board will issue a notice in accordance with its recommendation. However, if the Department recommends granting a refund in excess of \$100,000, the recommendation has to be submitted to the Board for approval, even if the claimant agrees with the Department's recommendation.⁶⁷

If a claim for refund is not included in a timely petition, there are no hearing or decision deadlines. Instead, a taxpayer who has filed a claim for refund may deem that claim denied and file a suit for a refund in superior court, if the Board does not mail notice of its action on the claim within six months after the claim was filed.⁶⁸ Once a taxpayer deems such a claim denied by filing suit in court, the Board loses any jurisdiction to act on the claim outside of litigation.

CONDUCT OF BOARD HEARING

Except for the hearing and decision deadlines applicable to private railroad car tax petitions and the lack of deadlines for hearing and deciding private railroad car tax claims for refund, the procedures for the conduct of Board hearings for private railroad car tax petitions and claims are the same as the procedures for the conduct of Board hearings⁶⁹ for petitions for reassessment of state-assessed property, discussed above.

AUDITS AND ESCAPED ASSESSMENTS

AUDITS

Private railroad car owners are required to maintain records of the operation of their private railroad cars and railroad companies are required to maintain records of the operation of private railroad cars on their rail lines.⁷⁰ SAPD may periodically audit such records to determine whether a private railroad car owner has failed to file an annual report with the Board or verify whether a private railroad car owner accurately reported information on its annual report; and prepare an estimated assessment or escaped assessment, if necessary.⁷¹ At any time after an audit begins, a private railroad car owner may disagree with a particular conclusion reached by SAPD. In order to resolve the dispute, the private railroad car owner may either provide more information to support its position or request a meeting with the auditor and the auditor's supervisor to discuss the issue further.

After the audit, SAPD staff prepares a preliminary audit report and mails a copy to the private railroad car owner. SAPD will also enclose a notice advising the private railroad car owner that it has 30 days in which to present any new information or evidence to support its positions before the audit report is completed.

If after further review of all submitted evidence, the completed audit findings indicate that the audited property has been underassessed or overassessed, staff will present recommendations reflecting escaped assessments or excessive assessments to the Board. If the Board adopts an escaped assessment or assessment reduction, staff will send a notice to the private railroad car owner along with an explanation of its appeal rights.

APPEAL PROCESS

Private railroad car owners have 50 days from the mailing of the notice to file a petition for reassessment or penalty abatement for an escaped assessment.⁷² The appeal and hearing procedures for filing a petition for reassessment of an escaped assessment are the same as those for assessments made during the regular assessment period. However, the Board hearing must be conducted within 90 days of the date the petition was filed.⁷³

A petition for reassessment of an escaped assessment must satisfy all of the same requirements as a petition for reassessment of a regular assessment. If a complete petition is not filed within the 50-day period the escaped assessment becomes final.⁷⁴ If a timely, valid, and complete petition is filed within the 50-day period the petition will be reviewed the same as a petition for redetermination of a regular assessment.

PROPERTY OF LOCAL GOVERNMENT LOCATED OUTSIDE ITS BOUNDARIES⁷⁵

ASSESSMENT AND REVIEW

COUNTY ASSESSMENT AND BOARD EQUALIZATION

Article XIII, section 11 of the California Constitution generally provides that real property owned by a local government (that is, city, county, city and county, or municipal corporation) that is located outside its boundaries is taxable if it was taxable when acquired. Article XIII, section 11 provides that improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by the local government to replace improvements which were taxable when acquired. Article XIII, section 11 specifically prescribes a method for the valuation of taxable government-owned property and the California Supreme Court has held that the value limitation standard of article XIII A of the California Constitution applies to taxable government-owned property, except in Inyo and Mono counties.⁷⁶

Government-owned property is assessed by the county in which the land and improvements are located.⁷⁷ However, these assessments are subject to review, equalization, and adjustment by the Board.⁷⁸

APPEAL PROCESS

In general, a local government seeking the Board's review and adjustment of an assessment must file an application with the Board on or before the later of November 30 of the assessment year in which the assessment was made or within two weeks after the assessor has turned the local roll over to the county auditor. However, applications appealing escaped assessments must be filed within 60 days of the mailing of the tax bill. The Board may not review an assessment unless an application is filed timely.⁷⁹

The application must be in writing, must be authorized by the local government's governing body, and must include: the official document authorizing the local government to file the application; the facts claimed to require Board action; the legal authorities relied upon; an indication whether written findings are desired; and the signature of the local government's authorized representative.⁸⁰ The Chief Counsel may grant written requests for exceptions to the page limitations when necessary.⁸¹

The application must be filed with the Chief of Board Proceedings and copies must also be filed with the affected county assessor and county board of supervisors because they will be the respondents for purposes of the appeal. All supporting documentation and a proof of filing with the county assessor must accompany the application submitted to the Board.⁸²

If the Chief of Board Proceedings determines that the application is valid, timely, and complete, it must be accepted and acknowledged. If the Chief Counsel (or designee) determines that there is a genuine, material issue relating to whether the application is valid, timely, and/or complete, the application will be accepted and the issues relating to validity, timeliness, and/or completeness will be decided by the Board. However, absent such an issue, the Chief of Board Proceedings must reject an application that is not valid, timely, and complete and must notify both the applicant and the respondent in writing.⁸³

If an incomplete, but otherwise timely and valid application is filed, the Chief of Board Proceedings must notify the applicant, explain what information is necessary to perfect the application, and give the applicant 30 days to perfect the application by providing additional information. If the applicant does not perfect the application within the 30-day period, or within any extension period granted by the Chief of Board Proceedings, the Chief of Board Proceedings must dismiss the application and notify the applicant and respondent in writing.⁸⁴

BRIEFING PROCESS⁸⁵

A valid and complete application is the applicant's Opening Brief. The respondents must file an Opening Brief no later than 90 days after the date the Chief of Board Proceedings acknowledges the filing of a perfected application. The applicant may file a Reply Brief no later than 30 days after the date the Chief of Board Proceedings acknowledges receipt of the respondents' Opening Brief, but it may only address points of disagreement with the respondents' Opening Brief.

The respondents may request permission to file a Reply Brief no later than 15 days after the Chief of Board Proceedings acknowledges receipt of the applicant's Reply Brief. The Chief Counsel may grant such a request when additional briefing is necessary and the respondents may file a Reply Brief no later than 30 days after their request is granted. If a request is granted, the applicant may file a Supplemental Brief no later than 30 days after the date the Chief of Board Proceedings acknowledges receipt of the respondents' Reply Brief.

The briefing process will end if the applicant does not file a Reply Brief, the respondents do not request permission to reply or do not file a Reply Brief, or the time for the applicant to file a Supplemental Brief has expired. In addition, all briefs must comply with the same page limitations applicable to applications.

APPEALS ATTORNEY REVIEW⁸⁶

When the briefing process is completed, an Appeals Attorney of the Legal Department will review the briefing to ensure that it adequately addresses all relevant factual and legal issues and request additional briefing, if necessary. When the Appeals Attorney is satisfied with the briefing on file, it will conduct an appeals conference with the parties to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law in order to facilitate a more efficient and productive Board hearing. After the appeals conference, the Appeals Attorney will prepare a Hearing Summary for the parties' Board hearing. However, if the applicant has not requested a Board hearing, the applicant has waived a requested Board hearing, or the applicant fails to respond to its hearing notice, the Appeals Attorney will prepare a Summary Decision and submit the application to the Board for a decision based upon the written record and without an oral hearing.

The Appeals Attorney may request additional briefing and evidence from the parties if the Chief Counsel (or designee) determines that additional briefing or evidence is necessary. Individual Board Members may request additional briefing and evidence from the parties at any time by contacting the Appeals Attorney, and the Board may order the parties to provide additional briefing and evidence while considering the application.

CONDUCT OF BOARD HEARING

The Board hearing will be scheduled, noticed, and conducted in the same manner as a Board hearing for a state assessee's petition and the Board's decision will be final when issued. However, there are three important differences. First, the notice of hearing must be mailed to the parties at least 75 days in advance of the Board hearing.⁸⁷ Second, the notice of hearing must contain a statement that subject to the limitations of section 3, subdivision (b), and section 11 of article XIII, and of article XIII A of the California Constitution, the Board is required to determine the full cash value of the property that is the subject of the hearing and that this determination may exceed the value on which the assessment is based.⁸⁸ Third, there are no deadlines for completing the appeal process.

More detailed information regarding the Board meeting is provided in the *Board Meetings* section of this *Board Meeting Reference Manual*. That section includes general information on the conduct of the Board meeting, along with specific information on voting, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

WELFARE AND VETERANS' ORGANIZATION EXEMPTION CLAIMS

THE EXEMPTIONS

Article XIII, section 4, subdivision (b) of the California Constitution authorizes the Legislature to enact a property tax exemption for property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities that (1) are organized and operating for those purposes, (2) are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual. The Legislature enacted the welfare exemption⁸⁹ pursuant to this authority and it applies to property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes if all of the statutory requirements are met. The welfare exemption also applies to certain limited partnerships that own low-income housing property and have a managing general partner that is an eligible nonprofit corporation or eligible limited liability company.⁹⁰ The Legislature also enacted the veterans' organization exemption⁹¹ which provides a property tax exemption for buildings used exclusively for charitable purposes, and so much of the real property upon which the buildings are

situated as may be required for the convenient use and occupation of the buildings, that are owned by a qualified veterans' organization, which has been chartered by the U.S. Congress and is organized and operated for charitable purposes, if all statutory requirements are met.

JOINT ADMINISTRATION

These property tax exemptions are administered jointly by the Board and the county assessors.⁹² The Board determines whether the organization seeking to claim the welfare or veterans' organization exemption is **organized and operated** for a qualifying purpose, while the county assessor determines whether the organization's property is being **used** for a qualifying purpose. The Board also determines whether a limited partnership has an eligible managing general partner. A county assessor cannot approve a claim for either exemption on a property unless the Board has determined that the claimant is an eligible organization.⁹³

FUNCTIONS OF BOE STAFF—CLEARANCE CERTIFICATE APPLICATION REVIEW AND ISSUANCE PROCESS

In order to be eligible for the welfare exemption or veterans' organization exemption from property taxes, a nonprofit, tax-exempt organization must file a claim for an Organizational Clearance Certificate (OCC) with the Board.⁹⁴ A limited partnership owning low-income housing property that has a qualifying managing general partner must file a claim for a Supplemental Clearance Certificate (SCC) with the Board.⁹⁵ The exemption staff in the County-Assessed Properties Division of the BOE's Property Tax Department reviews each claim form for completeness and determines whether the organization meets the organizational and operational eligibility requirements to obtain an OCC or SCC.

If eligible, the exemption staff issues an OCC, SCC, or both, if appropriate. The claimant may then file copies of the certificate or certificates with a county assessor along with its county exemption claim form in order to claim an exemption on specific property located within the assessor's county. The organization's property may be granted the exemption if the county assessor determines the property is being used for a qualifying purpose.⁹⁶

If the exemption staff determines that an organization is not eligible for an OCC or SCC based on the manner in which it is organized or operated, staff will issue a *Preliminary Notice* containing a finding sheet indicating that the organization has not met certain requirements, referred to as a "not been met" finding sheet. The notice will also inform the organization that there is 30 days from the date of the notice to submit supplementary material supporting the claim or to request a 30-day extension to provide additional information. Upon receipt of the supplemental material, the exemption staff will conduct a further review of the claim and determine if the requirements are met. The staff will send a notice to the organization explaining whether the supplemental material provides a basis for amending the staff's original "not been met" finding. If the exemption staff determines that the organization is eligible, the exemption staff will issue an OCC, SCC, or both. If the exemption staff's finding is that the organization remains ineligible for an OCC or SCC, or if the claimant does not submit supplementary material within 30 days from the date of the *Preliminary Notice* or within an approved 30-day extension, a *Final Notice* containing a second "not been met" finding sheet is issued to notify the claimant that it has 60 days from the date of the *Final Notice* to petition the Board for a hearing on the denied claim.⁹⁷

FUNCTIONS OF BOE STAFF—PERIODIC VERIFICATION REVIEW AND REVOCATION PROCESS

Once granted, an OCC or SCC remains valid until the exemption staff determines that the organization no longer meets the requirements and revokes the certificate.⁹⁸ In order to make this determination, exemption staff perform periodic "Verification Reviews" of organizations to confirm whether the organization remains eligible. An organization under a Verification Review is issued a finding sheet requesting updated information for that organization in order to determine its continued eligibility. Exemption staff reviews the submitted information provided to determine the organization's continued eligibility. If exemption staff determine that an organization continues to be eligible for its OCC or SCC, a finding sheet is issued to the organization to indicate continued eligibility, along with a copy of its existing OCC or SCC.

If exemption staff determine that an organization no longer meets the requirements, or if an organization fails to comply with the request for updated information during a Verification Review, then a *Preliminary Notice* containing a finding sheet is issued, indicating: continuing eligibility has "not been met"; the organization no longer meets the requirements; and, therefore, the OCC and/or SCC is being revoked. The notice will also inform the organization that there are 30 days from the date of the notice to submit supplementary material supporting continued eligibility or to request a 30-day extension to provide additional information. Upon receipt of the supplementary material, the exemption staff will conduct a further

review of the organization and determine if the requirements for continued eligibility are met. The staff will send a notice to the organization explaining whether the supplemental material provides a basis for amending the staff's original "not been met" finding. If the exemption staff determines that the organization continues to be eligible, the exemption staff will issue a subsequent finding sheet indicating continued eligibility has "been met" and reinstate the OCC or SCC by removing it from revoked status. If exemption staff determines that the organization continues to be ineligible, or if an organization does not submit supplementary material within 30 days from the date of the *Preliminary Notice* or within an approved 30-day extension, a *Final Notice* containing a second "not been met" finding sheet is issued to notify the organization that they have 60 days from the date of the *Final Notice* to petition the Board for a hearing on the revocation.⁹⁹

APPEAL PROCESS

The procedure for filing a petition to appeal a denial or revocation of OCC or SCC with the Board is the same in terms of the petition requirements and the Board's procedures for reviewing the petition under the Rules for Tax Appeals.¹⁰⁰ The petitioner has 60 days from the date of mailing a final notice denying a claim for an OCC or SSS or from the date of mailing a notice of revocation of an OCC or SCC to file a petition with the Board.¹⁰¹

PETITIONS FOR BOARD HEARING

A petition for a Board hearing on a denied claim or revocation must: be in writing; state all of the grounds upon which qualification is claimed; include all documents the petitioner wishes the Board to consider; indicate whether an oral hearing and/or written findings and decision are desired; and, bear the signature of the petitioner or an authorized representative.¹⁰² The petition and supporting documents must be submitted to the Chief of Board Proceedings.¹⁰³

BRIEFING AND APPEALS ATTORNEY REVIEW

A petition appealing the denial or revocation of an OCC or SCC is reviewed for timeliness, completeness, and validity in the same manner as an application appealing the assessment of government-owned property, and petitioners may perfect incomplete petitions. The briefings, appeals conference, and Appeals Attorney review processes for petitions are also the same as they are for applications. However, the County-Assessed Properties Division will be the respondent for purposes of the appeal. An attorney of the Legal Department will represent and draft the briefs for the County-Assessed Properties Division. Also, staff from both the Legal Department and the County-Assessed Properties Division will meet with the petitioner to informally exchange relevant information and evidence, identify issues, and, if possible, enter into stipulations to resolve all or some of the issues in the appeal.¹⁰⁴

CONDUCT OF THE BOARD HEARING

The Board hearing will be scheduled, noticed, and conducted in the same manner as a Board hearing for an appeal of an assessment of government-owned property and the Board's decision will be final when issued. However, the notice will not include the statement regarding full cash value and notice of the Board's decision will be mailed to the county assessors of the counties in which the petitioner's property is located.¹⁰⁵

More detailed information regarding the Board meeting is provided in the *Board Meetings* section of this *Board Meeting Reference Manual*. That section includes general information on the conduct of the Board meeting, along with specific information on voting, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

ASSESSMENT PRACTICES SURVEYS AND SAMPLE ITEMS¹⁰⁶

FUNCTIONS OF THE BOE STAFF

The BOE's County-Assessed Properties Division conducts a certain number of county assessment practices surveys each year to determine whether the county assessor is employing adequate tax assessment procedures and practices and performing other required duties.¹⁰⁷ The surveys of certain counties include a sampling of assessments from the local assessment rolls. The sampling results will determine whether the county's assessment levels conform to state law.

PROCESS BEFORE BOARD HEARING

In conducting the survey, the County-Assessed Properties Division will audit the assessor's records and may audit certain appraisal data held by persons owning, claiming, possessing, or controlling property included in the survey. The survey report must show the nature and volume of the assessing work accomplished by the assessor for all classes of property.¹⁰⁸

For surveys that include a sampling of assessments, the County-Assessed Properties Division appraises the representative sample items, expands the result of each appraisal, and compares the expanded total to the total local assessment roll to determine the average assessment level of the county. The county will lose the right to receive an allocation of funds to cover its administrative costs for the supplemental assessment roll if:

- The average level of assessment in the county is less than 95 percent of the assessment level required by statute; or,
- The sum of the absolute values of the differences from the statutorily required assessment level is greater than 7.5 percent of the total amount of the required value.¹⁰⁹

If the assessor and the County-Assessed Properties Division staff do not agree on the results of a sampled value and the disagreement is not resolved before the completion of the County-Assessed Properties Division staff's field review, the assessor may appeal the results of the sampled value to the Board.¹¹⁰

ASSESSOR'S RESPONSE AND APPEAL PROCESS

If a county assessor disagrees with a survey finding or sample finding, the county assessor can discuss the item with the County--Assessed Properties Division staff. If the county assessor cannot resolve the item with staff, the county assessor may also discuss the item with the Deputy Director of the Property Tax Department or the Chief of the County-Assessed Properties Division.

If a county assessor cannot resolve a sample finding disagreement with the Deputy Director, the county assessor may file a petition to appeal sample appraisals made within the assessor's county. The petition must be submitted in person or by mail to the Chief of Board Proceedings within 30 days of the final notice of sample findings mailed by the Deputy Director.¹¹¹ The petition must be in writing, must identify the appealed property, state the specific issue(s) being appealed, indicate whether an oral hearing is desired, and be signed by the county assessor or authorized representative. It must also include any supporting evidence.¹¹²

If a county assessor cannot resolve a survey finding disagreement with staff or otherwise elects to do so, the assessor may submit a written response to the survey, referred to as an "Assessor's Response," which may address any or all of the survey's findings and will be published within the final report issued by the County-Assessed Properties Division. The County-Assessed Properties Division may elect to respond by including comments to address the Assessor's Response, which would also be published within the final report.

CONDUCT OF BOARD HEARING

The briefing, Appeals Attorney review, and Board hearing procedures applicable to petitions appealing the denial of Organizational Clearance Certificates, discussed earlier in this section, apply to petitions appealing final notices of sample findings.¹¹³

ANNUAL MEETING WITH COUNTY ASSESSORS

The Board Members or their authorized representatives must meet with the county assessors at least once each year to discuss issues related to the administration of property assessment and taxation laws and to promote uniformity of property tax procedures throughout the state.¹¹⁴ The county assessors are summoned to the meeting in a *Letter to Assessors* signed by the Executive Director.

REFERENCE NOTES

- 1 California Constitution, article XIII, section 19; Revenue and Taxation Code, section 721 et seq.
- 2 See Revenue and Taxation Code, section 721.5 and California Code of Regulations, title 18, section 905 for specific rules regarding the Board's jurisdiction to assess electric generation facilities.
- 3 Revenue and Taxation Code, section 722.
- 4 *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859.
- 5 Revenue and Taxation Code, section 723.
- 6 California Code of Regulations, title 18, section 901.5.
- 7 Revenue and Taxation Code, section 731.
- 8 Revenue and Taxation Code, section 742.
- 9 Revenue and Taxation Code, section 732.
- 10 California Code of Regulations, title 18, section 901.
- 11 California Code of Regulations, title 18, sections 902 and 5322.
- 12 California Code of Regulations, title 18, sections 903 and 5322.
- 13 California Code of Regulations, title 18, section 5322.
- 14 Revenue and Taxation Code, section 731.
- 15 California Code of Regulations, title 18, section 904.
- 16 Revenue and Taxation Code, section 746; and California Code of Regulations, title 18, section 904.
- 17 Revenue and Taxation Code, section 756.
- 18 Revenue and Taxation Code, section 732; and California Code of Regulations, title 18, section 904.
- 19 Revenue and Taxation Code, sections 731, 733, and 746; and California Code of Regulations, title 18, sections 904, 5323, and 5324.2.
- 20 Revenue and Taxation Code, sections 732 and 733; and California Code of Regulations, title 18, sections 904, 5323, and 5324.2.
- 21 California Code of Regulations, title 18, sections 5324, 5335, 5570, and 5571.
- 22 California Code of Regulations, title 18, section 5328.5.
- 23 California Code of Regulations, title 18, section 5323.4.
- 24 Revenue and Taxation Code, section 830, subdivision (f).
- 25 Revenue and Taxation Code, section 747.
- 26 California Code of Regulations, title 18, section 5323.6.
- 27 California Code of Regulations, title 18, section 5323.8.
- 28 California Code of Regulations, title 18, section 5324.4.
- 29 California Code of Regulations, title 18, section 5324.6.
- 30 California Code of Regulations, title 18, section 5325.
- 31 California Code of Regulations, title 18, section 5326.
- 32 California Code of Regulations, title 18, sections 5326.2 and 5326.6.
- 33 California Code of Regulations, title 18, section 5326.4.
- 34 California Code of Regulations, title 18, section 5328.
- 35 California Code of Regulations, title 18, section 5326.6.
- 36 California Code of Regulations, title 18, section 5326.2.
- 37 California Code of Regulations, title 18, section 5325.4.
- 38 California Code of Regulations, title 18, sections 5325.6, 5326.2, and 5327.
- 39 California Code of Regulations, title 18, section 5523.5.
- 40 California Code of Regulations, title 18, section 5551.
- 41 Revenue and Taxation Code, sections 744 and 749; and California Code of Regulations, title 18, section 5327.4.
- 42 California Code of Regulations, title 18, section 5551.
- 43 California Code of Regulations, title 18, section 5560.
- 44 California Code of Regulations, title 18, section 5345.
- 45 Government Code, sections 15617 and 15618 and Revenue and Taxation Code, section 828 authorize the Board and Board staff to request and examine state assessees' records.
- 46 Revenue and Taxation Code, section 861.
- 47 Revenue and Taxation Code, section 864 (b).
- 48 Revenue and Taxation Code, section 758; and California Code of Regulations, title 18, section 5323.
- 49 Revenue and Taxation Code, section 758; and California Code of Regulations, title 18, section 5327.4.

50 Revenue and Taxation Code, section 11201 and following.
51 Revenue and Taxation Code, section 11203.
52 Revenue and Taxation Code, section 11251.
53 Revenue and Taxation Code, section 11252.
54 Revenue and Taxation Code, sections 11293 and 11336.
55 Revenue and Taxation Code, section 11651.5.
56 Revenue and Taxation Code, section 11338; and California Code of Regulations, title 18, section 5323.
57 Revenue and Taxation Code, section 11339, subdivision (a); and California Code of Regulations, title 18, section 5323.
58 Revenue and Taxation Code, sections 11338 and 11339.
59 Revenue and Taxation Code, section 11340; and California Code of Regulations, title 18, section 5323.4.
60 Revenue and Taxation Code, section 11316.
61 Revenue and Taxation Code, sections 11338, 11339, 11651.5.
62 Revenue and Taxation Code, section 11341, subdivision (a).
63 California Code of Regulations, title 18, section 5343.
64 Revenue and Taxation Code, section 11553.
65 Revenue and Taxation Code, section 11554.
66 California Code of Regulations, title 18, section 5323.4, subdivision (b)(2).
67 May 27, 2009, delegation of authority.
68 Revenue and Taxation Code, section 11574.
69 California Code of Regulations, title 18, sections 5310 and 5321.
70 Revenue and Taxation Code, sections 11652 and 11653.
71 Revenue and Taxation Code, sections 11311, 11314, and 11315.
72 Revenue and Taxation Code, section 11339.
73 Revenue and Taxation Code, section 11339, subdivision (d).
74 Revenue and Taxation Code, section 11339.
75 California Constitution article XIII, section 11.
76 City and County of San Francisco v. County of San Mateo et al. (1995) 10 Cal.4th 554.
77 Revenue and Taxation Code, section 404.
78 California Constitution article XIII, section 11, subdivision (g); and Revenue and Taxation Code, sections 1840 and 1841.
79 Revenue and Taxation Code, section 1840; and California Code of Regulations, title 18, section 5332.
80 Revenue and Taxation Code, section 1840; and California Code of Regulations, title 18, section 5332.4.
81 California Code of Regulations, title 18, section 5337.4.
82 California Code of Regulations, title 18, sections 5311, subdivision (b)(10), and 5332.6.
83 California Code of Regulations, title 18, section 5336.
84 California Code of Regulations, title 18, section 5336.5.
85 California Code of Regulations, title 18, sections 5337.4 and 5337.6.
86 California Code of Regulations, title 18, sections 5338, 5338.4, 5338.6, 5341, and 5343.
87 California Code of Regulations, title 18, section 5522.6.
88 California Code of Regulations, title 18, section 5342.
89 Revenue and Taxation Code, section 214 et seq.
90 Revenue and Taxation Code, section 214, subdivision (g); and California Code of Regulations, title 18, section 140.1.
91 Revenue and Taxation Code, section 215.1.
92 Revenue and Taxation Code, sections 254.5 and 254.6.
93 Revenue and Taxation Code, section 214 (Welfare Exemption Claims) or section 215.1 (Veterans' Organization Claims).
94 Revenue and Taxation Code, section 254.6.
95 California Code of Regulations, title 18, section 140.2.
96 Revenue and Taxation Code, section 254.5.
97 Revenue and Taxation Code, section 254.6, subdivision (d); and California Code of Regulations, title 18, section 5333.

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- ⁹⁸ Revenue and Taxation Code, sections 214, 215.1 and 254.6.
- ⁹⁹ Revenue and Taxation Code, section 254.6; and California Code of Regulations, title 18, section 5333.
- ¹⁰⁰ California Code of Regulations, title 18, section 5333 et. seq.
- ¹⁰¹ California Code of Regulations, title 18, section 5333 et. seq.
- ¹⁰² California Code of Regulations, title 18, section 5333.4.
- ¹⁰³ California Code of Regulations, title 18, section 5333.6.
- ¹⁰⁴ California Code of Regulations, title 18, section 5337.
- ¹⁰⁵ California Code of Regulations, title 18, section 5344.
- ¹⁰⁶ Government Code, section 15640 et seq.
- ¹⁰⁷ Government Code, sections 15640 and 15643.
- ¹⁰⁸ Government Code, sections 15641 and 15642.
- ¹⁰⁹ Revenue and Taxation Code, section 75.60.
- ¹¹⁰ Government Code, section 15640, subdivision (f); California Code of Regulations, title 18, section 5334, subdivision (a).
- ¹¹¹ California Code of Regulations, title 18, sections 5334 and 5334.6.
- ¹¹² California Code of Regulations, title 18, section 5334.4.
- ¹¹³ California Code of Regulations, title 18, sections 5336-5345 and 5510-5576.
- ¹¹⁴ Government Code, section 15607.

CHAPTER 6

ALCOHOLIC BEVERAGE TAX AND TAX ON INSURERS

OTHER TAX PROGRAMS¹ ADMINISTERED BY THE BOARD

If a taxpayer disagrees with a determination that the taxpayer is liable for additional taxes (taxes, interest, and penalties) the taxpayer may appeal the determination by filing a petition, request for relief, etc. If a taxpayer believes that the taxpayer has paid or the BOE has collected more taxes than are legally due, the taxpayer may file a claim for refund. This section explains the appeal processes as it relates to the Alcoholic Beverage Tax and Tax on Insurers Programs.

Pursuant to an interagency agreement, the California Department of Tax and Fee Administration (CDTFA) handles the day-to-day administration of these tax programs in coordination with the BOE.

INITIAL APPEAL PROCESS FOR PETITIONS, ADMINISTRATIVE PROTESTS AND HEARINGS, REQUESTS FOR RELIEF, AND CLAIMS FOR REFUNDS²

PETITIONS FOR REDETERMINATION

In general, any person to whom a Notice of Determination or Notice of Deficiency Assessment is issued or any directly interested person may appeal the determination or assessment by filing a petition for redetermination within 30 days after the notice is mailed. If a petition for redetermination is not filed within the 30-day period, the determination or assessment becomes final.³ A petition for redetermination must be filed in writing, identify the amounts the petitioner wishes to contest, if known, state the specific reasons for the petition, and be signed by the petitioner or the petitioner's authorized representative.⁴ However, a petition for redetermination may be amended to state additional reasons any time prior to the date on which the Board issues its order or decision.⁵

The filing of a timely petition for redetermination will stay collection activities with regard to amounts contained in a Notice of Determination or Notice of Deficiency Assessment. The filing of a timely petition for redetermination will not stop the accrual of interest⁶

After receiving a petition for redetermination, Department staff will send a letter to the petitioner acknowledging receipt of the petition.⁷ Then, Department staff will review the petition and any other relevant information and present its findings to the petitioner. If a petitioner disagrees with the Department's findings, the petitioner has a right to make a written request for an appeals conference conducted by an Appeals Attorney or an oral Board hearing, or both, and the Board will be required to grant the request for a Board hearing. The petitioner may also confirm a previous request for an appeals conference, a Board hearing, or both, included in the petition for redetermination. If a petitioner agrees with the Department's findings or fails to request an appeals conference or Board hearing to further appeal the Department's findings, the appeal process will end and the Department will issue a notice in accordance with its findings.⁸

ADMINISTRATIVE PROTESTS

The Department's Deputy Director has discretion to treat a premature or untimely petition for redetermination as an administrative protest and have the Department review the administrative protest in the same manner as a timely petition for redetermination. A taxpayer's request for an appeals conference, a Board hearing, or both, on an administrative protest will be liberally granted, however, taxpayers do not have an unconditional right to an appeals conference and Board hearing on an administrative protest.⁹

The treatment of a premature or untimely petition for redetermination as an administrative protest will not stay collection activities with regard to amounts contained in a Notice of Determination or Notice of Deficiency Assessment and will not stop the accrual of interest.¹⁰

APPEALS OF JEOPARDY DETERMINATIONS

If the Department believes that delay will jeopardize collecting amounts due from a taxpayer, the Department can make a “jeopardy determination.” The jeopardy determination establishes the amount due and requires immediate payment.¹¹

A person against whom a jeopardy determination is made may file a petition for redetermination. To be considered timely, the petition for redetermination must be filed within ten days after the Notice of Jeopardy Determination is mailed or personally served. The petitioner must also post security within that 10-day period, as prescribed by the Department.¹² If a petition is not filed within the 10-day period or the petitioner does not post the required security, the amount of the determination becomes final.¹³ Petitions for redetermination must be in writing, identify the amounts the petitioner wishes to contest, if known, state the specific reasons for the petition, and be signed by the petitioner or the petitioner’s authorized representative.¹⁴

A person against whom a jeopardy determination is made may also apply for an administrative hearing within 30 days after the Notice of Jeopardy Determination is mailed or personally served, for one or more of the following purposes:

- Establish that the determination is excessive.
- Establish that the sale of seized property should be delayed until the administrative hearing to avoid irreparable harm to the taxpayer.
- Request the release of all or part of the property.
- Request a stay of collection activities.
- Request administrative review of any other issue raised by the jeopardy determination.

If the taxpayer shows good cause, the Board may allow that person to file an application for administrative hearing after the 30-day limit and grant the applicant an administrative hearing.¹⁵ If a taxpayer files a petition for redetermination and applies for an administrative hearing for the same jeopardy determination, the two appeals will be combined into one administrative hearing.¹⁶

The Department will review a petition for redetermination of a jeopardy determination in the same manner as other petitions for redetermination, but will expedite its review.¹⁷ The administrative hearing is conducted by an Appeals Attorney as an appeals conference. If the applicant does not agree with the Appeals Attorney’s decision, in whole or in part, the applicant may file a request for a Board hearing within 30 days of the mailing of the decision.¹⁸ If that request is granted, the matter will be scheduled for Board hearing as soon as practicable.

CLAIMS FOR REFUND

In general, each claim for refund of an overpayment must be in writing, state the amount of the refund claimed, if known, the reporting periods for which the claim is filed, and the specific grounds upon which the claim is founded, and be signed by the claimant or claimant’s authorized representative.¹⁹ In general, a claim for refund must be filed prior to the expiration of the last of the following time periods:

- Three years from the last day of the calendar month following the close of the reporting period for which the overpayment was made;
- Six months from the date the determination became final, if the overpayment was made under a notice of determination;
- Six months from the date of the overpayment; or,
- Three years from the date the Department collected an involuntary payment, such as from a levy or lien.

The period for filing a claim for refund is suspended during any period of an individual’s life that the individual is financially disabled as defined by statute.²⁰

The Department will promptly send the claimant a letter acknowledging the filing of a claim for refund and, if additional information is needed, will notify the claimant as to what information is required. Then, Department staff will review the claim for refund and any other relevant information, and recommend that the claim for refund be granted or denied in whole or in part.²¹

If a claimant disagrees with the Department's findings, the claimant may make a written request for an appeals conference conducted by an Appeals Attorney or a Board hearing or both. Although claimants do not have a statutory right to an appeals conference or a Board hearing, requests for an appeals conference or a Board hearing are liberally granted except when the claimant has already been provided with an appeals conference and Board hearing on the same issue, and has not submitted any new arguments or evidence.²²

If a claimant agrees with the Department's recommendation, or fails to request an appeals conference or Board hearing to further appeal the Department's recommendation, or the claimant's request for an appeals conference and/or Board hearing is denied, the appeal process will end and the Department will issue a notice in accordance with its recommendation. However, if the Department recommends granting a refund in excess of \$100,000, the recommendation has to be submitted to the Board for approval, even if the claimant agrees with the Department's recommendation. Recommendations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from this requirement, but must be approved by the Executive Director.²³

Note that a taxpayer who has filed a claim for refund may deem that claim denied and file suit for refund in superior court if the Board does not mail notice of its action on the claim within six months after the claim was filed. Once a taxpayer deems such a claim denied by filing suit in court, the Board loses any jurisdiction to act on the claim outside of litigation.²⁴

REQUESTS FOR INNOCENT SPOUSE RELIEF AND OTHER EQUITABLE RELIEF²⁵

A divorced or separated individual that has an outstanding liability imposed under the Alcoholic Beverage Tax and meets certain statutory requirements²⁶ may file a request for innocent spouse relief.

In general, requests for innocent spouse relief must be in writing, signed by the individual requesting relief, specifically request innocent spouse relief, and identify the tax or fee from which relief is being sought. Requests for innocent spouse relief must also include a completed CDTFA-682-A, *Request for Innocent Spouse Relief*, or contain all of the information required on CDTFA-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.²⁷

There are time limits for requesting innocent spouse relief. If a liability is reported on a return, but not paid, a request for innocent spouse relief must be filed within the later of five years from the due date of the return or one year from the date the Board initially contacted the requesting spouse about the liability. If an unreported or underreported liability is assessed by the Board, a request for innocent spouse relief must be filed within the later of five years from the date the Board-assessed liability became final or one year from the date the Board initially contacted the requesting spouse about the liability. In addition, reporting periods that are closed by res judicata are not eligible for innocent spouse relief.²⁸

In cooperation with the California Department of Tax and Fee Administration (CDTFA), the Offers in Compromise (OIC) Section of the CDTFA Legal Division's Settlement and Taxpayer Services Bureau will acknowledge the receipt of a request for innocent spouse relief, contact the non-requesting spouse, and allow the non-requesting spouse to submit information to support or contest the request for innocent spouse relief. In coordination with the BOE's Alcoholic Beverage Tax Liaison, the OIC Section will also evaluate the merits of the request, render a decision, and notify the requestor. If innocent spouse relief is granted the appeal process ends. If innocent spouse relief is denied, the requestor may also request equitable relief.²⁹

The OIC Section will send the requestor a questionnaire and financial statement to complete and return in order to be considered for equitable relief. If an individual returns a completed questionnaire and financial statement, the OIC Section will review the information and mail the individual a letter granting or denying equitable relief. If equitable relief is granted, the appeal process ends. If the OIC Section does not grant equitable relief, the individual may request that the Board reconsider the individual's eligibility for equitable relief at a Board hearing. The Board will liberally grant requests for Board hearings, but may require requesting individuals to attend appeals conferences prior to their Board hearings.³⁰

Innocent spouse relief and equitable relief are available to registered domestic partners effective January 1, 2005.³¹

OTHER REQUESTS FOR RELIEF

The Board may relieve penalties for failure to make a timely return, report, payment, or prepayment if the failures were due to reasonable cause and circumstances beyond the taxpayer's control. Requests for relief due to reasonable cause must be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request is based, and be signed by the person requesting relief under penalty of perjury.³²

The Board may relieve taxpayers from interest imposed as a result of an unreasonable error or delay by a Board employee. Requests for relief due to unreasonable error or delay must be in writing, specifically identify the error or delay that caused the person requesting relief to be charged interest, specifically identify the period for which interest relief is sought, and be signed by the person requesting relief under penalty of perjury.³³

The Board may relieve taxpayers of taxes, interest, and penalties imposed as a result of the taxpayers' reasonable reliance on written advice from the Board. A request for relief due to reasonable reliance on written advice must be in writing, include the specific facts upon which the request for relief is based, be signed by the person requesting relief under penalty of perjury, and include copies of the person's request for written advice and the written advice relied upon.³⁴

The Board may also relieve interest incurred as a result of a disaster. Requests for relief due to disaster must be in writing, identify the disaster due to which relief is sought, identify the period for which relief is sought, and be signed by the person requesting relief under penalty of perjury.³⁵

Department staff reviews all four types of requests for relief to determine whether the requests satisfy the requirements set forth in the previous four paragraphs and whether taxpayers and fee payers are entitled to the relief they are requesting. Department staff can recommend granting or denying relief in whole or in part and must give the person requesting relief a written determination containing an explanation for staff's recommendation. If the person requesting relief disagrees, the person requesting relief may request that the Department's Deputy Director reconsider his or her request for relief and the Deputy Director will reconsider the request for relief and send the person a written decision. If the person requesting relief disagrees with the Deputy Director's decision, the person requesting relief may request a Board hearing to further appeal his or her request for relief. The Board has discretion to grant or deny a Board hearing on a request for relief, but generally grants requests for Board hearings. If a Board hearing is granted, the Board may also require the person requesting relief to attend an appeals conference. If the person requesting relief agrees with Department staff's initial recommendation or the Deputy Director's decision, the appeal process ends.³⁶

If a request for relief is included in a petition for redetermination, or claim for refund, the request for relief will be reviewed in the same manner as the petition for redetermination or claim for refund. The Board also has discretion to associate a request for relief with any petition for redetermination or claim for refund filed by the same person and covering the same periods.³⁷

REBUTTABLE PRESUMPTION FOR ALCOHOLIC BEVERAGE TAX PURPOSES

The Board established a rebuttable presumption that alcoholic beverages, other than wine, be classified as distilled spirits on or after July 10, 2008, unless the manufacturers file reports under penalty of perjury with the Board stating that the alcoholic beverage contains less than 0.5 percent alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products and specifying the sources of the alcohol content of the alcoholic beverage, including the alcohol by volume derived from flavors or other ingredients containing alcohol obtained by distillation. The Department will send a manufacturer a notice if it finds that the manufacturer has failed to rebut the presumption and the manufacturer may appeal the Department's determination by filing a written petition for redetermination within 30 days after receiving notice. If a timely petition for redetermination is filed, the Appeals Division will review the Department's determination. A Board hearing will be scheduled if requested within 30 days after the date the Appeals Attorney issues its Decision and Recommendation.³⁸

APPEALS ATTORNEY REVIEW

APPEALS CONFERENCE

When an appeal is referred to the Appeals Attorney for an appeals conference, the Board Proceedings Division will contact the taxpayer to verify contact information and ascertain the desired location for the conference. Unless the taxpayer indicates another preference, the appeals conference will be held in Sacramento, CA. The Board Proceedings Division will send a *Notice of Appeals Conference* to the taxpayer, including a response form that the taxpayer should complete and return within 15 days of the date the *Notice of Appeals Conference* was mailed. By the same date, the taxpayer and Department staff should submit to the Appeals Attorney any additional arguments or evidence not already submitted. The Board does not record appeals conferences, but the taxpayer may do so by checking the appropriate box on the *Response to Notice of Conference* and agreeing to provide a copy of the recording or transcript to the Appeals Division at no cost to the Board.³⁹

RESCHEDULING OR POSTPONING AN APPEALS CONFERENCE

Where there is a scheduling conflict for an appeals conference scheduled to be held at the BOE's Headquarters location or by videoconference or telephone, the Board Proceedings Division may reschedule the conference with the same conference holder, generally within 30 days. A request by a taxpayer for a postponement is generally granted if there is sufficient justification and the request is made within 15 days after the mailing of the *Notice of Appeals Conference*. Extreme hardship (for example, illness, death, disaster) must be shown in order for the Chief Counsel to grant a request for postponement made more than 15 days after the mailing of the notice or a request for a second or subsequent postponement of a previously scheduled and postponed conference. However, a previously postponed conference may be rescheduled, as discussed above.⁴⁰

EXPEDITED APPEALS CONFERENCE

The scheduling of an appeals conference can be expedited if the taxpayer sends a notice to the Board Proceedings Division that the taxpayer agrees to attend a conference at the BOE's Headquarters location, attend a video conference, or participate in a telephone conference. If the taxpayer sends such a notice to the Board Proceedings Division no later than the due date of the **Response to Notice of Appeals Conference** form, the appeals conference will be scheduled within 60 days of receipt of the notice from the taxpayer. After the due date of the *Response to Notice of Appeals Conference* form, the Board Proceedings Division will still schedule an appeals conference as soon as practicable after a taxpayer notifies the Board Proceedings Division that the taxpayer is willing to appear on shortened notice.⁴¹

FAIR, NEUTRAL, AND UNBIASED CONFERENCE HOLDER

An appeals conference is held by the Appeals Attorney who has had no involvement in the matter and who, with fairness and neutrality, will take a fresh look at the law and the facts and provide a Decision and Recommendation containing an objective view of the relevant facts and law. Generally, BOE staff from the appropriate Department or state agency will be present to provide the reasons the Department or other state agency determined that the disputed tax is due, or why the claim for refund or request for relief should be denied. The taxpayer may be represented by any person or persons, at least 18 years of age, such as an attorney, accountant, employee, or by any other person of the taxpayer's choosing, but a representative is *not* required.⁴² It should be noted that the appeals conference will be held as scheduled, even if the taxpayer, or authorized representative, fails to appear.⁴³

The appeals conference itself is not an adversarial proceeding. Rather, it is a discussion of the relevant facts and laws, which is led and conducted by the Appeals Attorney conference holder. As such, it is very important that the taxpayer (or the representative of the taxpayer) provide all relevant facts and arguments to the conference holder. As noted above, the taxpayer is requested to submit all arguments in writing along with all relevant evidence within 15 days of the mailing of the *Notice of Appeals Conference*. This allows the conference holder to be fully prepared for the conference. However, additional written arguments and documentary evidence may be submitted before and during the appeals conference. Upon request, the conference holder may grant either party 15 days (with sufficient justification, a total of 30 days) after the appeals conference to submit additional written arguments and documentary evidence. Where a party does submit additional written arguments or documentary evidence after the appeals conference, the other party is granted 15 days to

submit a response. No further extensions of time to submit additional written arguments or documentary evidence may be granted without the approval of the Appeals Attorney (or designee).⁴⁴

DECISION AND RECOMMENDATION (D&R)

Except where the Chief Counsel allows additional time, the Appeals Attorney will issue its decision, called a Decision and Recommendation (D&R), within 90 days after the appeals conference and the submission of any additional documents. The D&R will include the issues, the relevant facts, the parties' contentions, the applicable law, an analysis of the law applied to the facts, and the conclusions and recommendations of the Appeals Attorney.⁴⁵ The D&R may recommend that the appeal be granted or denied in its entirety, that the appeal be granted in part and denied in part, or that the Department perform a reaudit in accordance with the conclusions in the D&R.⁴⁶ The cover letter accompanying the D&R advises the taxpayer of the options for continuing the appeal process. However, where the D&R recommends a reaudit, the Appeals Attorney will send the taxpayer an options letter after the Department completes the reaudit.

REQUEST FOR RECONSIDERATION (RFR)

Any party may submit to the Appeals Attorney a request for reconsideration (RFR) within 30 days of the date of the options letter (that is, the date of the D&R except when it recommends a reaudit) to request reconsideration of any conclusion adverse to that party. If a RFR is submitted within this period, the Appeals Attorney will issue a Supplemental Decision and Recommendation (SD&R) to address the RFR. The SD&R may uphold the recommendation in the D&R or modify it. The Appeals Attorney may (but is not required to) accept a RFR filed more than 30 days after the date of the options letter and issue a SD&R to address it. The Appeals Attorney may also issue a SD&R on his own initiative to clarify or correct any information, analysis, or conclusion contained in the D&R or any prior SD&R.⁴⁷

A taxpayer whose appeal is denied, in whole or in part, and who has not previously requested a Board hearing in writing, may submit a written request for a Board hearing within 30 days of the date of the D&R or, if the D&R recommends a reaudit, within 30 days of the options letter sent following the reaudit. The same time periods for requesting a Board hearing are applicable when the Appeals Attorney issues a SD&R. While a taxpayer whose appeal is a claim for refund, request for relief, or an administrative protest does not have a statutory right to a Board hearing (or to an appeals conference), a request for Board hearing is generally granted unless the taxpayer had already been provided with an appeals conference and Board hearing on the same issue, and has not submitted any new arguments or evidence.⁴⁸

Where the tax at issue is one that is administered solely by the Board, such as Alcoholic Beverage Tax, the Department may appeal the D&R or a SD&R by filing a RFR with the Appeals Attorney, but cannot request a Board hearing. Where the tax at issue is one for which another state agency also has an administrative role, such as insurance tax, that other state agency has the same right to request a Board hearing as the taxpayer.⁴⁹

BOARD HEARINGS AND NONAPPEARANCE MATTERS

NOTICE OF HEARING

If a Board hearing is scheduled, the Board Proceedings Division will mail to the taxpayer a Notice of Board Hearing, which includes the date and location of the hearing and a *Response to Notice of Board Hearing*, at least 75 days before the hearing date. The completed response form must be returned to the Board Proceedings Division within 15 days of the mailing of the notice. If the party who requested the Board hearing does not return the completed response form by its due date (which will also be stated in the notice), the Board hearing will be canceled, the appeal will be presented to the Board on its nonappearance calendar, and the Board will make its decision based on the written record, without a Board hearing. However, prior to a Board decision, the Chief of Board Proceedings may make an exception and have the appeal placed back on the Board's hearing calendar for reasonable cause.⁵⁰

BRIEFING

Briefs are optional. Briefs cannot exceed 30 double-spaced or 15 single-spaced 8 ½ inch by 11 inch pages, excluding exhibits. Writing may only be printed on one side of each page and the writing must be printed in a type font size of at

least 10 points or 12 characters per inch. Briefs must also contain a statement of the facts and issues, and a discussion of the legal authorities on which the party filing the brief relies.⁵¹

Briefs may be filed in connection with Board hearings as follows:

- The party that requested the Board hearing may file an Opening Brief with the Chief of Board Proceedings no later than 55 days before the Board hearing.
- Where the party requesting the hearing files an Opening Brief, any other party may file a reply brief with the Chief of Board Proceedings no later than 35 days before the Board hearing.
- Any party may file a response to another party's reply brief with the Chief of Board Proceedings no later than 20 days before the Board hearing, *but only* for the purpose of addressing new issues or arguments raised in the reply brief to which it responds. The Chief of Board Proceedings is required to reject any response that exceeds this scope and does more than address new issues or arguments that were first raised in the reply brief to which it responds, even if the response *otherwise* addresses new issues or arguments raised in that reply brief.⁵²

A person who is not a party to the Board hearing may file a nonparty (amicus) brief with the Chief of Board Proceedings no later than 20 days before the Board hearing, and the parties may file responses with the Chief of Board Proceedings no later than 10 days before the hearing. Any such response must be limited to the points of disagreement the filing party has with the nonparty brief or else it will be rejected by the Chief of Board Proceedings.⁵³

In extraordinary circumstances, a Board Member or the Appeals Attorney may request additional briefing from any party after the briefing period is ordinarily complete. Such a request will be made in writing to the Chief of Board Proceedings who will set a briefing schedule and notify the parties accordingly.⁵⁴ Taxpayers and fee payers who receive representation from a Board-approved pro bono or clinical program may file their briefs at their Board hearings. Unrepresented taxpayers and fee payers may file their briefs at their Board hearings if they have not employed a representative to prepare a brief.⁵⁵

The Chief Counsel (or designee) may grant a reasonable extension of time for the filing of any brief for reasonable cause. The request must be in writing, must clearly explain why an extension is needed, and must be filed before the briefing deadline.⁵⁶

Although optional briefs must be submitted within the specified time limits, submissions that constitute relevant documentary evidence, and not argument, are allowable up to, and at, the Board hearing. Accordingly, when a party makes a submission after the time for that party to file a brief has passed, the Appeals Attorney determines whether the submission is a brief or additional evidence. If the submission is determined to be a brief, the submission will not be distributed. If the submission is determined to be evidence, the Board Proceedings Division will distribute the evidence to all the parties and the Board Members.

DEFERRAL AND POSTPONEMENT

A Board Member, the Appeals Attorney, or any party may request a deferral or postponement of a Board hearing. The Chief of Board Proceedings may grant an extension 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 (or designee), under any of the following circumstances:

- A party cannot attend a Board hearing because the party or the party's representative is ill, or there is an illness in the party or the representative's immediate family;
- A party cannot attend a Board hearing because the party or the party's representative has an unavoidable scheduling conflict;
- A party has obtained a new representative who requires additional time before the Board hearing to become familiar with the appeal;
- All the parties have agreed to an extension;

- Any other facts and circumstances that the Chief of Board Proceedings and the Chief Counsel (or designee) determines to constitute reasonable cause.

The Chief of Board Proceedings may 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 have entered into formal settlement negotiations. The Chief Counsel (or designee) may also grant extensions for any determined period of time if the Chief Counsel determines that related or unrelated civil or criminal litigation is pending in state or federal court, the outcome of which is likely to have a bearing on the appeal. The Chief Counsel may also grant an extension for any reason with the consent of the Board Chair.

Generally, after one extension has been granted, the Chief Counsel (or designee) may only grant additional extensions upon a showing of extreme hardship and with the consent of the Board Chair.⁵⁷

HEARING SUMMARY

The Appeals Division prepares an objective Hearing Summary for each hearing, which states the issues of fact and law remaining in dispute, each party's position, and the recommendation of the Appeals Division. The Board Proceedings Division will provide a copy of the summary to the parties, by mail or electronic transmission, generally about 30 days before the Board hearing. If the Appeals Division modifies the summary after its initial distribution, the Board Proceedings Division will promptly provide a copy of the revised summary to each party.⁵⁸

BOARD HEARING

The Board hearing is an oral presentation before the Board Members. The Board hearing is the opportunity for each party to present its position and evidence regarding the remaining disputed issues and the Board Members' opportunity to ask the parties questions.⁵⁹ As with the appeals conference, the taxpayer may be represented by any person or persons, at least 18 years of age, such as an attorney, accountant, or employee, or by any other person of the taxpayer's choosing, but a representative is not required.⁶⁰

At the conclusion of a Board hearing, the Board may vote to decide the appeal immediately, may order the parties to file additional briefing and evidence, may request the Appeals Attorney prepare a Memorandum Opinion and submit it to the Board for further consideration and potential adoption, or may take the appeal under submission for later consideration. If the Board adopts a Memorandum Opinion, the Memorandum Opinion may be cited as precedent in any appeal or other proceeding before the Board.⁶¹

The Board may decide the case by adopting the recommendation of the Appeals Attorney, or by specifically granting or denying the appeal, in whole or in part. For example, the Board may order a specific adjustment to a determination, or may order that an adjustment be calculated based on its directions. However, the Board may increase a deficiency determination only if a claim for an increase is made at or before the hearing.⁶² The *Board Meetings* section of this *Board Meeting Reference Manual* contains examples of common motions Board Members can make at an oral hearing.

Appeals taken under submission may be decided later at the same meeting or at a subsequent meeting. If the Board does not decide an appeal during the same meeting as the Board hearing, the appeal will be returned to the Board for a decision on its nonappearance calendar at a later Board meeting. If the Board has ordered the parties to submit additional post-hearing briefing or evidence, the Appeals Division will consider the submissions and advise the Board regarding its recommendations. Also, after the Board decides an appeal, the taxpayer will be notified of the Board's decision in writing (for example, by way of a *Notice of Board Action*).⁶³

PROCESS FOR ADOPTING MEMORANDUM OPINIONS

In general, the Board follows a three-step process when it adopts a Memorandum Opinion:

- First, a Board Member makes a motion to decide the appeal.

- Next, a Board Member will make a second motion to request the Appeals Attorney prepare a Memorandum Opinion and submit it to the Board for potential adoption at a subsequent hearing. A “Yes” vote on the second motion means that a Board Member agrees with directing the Appeals Attorney to draft a Memorandum Opinion, even though the Board Member may disagree with the result, or agree with the result, but have a different rationale. A “No” vote on the second motion means that a Board Member disagrees with directing the Appeals Attorney to draft a Memorandum Opinion.
- If the second motion passes, then the Appeals Attorney will prepare a Memorandum Opinion and submit the opinion to the Board for potential adoption on the nonappearance calendar at a subsequent Board meeting. At the subsequent hearing, a Board Member may make a third motion to adopt (publish) the Memorandum Opinion. A “Yes” vote on the third motion means a Board Member agrees with the result and rationale, and will sign the Memorandum Opinion. A “No” vote on the third motion means a Board Member disagrees with the adoption of the Memorandum Opinion.

If the Board skips the first step, the adoption of a Memorandum Opinion will decide the appeal. However, if the Board skips the first step and the motion to adopt the Memorandum Opinion fails, the Board will still need to vote to decide the appeal without a Memorandum Opinion.⁶⁴

In addition, if a Memorandum Opinion is adopted, a Board Member may submit a Dissenting Opinion setting forth the Board Member’s rationale for disagreeing with the Memorandum Opinion or a Concurring Opinion setting forth the Board Member’s rationale for agreeing with the result if different from the rationale set forth in the Memorandum Opinion. However, if a Board Member voted “Yes” on the motion to adopt the Memorandum Opinion, the Board Member may only submit a Concurring Opinion that is consistent with that vote. A Dissenting Opinion or Concurring Opinion will be attached to the adopted Memorandum Opinion without a further vote.⁶⁵ (See flowchart.)

Furthermore, any Board Member has the authority to state on or submit into the transcript or record the Board Member’s position or rationale with regard to any vote to decide an appeal without making a motion to adopt a Memorandum Opinion. No vote is required.⁶⁶

FINALITY

The Board’s decision on an insurance tax appeal or Alcoholic Beverage Tax appeal becomes final 30 days after the notice of the Board’s decision is mailed to the taxpayer unless a party files a petition for rehearing or the Board Chair orders the decision held in abeyance within that 30-day period and before the decision becomes final.⁶⁷

The Board may reconsider or rescind a vote on a business tax or fee appeal, unless the Board’s action on the appeal is final. However, once a decision is final, the Board has no further jurisdiction over an appeal.

PETITION FOR REHEARING

A petition for rehearing must contain sufficient facts and legal authorities necessary to:

- Identify an irregularity in the Board’s proceedings that prevented the fair consideration of the appeal;
- Identify an accident or surprise that occurred, which ordinary caution could not have prevented;
- 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,
- Demonstrate that there was insufficient evidence to justify the Board’s decision or the decision was contrary to law.⁶⁸

When a party files a timely petition for rehearing, the Appeals Attorney will prepare a recommendation for the Board. The Appeals Attorney may recommend that the petition for rehearing be granted or denied, or may recommend that the Board’s prior decision in the appeal be modified as appropriate. The petition for rehearing and recommendation will then

be presented to the Board for decision on its nonappearance calendar. If the Board denies the petition, a new *Notice of Action* will be issued (reflecting any adjustments to the Board's prior order that may be included in the Board's order on the petition for rehearing). If the Board grants a rehearing, a new *Notice of Action* will be issued in accordance with the Board's decision after the rehearing, which will become final 30 days after it is mailed.⁶⁹

NONAPPEARANCE MATTERS

The Board meeting agendas include headings for "Tax Program Nonappearance Matters – Consent" and "Tax Program Nonappearance Matters – Adjudicatory."

Alcoholic Beverage Tax or Tax on Insurance matters that the Appeals Attorney presents to the Board for decision without Board hearings appear under the subheadings for "Special Taxes Matters" and generally include four kinds of matters:

- Hearing Request Waived. Appeals in which a Board hearing was requested, then waived.
- Hearing Notice Sent—No Response. Appeals in which a Board hearing was requested, but the taxpayer did not respond to the hearing notice.
- Petitions for Rehearing. Petitions for rehearing on appeals previously decided by the Board.
- Appeals previously heard by the Board and taken under consideration, which are now presented to the Board for final action.

Matters in the first three categories are generally presented to the Board as consent matters.

The headings "Tax Program Nonappearance Matters – Consent" and "Tax Program Nonappearance Matters – Adjudicatory" on the Board meeting agendas also contain subheadings for the Departments' tax programs to submit taxpayers' appeals to the Board for decision without a Board hearing. For example, Board approval is required for most of the departments' recommendations to approve or deny refunds, credits, and cancellations (collectively refunds) in excess of \$100,000.⁷⁰

BANKRUPTCY

Where the Board receives notice that a taxpayer has filed a petition for relief under the Bankruptcy Code while a petition for redetermination is pending, the Board's policy is to notify the taxpayer of the Board's intention to proceed with the appeal process because that process falls within an exception to the automatic stay provisions of the Bankruptcy Code.⁷¹ The Board does not pursue collection actions while a bankruptcy petition is pending because collection actions are subject to the automatic stay. However, in asset bankruptcy cases, the Board may file a proof of claim in the bankruptcy case to preserve its right to receive a distribution from the bankruptcy estate in full or partial payment of that claim. If an objection to the Board's claim is filed, the bankruptcy court determines whether the claim is valid.

REFERENCE NOTES

- 1 A “Tax Program” is defined as any revenue collecting or advisory activity the BOE is obligated to perform by provision of law or by contract.
- 2 References to statutes throughout this section primarily refer to the Tax on Insurers or Alcoholic Beverage Tax Law sections of the Revenue and Taxation Code. References to regulations primarily refer to California Code of Regulations, title 18, section 2500 et seq., and the Rules for Tax Appeals. References to the “Department” throughout this section refer to the California Department of Tax and Fee Administration’s Business Tax and Fee Department and/or the BOE Property Tax Department.
- 3 Revenue and Taxation Code, section 32401; and California Code of Regulations, title 18, sections 5210 and 5211.
- 4 Revenue and Taxation Code, section 6561.5; and California Code of Regulations, title 18, section 5212.
- 5 Revenue and Taxation Code, section 6561.5; and California Code of Regulations, title 18, section 5212.5.
- 6 California Code of Regulations, title 18, sections 5211 and 5213.
- 7 California Code of Regulations, title 18, section 5217.
- 8 California Code of Regulations, title 18, sections 5212 and 5218.
- 9 California Code of Regulations, title 18, section 5220.
- 10 California Code of Regulations, title 18, sections 5220.4 and 5220.6.
- 11 Revenue and Taxation Code, section 32311 et seq; and California Code of Regulations, title 18, section 5221.
- 12 Revenue and Taxation Code, section 32312; and California Code of Regulations, title 18, sections 5222, 5222.6, and 5223.
- 13 Revenue and Taxation Code, section 32311.
- 14 California Code of Regulations, title 18, section 5222.4.
- 15 California Code of Regulations, title 18, sections 5225 and 5226.
- 16 California Code of Regulations, title 18, section 5225.
- 17 California Code of Regulations, title 18, section 5224.
- 18 California Code of Regulations, title 18, sections 5229 and 5266.
- 19 California Code of Regulations, title 18, section 5232.
- 20 Revenue and Taxation Code, section 32402.1 et seq.
- 21 California Code of Regulations, title 18, sections 5234, 5234.5, and 5235.
- 22 California Code of Regulations, title 18, sections 5235 and 5236.
- 23 California Code of Regulations, title 18, sections 5235 and 5237.
- 24 Revenue and Taxation Code, sections 13104 and 32414.
- 25 Revenue and Taxation Code, section 32402.2.
- 26 Revenue and Taxation Code, section 32258.
- 27 California Code of Regulations, title 18, section 5240.
- 28 Revenue and Taxation Code, section 32258, subdivision (c).
- 29 Revenue and Taxation Code, section 32258; and California Code of Regulations, title 18, sections 5241 and 5242.
- 30 Revenue and Taxation Code, section 32258, subdivision (f); and California Code of Regulations, title 18, sections 5241 and 5242.
- 31 Family Code, section 297.5.
- 32 California Code of Regulations, title 18, section 5245.
- 33 California Code of Regulations, title 18, section 5246.
- 34 California Code of Regulations, title 18, section 5247.
- 35 California Code of Regulations, title 18, section 5248.
- 36 California Code of Regulations, title 18, sections 5249.6.
- 37 California Code of Regulations, title 18, section 5244.
- 38 California Code of Regulations, title 18, sections 2559 and 2559.1.
- 39 California Code of Regulations, title 18, section 5261.
- 40 California Code of Regulations, title 18, section 5262.
- 41 California Code of Regulations, title 18, section 5263.
- 42 California Code of Regulations, title 18, sections 5523 and 5523.1.
- 43 California Code of Regulations, title 18, section 5264.
- 44 California Code of Regulations, title 18, section 5264.

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- 45 California Code of Regulations, title 18, section 5265.
46 California Code of Regulations, title 18, section 5266.
47 California Code of Regulations, title 18, section 5266.
48 California Code of Regulations, title 18, section 5266.
49 California Code of Regulations, title 18, section 5266.
50 California Code of Regulations, title 18, section 5522.6 (the Chief Counsel delegated to the Chief of Board Proceedings the duty to decide whether appeals should remain on the hearing calendar where the taxpayer submits the response form more than 15 days after the mailing of the notice).
51 California Code of Regulations, title 18, section 5270.
52 California Code of Regulations, title 18, section 5270.
53 California Code of Regulations, title 18, section 5270.
54 California Code of Regulations, title 18, sections 5270 and 5523.4.
55 California Code of Regulations, title 18, section 5270.
56 California Code of Regulations, title 18, section 5271.
57 California Code of Regulations, title 18, section 5522.8.
58 California Code of Regulations, title 18, sections 5511, subdivision (q), and 5523.3.
59 California Code of Regulations, title 18, section 5523.5.
60 California Code of Regulations, title 18, section 5523.
61 California Code of Regulations, title 18, section 5551.
62 Revenue and Taxation Code, section 12430.
63 California Code of Regulations, title 18, section 5560.
64 California Code of Regulations, title 18, section 5551, subdivision (a).
65 California Code of Regulations, title 18, section 5551, subdivision (b).
66 Parliamentary Rules of Order, Section F. Debate.
67 California Code of Regulations, title 18, section 5560, subdivision (b).
68 California Code of Regulations, title 18, section 5561.
69 California Code of Regulations, title 18, sections 5562 and 5563.
70 California Code of Regulations, title 18, section 5237.
71 11 U.S.C. section 362(b)(9).

CHAPTER 7

TAXPAYERS' RIGHTS ADVOCATE

The state Taxpayers' Bill of Rights statutes seek to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the assessment and collection of taxes; the California State Board of Equalization is tasked specific obligations under these statutes,¹ which are generally intended to promote proper assessment and collection of property taxes as well as to improve efforts to inform the public of the proper application of the tax laws. For Property Tax, the statutes declare that the purpose is to disseminate information to taxpayers, promote enhanced understanding regarding the property tax system, and promote the proper assessment and collection of property taxes throughout the state by advancing uniform practices of property tax appraisal and assessment.² For Alcoholic Beverage Tax, the statutes focus on the fairness of proceedings between the Board and a taxpayer, including the determination of the correct amount of liability; and that, in furtherance of this purpose, the Board shall allow taxpayers every opportunity to present all relevant information pertaining to their liabilities.³ The statutes also created the Taxpayers' Rights Advocate to facilitate the resolution of taxpayer complaints and problems; the Taxpayers' Rights Advocate is also tasked with ensuring the adequacy of procedures for distribution of property tax assessment matters and addressing taxpayer complaints regarding unsatisfactory treatment by Board employees in the Alcoholic Beverage Tax Program, including staying actions where taxpayers have suffered or will suffer irreparable loss as the result of Board employees' actions.⁴

Under the Taxpayers' Bill of Rights statutes, the Board is required to convene annual hearings to hear public comments on the Board's tax programs, the tax laws administered by the Board, and the Board's policies and procedures, as described in greater detail below.⁵

The Taxpayers' Bill of Rights statutes require the Board to develop and implement taxpayer education and information programs.⁶ The Taxpayers' Rights Advocate Office coordinates the annual Taxpayers' Bill of Rights Hearing in cooperation with the Board Proceedings Division.

The Taxpayers' Bill of Rights statutes and regulations also permit taxpayers to claim reimbursement for reasonable fees and expenses they incurred with regard to a Board hearing when the Board finds that the action taken by BOE staff was unreasonable.⁷

ANNUAL TAXPAYERS' BILL OF RIGHTS HEARINGS BEFORE THE BOARD

The Board holds an annual Taxpayers' Bill of Rights hearing in Sacramento to hear comments regarding the administration of the Alcoholic Beverage Tax Program and the state-wide administration of property tax. The hearing provides an opportunity for taxpayers, local government officials, and others to express their ideas, concerns, and suggestions directly to the Board Members. The Board welcomes proposals for changes to tax laws or to the Board's procedures, policies or rules, including those that may improve voluntary taxpayer compliance and the relationship between citizens and the state and local government employees who serve them.

In addition, the property tax hearing solicits comments and suggestions from assessors, other local agency representatives, and taxpayers on proposed changes to the property tax law, programs, policies, or procedures. Property tax hearings also provide a forum for individuals to identify ways to correct any problems identified in the Taxpayers' Rights Advocate's annual report.⁸

ARRANGEMENT AND COORDINATION OF HEARINGS

The Chief of Board Proceedings and the Taxpayers' Rights Advocate share responsibility for coordinating each year's hearing.

Publicity for all hearings is the responsibility of the Taxpayers' Rights Advocate.

Individuals who plan to make a presentation at the hearing are encouraged to prepare a description of their issue in writing, submit it to the Taxpayers' Rights Advocate Office prior to the hearing, and be prepared to summarize the issue at the hearing.⁹ Prior to the hearing, the Taxpayers' Rights Advocate will inform Board Proceedings Division staff of any parties that have advised the TRA Office of their intention to speak at the hearing.

CONDUCT OF THE HEARING

The Chair convenes the hearing. Typically, the Taxpayers' Rights Advocate makes introductory remarks and explains the format and purpose of the meeting. Presentations or comments from taxpayers and other interested parties follow.

Hearing participants may elect to comment directly to the Board Members and their staff during the hearing or may elect to forward their comments in writing to the Taxpayers' Rights Advocate Office or to an individual Board Member after the hearing for consideration.

Priority for presentations is given to those who give advance notification to the Taxpayers' Rights Advocate Office or the Chief of Board Proceedings. Individuals who did not give advance notification and wish to make presentations are requested to complete a Taxpayers' Bill of Rights Hearing Appearance Sheet.¹⁰ Board Proceedings Division staff, with the assistance of Taxpayers' Rights Advocate Office staff, collects voluntary appearance sheets from all presenters and prepares a list of presenters; a copy of the appearance sheets or a list of presenters may also be provided to the Chair at the meeting.

The Taxpayers' Rights Advocate or the Board Proceedings Division Clerk calls each speaker in the order of the prepared list. For the record, each presenter is asked to state his or her name and, if applicable, organizational affiliation, at the beginning of the presentation.

In general, if TRA staff has been working with the presenter on the issue that is the subject of the presenter's comment, the TRA Office may comment on the status or actions taken by the TRA Office to address concerns.

Since the hearing is conducted informally, Board Members may direct questions or comments to the presenter or staff during the presentation. The Board will not take any formal action during the hearing but may request staff to report back on issues that have been brought forward by the hearing participants and may coordinate with Board Proceedings to schedule an item to take action at a later time, if necessary. If a presenter raises issues about a specific BOE case pending before the Board, the Board will not respond substantively,¹¹ as such a matter is properly addressed as part of the normal appeal process; accordingly, the Board will defer taking formal action until the case is scheduled for a Board hearing.

The Chair adjourns the hearing after the presentations are complete.

BOARD RESPONSE

After the hearing, the Taxpayers' Rights Advocate Office coordinates responses addressing participants' concerns and identifies issues that require further action. If requested by the Board, the Taxpayers' Rights Advocate may provide follow-up reports to the Board on issues brought forward by hearing participants.

REFERENCE NOTES

- 1 Revenue and Taxation Code, sections 11657 (private railroad car tax reimbursement claims), 5900 et seq. (property tax), and 32460 et seq. (Alcoholic Beverage Tax). The remainder of this section will refer to the Taxpayers' Bill of Rights statutes and regulations applicable to property tax, unless otherwise cited.
- 2 Revenue and Taxation Code, section 5901.
- 3 Revenue and Taxation Code, section 32460 et. seq; See Stats. 1992, Ch. 438, section 8, which, when adopted, was modeled after the Katz-Harris Taxpayers' Bill of Rights to enact a taxpayers' bill of rights applicable to each of the specified laws administered by the State Board of Equalization.
- 4 Revenue and Taxation Code, sections 5903, 5904, and 32461.
- 5 Revenue and Taxation Code, sections 5906 and 32463.
- 6 Revenue and Taxation Code, sections 5908 and 32462.
- 7 Revenue and Taxation Code, section 32401 et seq; and California Code of Regulations, title 18, section 5600 et seq.
- 8 Revenue and Taxation Code, section 5904.
- 9 The BOE-1373 is available for this purpose.
- 10 A BOE-1373.
- 11 Gov. Code, section 15609.5.

CHAPTER 8

ADMINISTRATIVE SETTLEMENT PROGRAM

PURPOSE OF ADMINISTRATIVE SETTLEMENT PROGRAM

The purpose of the Board's administrative settlement program is to provide an alternative process to resolve tax disputes that is faster and less costly than continuing through the regular appeal processes or litigation. Currently, the California Department of Tax and Fee Administration (CDTFA) coordinates with BOE staff to administer the administrative settlement program for Alcoholic Beverage Tax.¹ The administrative settlement program does not presently apply to property tax or to insurance tax disputes.

ELIGIBLE DISPUTES

The Settlement and Taxpayer Services Bureau of the CDTFA Legal Department administers the administrative settlement program. By statute, disputed civil tax liabilities involving petitions for redetermination or reconsideration, administrative protests, or claims for refund pending before the Board are eligible for the administrative settlement program. The Settlement and Taxpayer Services Bureau may also consider jeopardy determinations when an administrative hearing has been requested. Audits in progress, matters in litigation, and final, collectable liabilities are not eligible. The statutes require that settlements be consistent with a reasonable evaluation of litigation risks and costs and in the State's best interest.² Accordingly, inability to pay is not a basis for settlement. If a taxpayer does not dispute the tax, but asserts that he or she is unable to pay the full liability, the Settlement and Taxpayer Service Bureau advises the taxpayer about the option to apply for an installment payment agreement, or the Offer in Compromise Program, or both. More detailed information about the Offer in Compromise Program is provided in the *Offers in Compromise* section of this *Board Meeting Reference Manual*.

In addition to the above eligibility requirements, generally settlement requests must be submitted at least 15 days before the date of the scheduled hearing by the five-elected Board Members. Once a Board decision has been made, a settlement offer can only be considered if a petition for rehearing is filed with the Board Proceedings Division or if a timely, valid claim for refund is filed after the required payments have been made.

INITIATING A SETTLEMENT OFFER AND ACCEPTANCE INTO THE SETTLEMENT PROGRAM

A taxpayer wishing to initiate a settlement must submit a signed and dated written settlement proposal to the CDTFA's Settlement and Taxpayer Services Bureau's Assistant Chief Counsel. The proposal should include:

- The taxpayer's name, telephone number, and current address;
- If applicable, the name, address, and fax and telephone numbers of the taxpayer's representative and a copy of the representative's power of attorney;
- The taxpayer's account number;
- The tax or fee period involved; and,
- A good faith settlement offer, including factual and legal grounds in support of the offer.

After reviewing the settlement proposal, Settlement and Taxpayer Services Bureau staff notifies the taxpayer whether the appeal has been accepted into the administrative settlement program. A taxpayer who requests a settlement must continue to meet applicable deadlines for its petition, administrative protest, or claim for refund while its settlement proposal is considered and after settlement negotiations begin. If an appeal is scheduled for an appeals conference when the taxpayer requests a settlement, generally the appeals conference will still be held so that the appeal process will not be unduly delayed.

Generally, an eligible appeal that presents a genuine factual or legal dispute and more than a negligible risk to the State's position will be accepted for settlement. Occasionally, an appeal may not be considered appropriate for settlement.

For example, if Settlement and Taxpayer Services Bureau staff determine that there are insufficient facts to allow a reasonable evaluation of the merits of the taxpayer's position or an appeal presents little or no litigation risk, staff will notify the taxpayer in writing that the appeal is not conducive to settlement and advise the taxpayer that the appeal will be returned to the regular appeal process.

PROCESSING SETTLEMENT OFFERS

CDTFA Settlement and Taxpayer Services Bureau attorneys and auditors evaluate each appeal accepted into the administrative settlement program to assess the strengths and weaknesses of each party's position, the risks and costs of litigating the matter, and the reasonableness of the taxpayer's settlement proposal under the circumstances. If the difference between the liability and the taxpayer's offer exceeds \$500,000, staff presents proposed settlement terms to the BOE's Alcoholic Beverage Tax Liaison, BOE's Chief Counsel and BOE's Executive Director. CDTFA Settlement and Taxpayer Services Bureau staff then seeks to reach a settlement agreement with the taxpayer on mutually acceptable terms that are reasonable overall and in the best interests of the State. However, if the appeal does not appear to be conducive to settlement at any time during the settlement process, the Settlement and Taxpayer Services Bureau will coordinate with BOE to end negotiations and advise the taxpayer accordingly.

Settlement negotiations are conducted by telephone or face-to-face conference. If Settlement and Taxpayer Services Bureau staff and the taxpayer agree on settlement terms, staff prepares a formal Settlement Agreement memorializing those terms and mails it to the taxpayer to sign. Generally, Settlement and Taxpayer Services Bureau staff gives the taxpayer 21 days after the date of the cover letter to sign and return the Settlement Agreement.

If, after negotiating, Settlement and Taxpayer Services Bureau staff and the taxpayer are unable to agree on settlement terms, staff sends a letter advising the taxpayer that the appeal will be returned to the regular appeal process. A taxpayer who disagrees with Settlement and Taxpayer Services Bureau staff's action may seek reconsideration of the matter by appealing to the CDTFA's Settlement and Taxpayer Services Bureau's Assistant Chief Counsel. The appeal must be in writing and state why the settlement terms proposed by the taxpayer are reasonable and in the best interests of the State. If filed, the Assistant Chief Counsel will consider the appeal and consult with the BOE and with settlement staff. If the Assistant Chief Counsel agrees with the taxpayer, the Assistant Chief Counsel may either advise BOE to accept the taxpayer's terms or conduct additional negotiations. However, if the Assistant Chief Counsel and BOE agree that further negotiations would not result in a reasonable settlement agreement, the Assistant Chief Counsel will advise the taxpayer that the appeal will be returned to the regular appeal process.

Upon the receipt of a timely signed and dated Settlement Agreement from a taxpayer, CDTFA Settlement and Taxpayer Services Bureau staff prepares a settlement memorandum. The memorandum describes the liability and disputed issues, summarizes the terms of the negotiated Settlement Agreement, and discusses why, in light of litigation risks and costs, the settlement is reasonable overall and in the best interests of the State. Then, CDTFA Settlement and Taxpayer Services Bureau staff submits the memorandum to the Settlement and Taxpayer Services Bureau's Assistant Chief Counsel, the BOE liaison, BOE Chief Counsel and BOE Executive Director for preliminary approval before being sent to the Board for final approval. However, if the settlement will result in a reduction of taxes and/or penalties in excess of \$300,000, the memorandum is also reviewed by the BOE's Executive Director for preliminary approval and signature before being sent to the Board.

If the reduction of taxes and/or penalties in a preliminarily approved settlement exceeds \$5,000, CDTFA Settlement and Taxpayer Services Bureau staff also sends the signed memorandum to the State Attorney General who, by statute, has 30 days to comment on whether the settlement appears reasonable from an overall perspective.³ If the Attorney General's comment is unfavorable, at the discretion of the BOE and CDTFA's Assistant Chief Counsel, the appeal may either be renegotiated or returned to the regular appeal process.

Following comment from the Attorney General, CDTFA Settlement and Taxpayer Services Bureau staff submits the memorandum and a copy of the Attorney General's comments to the Board, which, by statute, has 45 days to approve or disapprove the settlement. If the Board fails to act within 45 days, the settlement is deemed approved. If the Board disapproves, the settlement may be renegotiated and resubmitted to the Board at the discretion of the BOE Executive Director or BOE Chief Counsel. The statutes prohibit Board Members from participating in the settlement process except in the final approval phase.⁴

For appeals in which the reduction of taxes and/or penalties in settlement does not exceed \$5,000, CDTFA Settlement and Taxpayer Services Bureau staff submits the settlement memorandum to the Settlement and Taxpayer Services Bureau's Assistant Chief Counsel, the BOE liaison, the BOE Chief Counsel, and the BOE Executive Director for preliminary and final approval. In such appeals, the memorandum will not be forwarded to the Attorney General for comment or the five-elected Board Members for approval. However, as required by statute, the BOE Executive Director or BOE Chief Counsel will notify the Board of settlements in which the reduction of taxes and penalties does not exceed \$5,000.⁵

Upon approval or disapproval of a settlement, CDTFA Settlement and Taxpayer Services Bureau staff notifies the taxpayer. The taxpayer generally is expected to pay any settlement amount due to the Board within 30 days of notice that the settlement has been approved.

Upon timely payment of the settlement amount, CDTFA Settlement and Taxpayer Services Bureau staff sends the Settlement Agreement to the BOE Executive Director or his or her designee for execution on behalf of the Board. The Settlement Agreement is considered effective when executed on behalf of the Board. Staff then sends a fully executed copy of the Settlement Agreement to the taxpayer.

If the taxpayer fails to timely pay the settlement amount due, the Board does not execute the Settlement Agreement, the Settlement Agreement does not become effective, and the appeal is returned to the regular appeal process.

PUBLIC RECORD STATEMENT, FINALITY OF SETTLEMENTS

By statute, if a settlement results in a reduction of taxes and/or fees in excess of \$500, a Public Record Statement must be placed on file in the Executive Director's Office. The Public Record Statement must include:

- The name or names of the parties to the settlement;
- The total amount in dispute;
- The amount agreed to pursuant to the settlement;
- A summary of the reasons why the settlement is in the best interests of the State; and,
- The Attorney General's conclusion as to whether the settlement is reasonable from an overall perspective.

The Public Record Statement may not include information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.⁶ The Board must consider settlements in closed session and, except for the Public Record Statement, any settlement considered or entered into constitutes confidential tax information.⁷

By statute, settlements entered into under the Board's administrative settlement authority are final and may not be appealed unless fraud or misrepresentation of a material fact is shown.⁸

REFERENCE NOTES

- 1 Revenue and Taxation Code, section 32471 (Alcoholic Beverage Tax).
- 2 Revenue and Taxation Code, section 32471, subdivision (a).
- 3 Revenue and Taxation Code, section 32471, subdivision (b)(2) and (3).
- 4 Revenue and Taxation Code, section 32471, subdivisions (d) and (e).
- 5 Revenue and Taxation Code, section 32471, subdivision (b)(1) and (3).
- 6 Revenue and Taxation Code, section 32471, subdivision (c).
- 7 Revenue and Taxation Code, section 32471, subdivision (g).
- 8 Revenue and Taxation Code, section 32471, subdivision (f).

CHAPTER 9

OFFER IN COMPROMISE

OFFER IN COMPROMISE

An Offer in Compromise (OIC) is an offer made by an alcoholic beverage taxpayer to satisfy a final tax liability by paying the Board an amount that is less than the full tax liability due.

OIC AUTHORITY

The OIC statutes¹ authorize the Board to consider and accept an OIC from an alcoholic beverage taxpayer if certain statutory requirements are satisfied.

OIC REQUIREMENTS

The Board may only consider and accept an OIC with regard to a final, nondisputed tax liability.² Prior to January 1, 2009, the Board could not consider and accept an OIC for final liabilities that were generated from a business, unless the business was discontinued or transferred, and the taxpayer making the OIC no longer had a controlling interest or association with the business that incurred the liability and did not have a controlling interest or association with a similar type of business as the business that incurred the liability.³

However, effective January 1, 2009, through January 1, 2023, the Board may also consider and accept an OIC for a “qualified” final, undisputed tax liability, including liabilities generated by an active business that the taxpayer making the OIC continues to own, and liabilities generated by a discontinued or transferred business in situations where the taxpayer making the OIC still has a controlling interest or association with a similar type of business.⁴ There are tax specific definitions for “qualified” final, nondisputed tax and fee liabilities in each of the OIC statutes. In addition, the Board may not accept an OIC for a “qualified” final, nondisputed tax liability from a taxpayer who previously received an OIC for a “qualified” final, nondisputed tax liability under the same OIC statute.⁵

The Board will only accept an OIC:

- When a taxpayer establishes that (A) the amount offered is the most that can be expected to be paid or collected from the taxpayer’s present assets and income and (B) the taxpayer does not have reasonable prospects of increasing its income or assets so as to enable the taxpayer to satisfy a greater amount of the liability, within a reasonable period of time, in most cases 5 to 7 years; and,
- The Board determines that accepting the OIC is in the best interest of the state (that is, a good business decision).⁶

The Board will only accept an OIC with regard to a nondisputed, Board-assessed liability incurred by an active business if the taxpayer establishes that the business does not have, and will not have in the foreseeable future, the income, assets, or means to pay the liability in full without suffering economic hardship and possible closure.

Taxpayers may not appeal the BOE’s recommendation that it would not be in the best interest of the state to accept an OIC to satisfy a final tax liability.⁷

OIC PROGRAM

The BOE’s OIC Program is administered by the OIC Section of CDTFA’s Settlement and Taxpayer Services Bureau of the CDTFA Legal Department at this time pursuant to an interagency agreement. If after reviewing an account, it appears the taxpayer is a good candidate for the OIC program, the responsible collector may invite the taxpayer to apply by sending the taxpayer an OIC invitation notice (CDTFA-908) and an OIC application (CDTFA-490 or CDTFA-490-C). However, taxpayers may file an OIC application without receiving an invitation by filing the OIC application along with supporting documentation. OIC applications are available on the CDTFA’s website, www.cdffa.ca.gov. You may also complete the Multi-Agency application if you have liabilities with multiple tax agencies, this is also available at www.cdffa.ca.gov.

REVIEWING OIC APPLICATIONS

Each OIC application is forwarded to the CDTFA OIC Section. The OIC Section determines whether the amount offered represents the most the Board can expect to collect within a reasonable period of time, in most cases five to seven years. Although each case is evaluated based on its own merit, the OIC Section gives the following factors strong consideration when making its determination: ability to pay, equity in the entity's assets, present and future income, present and future expenses, potential for changed circumstances, concealment of assets, and existence of fraud.

SUBMITTING OFFERED FUNDS

If the CDTFA OIC Section intends to recommend approval of an OIC application, OIC Section staff will coordinate with the BOE liaison, to notify the taxpayer and request all of the offered funds, whether in full or by an agreed upon payment plan not to exceed a 12 month term, in the form of a certified check or other accepted payment method. Once received, the funds will be held as an unapplied payment or in the form of a noninterest bearing deposit. If the OIC application is denied at any stage during the approval process, the full amount of the deposit will be refunded, unless the taxpayer indicates that the deposited funds should be applied to an unpaid liability.⁸ Credit interest will not be paid on the deposited amount if an OIC application is denied and the deposited funds are subsequently refunded.

If a taxpayer directs staff to apply offered funds to an unpaid liability, the funds will be applied with the same effective date as the date the taxpayer's payment was originally received. If a third party has paid the deposited amount, staff must receive written permission from the third party to apply the deposit, otherwise the deposit will be returned to the third party.

APPROVING OR DENYING OIC APPLICATIONS

CDTFA OIC Section recommendations to accept an OIC where the tax compromised is less than \$7,500 will be forwarded to the Assistant Chief Counsel for the Settlement Division, the BOE Liaison, the BOE Chief Counsel, and the BOE Executive Director for final approval. Recommendations to accept an OIC where the tax compromised exceeds \$7,500 will be forwarded to the Assistant Chief Counsel for the Settlement Division, the BOE Liaison, the BOE Chief Counsel, and the BOE Executive Director for preliminary approval, and, finally to the Board Members for formal approval during a public Board meeting. The Board Members do not participate in the OIC process except in the final approval phase.

FRAUD

An OIC application will *not* be considered in situations where the taxpayer has been convicted of criminal (felony) fraud.⁹ Taxpayers that have been assessed a civil fraud penalty may participate in the OIC program; however, the OIC Section will require a *minimum* offer that will pay the entire tax amount and the civil fraud penalty. The minimum offer requirement may be waived if the taxpayer making the offer can prove they were not the person responsible for perpetrating the fraud that gave rise to the civil fraud penalty.¹⁰

OTHER ISSUES

Generally, no new collection actions will be enforced while an OIC application is being evaluated, unless delaying collection activity would jeopardize the Board's ability to collect a final tax liability. However, taxpayers with pre-established installment payment agreements are required to continue making timely installment payments while their OIC applications are being considered.

REFERENCE NOTES

- ¹ Revenue and Taxation Code, section 32471.5 (Alcoholic Beverage Tax).
- ² Revenue and Taxation Code, section 32471.5, subdivisions (a) and (b).
- ³ Revenue and Taxation Code, section 32471.5, subdivision (c).
- ⁴ The current versions of the OIC statutes are effective until January 1, 2023, unless their effective dates are extended by subsequent legislation. (See e.g., Rev. & Tax. Code, § 32471.5, subd. (r).)
- ⁵ Revenue and Taxation Code, section 32471.5, subdivision (c)(3).
- ⁶ Revenue and Taxation Code, section 32471.5, subdivision (i).
- ⁷ Revenue and Taxation Code, section 32471.5, subdivision (i)(2).
- ⁸ Revenue and Taxation Code, section 32471.5, subdivision (l).
- ⁹ Revenue and Taxation Code, section 32471.5, subdivision (h).
- ¹⁰ Revenue and Taxation Code, section 32471.5, subdivision (k).

CHAPTER 10

CONFIDENTIALITY AND DISCLOSURE

In general, the Board Members and BOE staff are prohibited from disclosing confidential taxpayer information obtained by the Board, unless the taxpayer at issue waives its right to confidentiality.¹ The California Public Records Act (PRA)² generally grants the public access to public records maintained by the Board. The Information Practices Act of 1977 (IPA)³ prohibits the Board from disclosing anyone's personal information to the public, except under certain statutorily authorized conditions, and gives individuals the right to inspect their own personal information⁴ The Legal Department is responsible for protecting the confidentiality of information in the Board's possession and responds to requests for public records and access to personal information.

When a member of the public requests a copy of a record, the Legal Department will determine whether the request seeks disclosable public records in the Board's possession and will notify the requester within ten days regarding whether or not records will be provided and the reasons therefore, in accordance with the PRA.⁵ The Legal Department makes determinations as to whether documents constitute public records⁶ and whether public records are exempt from disclosure under the PRA.⁷

When a taxpayer or a taxpayer's representative makes a request for a taxpayer's own records, the request is not processed under the PRA. Instead, the Board processes these types of requests under the IPA. In general, the IPA requires the Board to provide taxpayers with access to their own personal information within 30 calendar days of receipt of a request. However, the Board has 60 calendar days to respond to requests for records that are geographically dispersed or which are inactive and in central storage.⁸ The Legal Department determines whether Board records contain personal information pertaining to a requesting taxpayer, determines whether the Board is prohibited from disclosing information contained in Board records to a requesting taxpayer and redacts responsive documents when necessary to comply with the IPA⁹ or other laws.

If there is a question about confidentiality or the disclosure of Board records, contact the Legal Department.

MINUTES AND TRANSCRIPTS

In general, the Bagley-Keene Open Meeting Act prohibits the Board Members from taking action on matters before the Board, except during an open session at a public meeting.¹⁰ As a result, the Board generally conducts Board meetings during open session, including the portions of Board meetings devoted to the conduct of oral Board hearings on taxpayers' appeals.¹¹ The minutes and transcripts of Board meetings conducted during open session and any exhibits incorporated by reference into the record of public meetings are disclosable records that are available to the public under the PRA.¹² See the Board Meetings section of this Board Meeting Reference Manual for more detailed information about open and closed sessions, and about minutes and transcripts.

CONFIDENTIALITY WAIVERS

ALCOHOLIC BEVERAGE TAX AND TAX ON INSURERS HEARINGS

The filing of a written request for an oral hearing before the Board with regard to an Alcoholic Beverage Tax or Tax on Insurers appeal constitutes 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 Board hearing or included in the Hearing Summary prepared for the taxpayer's oral Board hearing.¹³ However, the waiver is not effective at the time the oral Board hearing is requested and the waiver does not apply to certain information that can be used for identity theft, as explained below.

A Decision and Recommendation prepared by the Appeals Attorney is not subject to the waiver described above. If BOE staff receives a PRA request for a disclosable Hearing Summary, BOE staff should make sure that the response only includes the Hearing Summary and does not include a Decision and Recommendation prepared by the Appeals Attorney.

The waiver of confidentiality does not apply to briefs filed by a taxpayer or BOE staff and does not apply to Summary Decisions the Appeals Attorney prepares for Alcoholic Beverage Tax or Tax on Insurers appeals. In addition, the waiver does not apply to any post-hearing documents, including final action summaries.

PROPERTY TAX HEARINGS¹⁴

A state assessee waives its right to confidentiality when it files a petition appealing the BOE's valuation of its state-assessed property or the Board's assessment allocation and submits a written request for an oral Board hearing. A taxpayer waives its right to confidentiality when it files a petition appealing a private railroad car tax assessment or claim for refund of private railroad car taxes and submits a written request for an oral Board hearing. An organization waives its right to confidentiality when it files a petition appealing the denial or revocation of an Organizational Clearance Certificate for the welfare exemption or veterans' organization exemption or a Supplemental Clearance Certificate for the welfare exemption. A county assessor waives the county assessor's right to confidentiality when the assessor files a petition appealing the findings of a survey of the assessor's assessment practices and submits a written request for an oral Board hearing. Also, a local government waives its right to confidentiality when it files an application for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of the California Constitution. However, the waivers are not effective at the time the petitions or applications are filed, or at the time the oral hearings are requested. Moreover, the waivers do not apply to certain information that can be used for identity theft, as explained below.

A petitioner's or applicant's waiver of confidentiality applies to:

- The petition or application, and any documents filed in support of the petition or application;
- Any briefs filed in response to or in support of the petition or application, and any documents filed or taken official notice of in support of such briefs;
- The Hearing Summary or Summary Decision prepared for the oral Board hearing; and,
- Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the oral Board hearing.

EFFECTIVE DATE OF WAIVER¹⁵

The waivers of confidentiality described above are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the requested oral Board hearing. However, waivers may be rescinded at any time before they become effective, and if the taxpayer agrees to waive its oral hearing before the Board.

EXCEPTIONS¹⁶

PROTECTION FROM IDENTITY THEFT

The waivers described above 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 PRA request.

INFORMATION ONLY DISCUSSED IN CLOSED SESSION

The waivers described above, except the waivers applicable to state assessees' requests for oral Board hearings do not apply to information that is only discussed during the portion of an oral Board hearing conducted during a closed session.

SETTLEMENTS

Under current law, settlements must be heard in closed session.¹⁷ See the *Administrative Settlement Program* section of this *Board Meeting Reference Manual* for more information regarding settlements and the Public Record Statements of settlements that the Board is required to retain.

OFFER IN COMPROMISE

Unlike settlements, the law does not state that offers in compromise must be heard in closed session. Consequently, it is Board practice to hear these matters in open session.

REFERENCE NOTES

- ¹ See, for example, Revenue and Taxation Code, sections 833 (confidentiality of information required from state assessees), 11655 (confidentiality of Private Railroad Car Tax information). See also Government Code, section 15619 prohibiting the disclosure of specified information concerning the business affairs of companies reporting to the Board.
- ² Government Code, section 6250 et seq.
- ³ Civil Code, section 1798 et seq.
- ⁴ It is Board policy to grant all taxpayers equal access to their own information under the IPA, including corporations.
- ⁵ Government Code, section 6253, subdivision (c).
- ⁶ Government Code, section 6252, subdivision (e).
- ⁷ See Government Code, section 6254.
- ⁸ Civil Code, section 1798.34, subdivision (a).
- ⁹ Civil Code, section 1798.42, 1798.43, and 1798.72.
- ¹⁰ Government Code, sections 11122, 11122.5, and 11123.
- ¹¹ California Code of Regulations, title 18, section 5573.
- ¹² Government Code, sections 11124.1 and 11125.1; and California Code of Regulations, title 18, section 5572.
- ¹³ California Code of Regulations, title 18, section 5573, subdivision (b).
- ¹⁴ California Code of Regulations, title 18, section 5573, subdivision (c).
- ¹⁵ California Code of Regulations, title 18, section 5573, subdivision (d).
- ¹⁶ California Code of Regulations, title 18, section 5573, subdivision (e).
- ¹⁷ Revenue and Taxation Code, section 32471.

CHAPTER 11

RULEMAKING

REGULATIONS

Regulations are rules of general application that implement, interpret, or make specific the laws enforced or administered by a state agency.¹ The Board has broad authority to adopt regulations for its own government and for the transaction of its business,² to govern local boards of equalization when equalizing and county assessors when assessing county property taxes,³ and to implement, interpret, and make specific provisions of the Board's various tax programs.⁴ The Board's regulations are codified in title 18, divisions 1 through 2.4 of the California Code of Regulations.

The California Administrative Procedure Act (APA) is codified in title 2, division 3, chapters 3.5, 4, 4.5, and 5 of the Government Code.⁵ Title 2, division 3, chapter 3.5 of the Government Code (commencing with Government Code section 11340) is applicable to the Board's adoption, amendment, and repeal of regulations, unless otherwise provided,⁶ and refers to all three types of regulatory actions as "rulemaking."

RULEMAKING DUTIES

Rulemaking authority is vested in the Board Members when acting as a Board and the Board Members vote on whether to adopt, amend, or repeal regulations as explained further below. The Board has delegated rulemaking authority to the Executive Director,⁷ who delegates that rulemaking authority to the Board's current Chief Counsel and Chief of Board Proceedings using the Delegation of Authority for the Adoption of Regulations form prescribed by the Office of Administrative Law (OAL). The Chief Counsel is delegated the authority to draft regulations⁸ and directs the Legal Department's drafting, editing, and review of regulations.⁹ The Chief of Board Proceedings is delegated the authority to review regulations, approve rulemaking calendars, and sign rulemaking documents and forms, including notices of public hearings and letters to interested parties.¹⁰ The Regulations Coordinator assists the Chief of Board Proceedings in performing the Board Proceedings Division's duty to manage and coordinate the Board's rulemaking activities,¹¹ including maintaining the Board's official rulemaking files during the rulemaking process.¹² The Executive Director's delegations of rulemaking authority are subject to the general direction of the Board and the Chief Counsel's and Chief of Board Proceedings' rulemaking activities are subject to the general direction of the Executive Director.¹³

THE BOARD'S RULEMAKING PROTOCOL

The Property Tax Department and the Legal Department (Departments) identify the need to adopt, amend, or repeal a regulation based on new legislation, a court decision, changes in the interpretation of existing law, the need to clarify the application of existing law to specific facts, and other reasons. The Property Tax Department or the Legal Department will initially present proposed regulatory actions to the Board. The Legal Department, with the administrative support of the Board Proceedings Division, engages in rulemaking activities and presents proposed changes to the Board as Chief Counsel Matters for discussion at public meetings, as needed.

CHIEF COUNSEL MATTERS

The Legal Department seeks authorization to begin rulemaking from the Board. The Legal Department may conduct interested parties meetings and seek comments and suggestions from interested parties to resolve as many issues as possible regarding the proposed regulatory changes before seeking authorization to begin rulemaking or it may be directed by the Board to conduct interested parties meetings when necessary.¹⁴ The Chief Counsel prepares and submits a Chief Counsel Memorandum to the Board in advance of each Chief Counsel Matter that identifies the Legal Department's regulatory proposal and the provisions of the regulatory proposal that can be regarded as consent items and those that remain unresolved. The Board accepts public comments and hears the Legal Department's recommendations regarding the regulatory proposal at a public Board meeting. The Board then decides whether to authorize the Legal Department to begin rulemaking or provides other direction.

PETITION REQUESTING ADOPTION, AMENDMENT, OR REPEAL OF A REGULATION

Except as otherwise provided by statute, any person may petition the Board to adopt, amend, or repeal a regulation. The petition may be in any written form (letter, email, etc.), but must clearly and concisely state: (1) the substance or nature of the regulation, amendment, or repeal requested; (2) the reason for the request; and, (3) the Board's authority to take the requested action.¹⁵

The Board must acknowledge the filing of a petition for the adoption, amendment, or repeal of a regulation in writing; and, within 30 days, the Board must either deny the petition or schedule the petition for a public hearing.¹⁶ The Board will normally request that petitioners waive the 30-day time limit in order to allow the Board to fully consider their petitions at a regularly scheduled public meeting.

Generally, the following procedure is followed in response to a submission requesting that the Board adopt, amend, or repeal a regulation:

- The Legal Department determines whether the submission meets the requirements listed above and notifies the petitioner of any defects.
- If the submission meets the requirements, the Board Proceedings Division notifies the petitioner in writing of the receipt of the petition and, when necessary, requests a waiver of the 30-day decision deadline.
- The appropriate program Department prepares the necessary Board materials and the Board Proceedings Division places the petition on the Chief Counsel Matters, Rulemaking portion of the Board's public meeting agenda for a regularly scheduled Board meeting for consideration.
- If the petition is granted in whole or in part, the Board Proceedings Division notifies the petitioner of the Board's decision and staff begins the rulemaking process.
- If the petition is denied, the Board Proceedings Division notifies the petitioner of the Board's decision.
- The Board's decision is also transmitted in writing to OAL for publication in the California Regulatory Notice Register.

In addition, any interested party may request reconsideration within 60-days after the Board's action on a petition to amend, adopt, or repeal a regulation.¹⁷

NOTICE OF PROPOSED REGULATORY ACTION

If the Board authorizes a Department to begin rulemaking under the general provisions of the APA during a Board meeting, the Legal Department prepares a Notice of Proposed Regulatory Action and the Regulations Coordinator submits the Notice of Proposed Regulatory Action to OAL for publication in the California Regulatory Notice Register, sends the notice to interested parties by U.S. mail and email, distributes the notice to BOE staff, and has the notice posted on the BOE's website. The Notice of Proposed Regulatory Action must be noticed in the California Regulatory Notice Register, mailed to interested parties, and posted on the BOE's website at least 45 days before the public hearing and close of the public comment period on the proposed regulatory action.¹⁸

A Notice of Proposed Regulatory Action must include all of the information specified in Government Code section 11346.5. For example, a Notice of Proposed Regulatory Action must include:

- A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;
- A reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific;
- An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills, which must include: (a) a concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action; (b) if the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes; and (c) a policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives;

- A statement that the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action;
- The name and telephone number of the Board representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed;
- The date by which written statements, arguments, or contentions must be received in order for them to be considered by the Board before it adopts, amends, or repeals the regulation;
- Reference to the fact that the Board has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action; and,
- A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to section 11346.9, subdivision (a).

PUBLIC HEARINGS

No sooner than 45 days after the publication of a Notice of Proposed Regulatory Action, the Board will hold a public hearing. At the hearing, a Board attorney will describe the proposed regulatory action, provide the staff's recommendation to the Board regarding the proposed regulatory action, and answer any substantive or procedural questions the Board may have. The Board will hear oral testimony from interested parties, consider written comments submitted by the interested parties, and may ask staff to respond to and answer any questions raised by the Board Members or interested parties. After considering all of the interested parties' comments and all relevant matter presented during the public hearing, the Board then votes on whether to adopt the proposed regulatory action.¹⁹

A Notice of Proposed Regulatory Action is effective for one year from the date of publication and the Board may postpone or continue a public hearing by announcing the postponement or continuance at the scheduled public hearing or by posting a notice at the entrance to the Boardroom on the originally scheduled date.²⁰ The Board Proceedings Division will also notify the OAL and interested parties of the new public hearing date.

ADOPTION OF REGULATIONS AND CHANGES TO PROPOSED LANGUAGE

The Board may choose to adopt the original proposed language of a new regulation or an amendment to an existing regulation, approve the original proposed language with nonsubstantial, solely grammatical, and/or closely related changes, or request staff restart the rulemaking process with new proposed language that is not closely related to the original proposed language.²¹

The Board may adopt a regulation with only nonsubstantial or solely grammatical changes to the original proposed text without publishing an additional notice, accepting additional public comments, or conducting an additional public hearing. BOE staff gives the Board Members at least ten days advance notice of nonsubstantial or solely grammatical changes to regulations, except changes made in response to comments made by OAL during its final review of a proposed regulatory action, before the changes are submitted to OAL and identifies the changes using a strikeout and underline format. The distribution of nonsubstantial or solely grammatical textual changes will be coordinated through the Board Proceedings Division at the request of the Regulations Coordinator, who will forward the changes to Board Members' offices via an email requesting that any comments be submitted within the following three days.

If the Board approves a regulation with changes that are sufficiently related to the original proposed language, the full text of the proposed regulation, with the changes clearly indicated, must be made available to the public for at least a 15-day comment period. The Regulations Coordinator will also send the revised text to the interested parties who commented on the original version. Then at the next Board meeting after the 15-day comment period the Chief Counsel (or designee) will report on any comments received and recommend whether the Board should adopt the revised regulation for filing with OAL.²²

If the Board makes changes to a proposed regulation that are not sufficiently related to the original version, the entire rulemaking process must begin again, and the new rulemaking process may include additional committee meetings and/or interested parties meetings.

FINAL STATEMENT OF REASONS

If the Board adopts a regulation as originally published or with permitted changes, the Legal Department will prepare a Final Statement of Reasons and an Updated Informative Digest.²³ The Final Statement of Reasons must respond to all of the relevant public comments that were timely submitted to the Board orally or in writing with regard to the proposed regulatory action.²⁴

The Regulations Coordinator will add the Final Statement of Reasons and Updated Informative Digest to the Board's rulemaking file and submit a complete copy of the Board's rulemaking file and the text of the adopted regulation to OAL.²⁵ The Final Statement of Reasons will also be posted on the BOE's website.

OAL REVIEW AND PUBLICATION WITH THE SECRETARY OF STATE

OAL reviews the Board's proposed adoption, amendment, or repeal of a regulation for necessity, authority, clarity, consistency, reference, and nonduplication to ensure the Board's compliance with certain procedural requirements of the APA²⁶ and OAL regulations.²⁷ OAL has 30 working days to review a proposed regulatory action.²⁸ If it approves the action, OAL sends the final text showing the adopted, amended, or repealed regulatory language to the Secretary of State for publication. If it does not approve a proposed regulatory action, OAL will return the rulemaking file to the Board along with a notice specifying the reasons for OAL's disapproval²⁹ and the Board will have 120 days to address OAL's concerns and resubmit the proposed regulatory action to OAL for further review.³⁰ If OAL fails to act within 30 working days, the Board's proposed regulatory action will be deemed approved and OAL will be required to forward it to the Secretary of State for publication.³¹

EFFECTIVE DATE OF REGULATORY ACTIONS

Regulations generally become effective on a quarterly basis as follows:

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

The effective dates above apply unless otherwise provided by the statutes authorizing the adoption or repeal of the regulations, the Board specifies a later effective date in writing, or OAL grants the Board's request for an earlier effective date for good cause.³²

RULE 100 CHANGES WITHOUT REGULATORY EFFECT

California Code of Regulations, title 1, section 100 (Rule 100), authorizes the Board to add to, revise, or delete the text of final Board regulations without complying with the rulemaking procedures specified above, but only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. Rule 100 changes include, but are not limited to, renumbering, reordering, or relocating regulatory provisions; deleting regulatory language for which the constitutional or statutory authority has been repealed; deleting regulatory provisions held invalid by a California or federal court of competent jurisdiction; revising the structure, syntax, cross-referencing, grammar, or punctuation in regulatory language; revising the authority or reference sections; and, making regulatory language consistent with changes in a California statute (under certain circumstances).

Procedurally, Rule 100 changes are made by:

- Submitting seven copies of the revised regulation to OAL showing the additions and deletions;

- Completing OAL-400, *Notice Publication/Regulations Submission*, (OAL-400) attaching the original OAL-400 to one copy of the revised regulation, and attaching copies of the OAL-400 to the other six copies of the revised regulation; and,
- Submitting a written statement explaining why the Rule 100 change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.³³

OAL has 30 working days to review proposed Rule 100 changes to determine whether they are changes without regulatory effect, although OAL normally completes its review sooner.³⁴ Approved Rule 100 changes are effective the day that OAL files them with the Secretary of State for publication.

EMERGENCY REGULATIONS

The emergency rulemaking process provided by Government Code section 11346.1 allows the Board to quickly adopt regulations in order to avoid serious harm to the public peace, health, safety, or general welfare. The emergency rulemaking process has different requirements and procedures than the regular rulemaking and Rule 100 change processes discussed above.

In order to use the emergency rulemaking process, the Board must:

- Find that “the adoption of a regulation or order of repeal is necessary to address an emergency”; and,
- Provide a written statement containing a “description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.”

Otherwise, the Legislature must enact legislation declaring the existence of such an emergency.³⁵ An emergency is “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”³⁶

The Board must send notice of a proposed emergency rulemaking action to every person who has requested such notice at least five days before the Board submits the emergency rulemaking action to OAL, unless “the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.”³⁷

After the 5-day notice period, the Board must also forward the following documents to OAL:

- The proposed regulatory language;
- The finding of emergency;
- The statement of facts demonstrating emergency;
- An informative digest explaining the proposed regulatory language;
- A determination as to whether the proposed regulatory language imposes a mandate on local agencies or school districts; and,
- A fiscal impact estimate.³⁸

OAL has ten calendar days after the submission of the emergency rulemaking documents to make a decision on the proposed emergency rulemaking action. OAL will post a notice on its website when the emergency rulemaking package is received and provide the public with a 5-day comment period in which to submit comments to OAL, unless the emergency situation clearly presents such an immediate serious harm that delaying action to allow public comment would be inconsistent with the public interest. Then, OAL either will approve or reject the regulation. Rejections may be based upon any one of the following circumstances: (A) the situation being addressed is not an emergency; (B) the regulation does not satisfy the necessity, authority, clarity, consistency, reference, and nonduplication standards set forth in Government Code section 11349.1; or, (C) the Board did not comply with the requirements of Government Code section 11346.1.³⁹

If OAL approves an emergency regulation, it will file the approved regulation with the Secretary of State for publication. Approved emergency regulations are effective on the date they are initially filed with OAL (or a later date if specified in the regulation). Approved emergency regulations remain effective for 180 days, unless OAL approves a re-adoption of the emergency regulation during that time period. If the Board requests a re-adoption of an emergency regulation, it must be submitted to OAL at least 10 calendar days prior to the expiration of the emergency regulation's effective period. OAL may approve two re-adoptions of the same emergency regulation and each re-adoption may extend the emergency regulation's effective period for up to 90 days. Finally, emergency regulations are automatically deemed to be repealed when their effective periods expire.⁴⁰ However, emergency regulations can become permanent if the Board re-adopts the regulations through the regular rulemaking process discussed above during their effective periods as emergency regulations.

ANNUAL RULEMAKING CALENDAR AND ACTION SUMMARIES

Government Code section 11017.6 requires every state agency responsible for implementing a statute that requires interpretation pursuant to the Administrative Procedure Act to prepare and approve an annual rulemaking calendar. Each rulemaking calendar must include a schedule which describes the rulemaking necessary to implement statutes enacted during the previous year and a schedule which describes all other rulemaking the agency plans to propose that implement or interpret other statutes enacted during years prior to the previous year.

Government Code section 11017.6 requires every state agency to file its adopted rulemaking calendar with OAL for publication in the California Notice Register and to send copies to the authors of each statute enacted during the previous year for which the agency has responsibility, together with an explanation of the priority the agency has given the statute in the rulemaking calendar. The Board Proceedings Division is responsible for coordinating the preparation and approval of the Board's rulemaking calendar, for filing the calendar with OAL, and for sending copies to the necessary authors. Each division planning regulatory action must complete and return their proposed calendar to the Regulations Coordinator by the first week in January. The deadline to file the annual rulemaking calendar with OAL is January 31.

Additionally, Government Code section 11017.5 requires state agencies to prepare summaries for the Legislature of the actions they are taking to implement or interpret newly enacted statutes. Specifically, this law requires the following:

When a statute is enacted establishing a new program or requiring interpretation pursuant to the Administrative Procedure Act, the state agency responsible for the program or regulatory action shall, six months after the operative date or the effective date of the statute, whichever is later, issue a clear and concise summary of actions taken to implement the statute to the author of the statute, the policy committees in each house of the Legislature that considered the statute and, if the statute has been considered by the fiscal committee of either house of the Legislature, to the Joint Legislative Budget Committee and to the fiscal committee of each house of the Legislature that considered the statute.⁴¹

Furthermore, Government Code section 11017.5 requires a state agency responsible for implementing or interpreting a statute to send to the author of the statute copies of all regulations proposed to implement the statute and notice of any hearings held on those regulations before those hearings are held, so long as the author is a Member of the Legislature.⁴²

When a notice is sent to the Legislature and/or legislators pursuant to Government Code sections 11017.5 or 11017.6, the notice will be accompanied by a cover letter from the Executive Director.

REFERENCE NOTES

- 1 Government Code, section 11342.600.
- 2 Government Code, section 15606, subdivision (a).
- 3 Government Code, section 15606, subdivision (c).
- 4 See, for example, Revenue and Taxation Code, sections 251 (property tax exemptions) and 32451 (Alcoholic Beverage Tax).
- 5 Government Code, section 11370.
- 6 See, for example, Revenue and Taxation Code, section 32471, subdivision (i).
- 7 See the “Board Organization” section of this manual for more information on the Board’s delegations of authority to the Executive Director.
- 8 State Board of Equalization Administrative Manual (BEAM) section 0301.
- 9 BEAM section 0330.
- 10 See the “Board Organization” section of this manual for more information on the Executive Director’s delegations of authority to the Chief of Board Proceedings.
- 11 BEAM section 0351.
- 12 Government Code, section 11347.3.
- 13 BEAM sections 0301 and 0351. See also the “Board Organization” section of this manual for more information on the delegations to the Executive Director.
- 14 Government Code, section 11346.45.
- 15 Government Code, section 11340.6.
- 16 Government Code, section 11340.7, subdivision (a).
- 17 Government Code, section 11340.7, subdivision (c).
- 18 Government Code, section 11346.4.
- 19 Government Code, section 11346.8.
- 20 Government Code, sections 11346.4, subdivision (b), and 11346.8, subdivision (b).
- 21 Government Code, section 11346.8, subdivision (c).
- 22 Government Code, section 11346.8.
- 23 Government Code, section 11346.9.
- 24 Government Code, section 11346.9, subdivision (a)(3).
- 25 Government Code, section 11347.3, subdivision (c).
- 26 Government Code, section 11349.1.
- 27 See California Code of Regulations, title 1, sections 1-100.
- 28 Government Code, section 11349.3, subdivision (a).
- 29 Government Code, section 11349.3, subdivision (b).
- 30 Government Code, section 11349.4, subdivision (a).
- 31 Government Code, section 11349.3, subdivision (a).
- 32 Government Code, section 11343.4.
- 33 California Code of Regulations, title 1, section 100, subdivision (b).
- 34 California Code of Regulations, title 1, section 100, subdivision (c).
- 35 Government Code, section 11346.1, subdivision (b).
- 36 Government Code, section 11342.545.
- 37 Government Code, section 11346.1, subdivision (a).
- 38 Government Code, section 11346.1, subdivision (b).
- 39 Government Code, section 11349.6, subdivision (b).
- 40 Government Code, section 11346.1, subdivisions (d) through (h).
- 41 Government Code, section 11017.5, subdivision (a).
- 42 Government Code, section 11017.5, subdivision (b).