



STATE BOARD OF EQUALIZATION

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Interim Executive Director

No. 2003/055

August 13, 2003

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

CALIFORNIA CODE OF REGULATIONS
TITLE 18. PUBLIC REVENUES

RULES OF PRACTICE

Enclosed are proposed amendments to the Rules of Practice of the State Board of Equalization (Title 18 California Code of Regulation 5010 et seq.) that would make substantive revisions to Article 4 - State Assesseees and Private Railroad Car Companies, Article 7 - General Board Hearing Procedures, and Article 9 – Taxpayer Bill of Rights Reimbursement Claims, as well as minor revisions or corrections throughout the Rules of Practice.

We invite you to participate in the continuing process of updating the Rules of Practice. If you have comments about the proposed amendments, or would like to propose additional amendments, you are invited to attend the interested parties meeting and/or submit your comments or draft amendments in writing.

The interested parties meeting to discuss amendment of the Rules of Practice is scheduled for Tuesday, September 2, 2003, at 1:00 p.m. in Conference Room 122, 450 N Street, Sacramento. Please submit your written comments no later than September 2, 2003, to Deborah Pellegrini, Chief, Board Proceedings Division, Board of Equalization, MIC: 81, P.O. Box 942879, Sacramento, CA 94279-0081.

Sincerely,

/s/ Jean Ogrod

Jean Ogrod
Interim Chief Counsel

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Enclosure

**RULES OF PRACTICE
of the
STATE BOARD OF EQUALIZATION**

California Code of Regulations
Title 18. Public Revenues
Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

ARTICLE 2. BUSINESS TAXES AND TIMBER YIELD TAX

5021. CONTENTS OF PETITION FOR REDETERMINATION; AMENDMENTS.

(a) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The taxpayer or the taxpayer's representative shall sign the petition for redetermination. ~~It shall be signed by the taxpayer, the taxpayer's authorized representative or any person directly interested. Any portion of the tax which the taxpayer concedes is owing by the taxpayer shall be indicated in the petition.~~

(b) The petition may be amended to state additional grounds at any time prior to the date the Board issues its order or decision on the petition.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6561.5, 6814, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

5023. APPEALS CONFERENCE.

(a) The Board Proceedings Division shall schedule an appeals conference with the parties and a conference holder who is an Appeals Attorney or Appeals Auditor independent of the assessing Department. As requested by the taxpayer, an appeals conference may be held at the Sacramento headquarters of the Board, a district office, by videoconference or by telephone. The appeals conference is an informal discussion of the relevant facts and applicable laws and regulations. The appeals conference is not an adversarial proceeding. Subpoenas are not issued for appeals conferences and testimony is not taken under oath; ~~;~~ however, the conference holder will accept written statements made under penalty of perjury. The appeals conference is not recorded, videotaped or reported by the conference holder. Taxpayers may arrange for the appeals conference to be recorded or reported. If the appeals conference is recorded or reported, the taxpayer shall make a copy of the tape or transcript available to the conference holder upon request.

(b) Rescheduling and Postponements. Requests to reschedule or postpone appeals conferences shall be directed to the Board Proceedings Division.

(1) Rescheduling. If there is a scheduling conflict for an appeals conference scheduled to be held in-person at headquarters, by videoconference or by telephone, the appeals conference may be rescheduled to accommodate the parties. If a party ~~has sufficient justification~~ can demonstrate extreme hardship, a second rescheduling may be allowed. ~~An appeals conference scheduled to be heard at a district office may be postponed as discussed in subdivision (b) (2), unless the party requests that the appeals conference be rescheduled to a different district office, to headquarters, or to a telephone appeals conference.~~ The Board Proceedings Division may reschedule an appeals conference scheduled to be heard at a district office to a

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different district office, to headquarters, to a videoconference, or a telephone conference, or may postpone the appeals conference to the same district office as provided in subdivision (b)(2).

(2) Postponement. Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being placed back into the inventory of unassigned cases. If a party requests a postponement of an appeals conference to be held at the district office within 15 days after the date of the notice of the appeals conference sent by the Board Proceedings Division and has sufficient justification for requesting the postponement, the Board Proceedings Division may allow the postponement. If a party requests a postponement of the appeals conference later than 15 days after the date of the notice of the appeals conference, and can demonstrate extreme hardship for requesting the postponement, the Board Proceedings Division may allow the postponement. While only one postponement may be granted, an appeals conference may be rescheduled as provided in subdivision (b)(1).

(c) Failure to Respond or Appear; Waiver.

(1) If the taxpayer fails to respond to the notice of the appeals conference sent by the Board Proceedings Division by the deadline stated in the notice, or responds to the notice but fails to appear for the appeals conference, the conference holder shall conduct the appeals conference as scheduled with the Department.

(2) A party may waive appearance at the appeals conference.

(d) Submission of Additional Documents.

(1) A party may submit additional documents to the Appeals ~~Section~~ Division at any time before or during the appeals conference. If a party submits additional documents, the other party shall have the opportunity to respond to the documents either at the appeals conference or within 15 days after the appeals conference.

(2) If at an appeals conference a party requests time to submit additional documents, the party shall have 15 days after the appeals conference to submit the documents. The other party shall have an additional 15 days to respond to the documents submitted. If there is sufficient justification, the conference holder may extend the time period for either party by an additional 15 days. Neither party shall be allowed any further additional time to submit or respond to documents unless approved by either the Assistant Chief Counsel of the Appeals ~~Section~~ Division or his or her designees.

(3) A conference holder may contact either or both of the parties after the appeals conference in order to obtain clarification of the issues, or additional information on the issues. However, the conference holder shall not rely on any information obtained after the appeals conference in deciding an issue against a party, without giving that party an opportunity to respond to the information.

(e) Within 90 days after the submission of any additional documents as authorized in subdivision (d) above, the conference holder shall issue a written report of his or her findings, called a Decision and Recommendation, copies of which shall be sent to all parties. If a party did not appear at the appeals conference, the Decision and Recommendation will be based on the information in the file and the information obtained from the other party. The Chief Counsel or his or her designee may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time shall be in writing and copies provided to all parties to the conference.

(f) If the taxpayer or the Department has requested ~~an~~ an oral hearing prior to, or within 30 days of, the date that the Decision and Recommendation was mailed to the taxpayer, an oral hearing before the Board will be scheduled. If ~~a~~ an oral hearing before the Board is not requested, official notice of the Board's action on the Decision and Recommendation will be mailed to the taxpayer.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522, Revenue and Taxation Code.

ARTICLE 4. STATE ASSESSEES AND PRIVATE RAILROAD CAR COMPANIES

5041. FILING AND CONTENTS OF PETITION; REQUEST FOR ORAL HEARING; STAFF RESPONSE; EXTENSION OF TIME.

(a) Board Staff shall send a notice to each assessee setting forth the amount of assessed value and the ~~dates~~ date by which a petition for reassessment may be filed.

(b) The appropriate Board Staff capitalization rate study and final calculations of the value indicators shall be made available, between the time that the Board values the subject property and the deadline for filing a petition, to any petitioner submitting a written request therefor to the Chief, Valuation Division, State Board of Equalization.

(c) Petition; Oral Hearing.

(1) The petition shall be in writing and shall state the name of the petitioner, the petitioner's opinion of value, and the precise elements of the Board's valuation to be contested, and shall include petitioner's appraisal reports, financial studies and other materials relevant to value. Petitioner's appraisal reports, financial studies and other materials relevant to value shall not be presented as evidence at the hearing unless provided to the ~~Chief, Board Proceedings Division~~ at the time of filing of the petition.

(2) The petition shall be accompanied by a Board form that indicates the petitioner's opinion of value, whether an oral hearing is desired and whether written findings and decision are requested. The Board form and the petition shall be signed by the petitioner or petitioner's authorized representative and shall be addressed and mailed to the Chief of Board Proceedings, State Board of Equalization at Sacramento, or shall be deposited personally at the headquarters office of the Board in Sacramento. A statement of authorization, as described in Article 7, Regulation 5073.1, shall also be filed along with the Board form and petition, if the petition is filed by a tax representative. The original petition and related supporting documents, as described in subdivision (c), and 10 copies of the original petition and related supporting documents shall be filed with the Board Proceedings Division.

(3) If the petitioner requests an oral hearing, subdivisions (d) through (g) below shall apply.

~~(d) The petition shall also indicate whether an oral hearing is desired and whether written findings and decision are requested. If requested in the petition, the Board shall issue written findings and decision. The petition shall be signed by the petitioner or petitioner's authorized representative and shall be addressed and mailed to the Chief, Board Proceedings Division, State Board of Equalization at Sacramento, or shall be deposited personally at the headquarters office of the Board in Sacramento.~~

~~(e)~~ The Board staff shall submit an analysis of the petition, the related supporting documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief, of Board Proceedings Division and a copy shall be sent to the petitioner.

~~(f)~~ The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief, of Board Proceedings Division.

~~(g)~~ The Chief, Board Proceedings Division shall distribute the petition and related supporting documents, the staff analysis and recommendation, and the petitioner's response, if any, to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

~~(h) A reasonable extension of time for filing materials under (c), (e) or (f) above may be granted by the Chief, Board Proceedings Division for reasonable cause. The request for an extension of time shall be submitted in writing no later than 5 o'clock p.m. of the last business day before the date set for filing the materials.~~

~~(i)(g) The petition and related supporting documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. Any other documents received shall be returned by the Chief, Board Proceedings Division to the person submitting the documents.~~

(h) The Chief of Board Proceedings, upon a showing of reasonable cause, may grant an extension of time for filing materials of up to 15 days under (c), (d) or (e) above. The request for an extension of time shall be submitted in writing no later than 5 o'clock p.m. on the last business day set for filing the materials.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Sections 731, 732, 733, 741, 742, 743, 746, 747, 748, 11338, 11339, 11340 and 11353, Revenue and Taxation Code.

ARTICLE 6. PROPERTY TAX WELFARE EXEMPTION CLAIM REVIEW PROCEDURE.

5063. HEARING PETITION: CONTENTS.

(a) The petition for hearing shall be in writing and addressed to the Chief, of Board Proceedings ~~Division~~. It shall state all of the grounds upon which qualification is claimed, and shall include all documents the petitioner wishes the Board to consider in deciding the petition. The petition shall indicate whether an oral hearing is desired, and if so, ~~claimant's~~ petitioner's estimate of the time necessary therefor. If requested in the petition, and in the event that the Board grants a hearing and hears the matter, the Board shall issue written findings and decision. The petition shall be signed by an authorized representative of the ~~claimant~~ petitioner and shall be mailed to the Chief, of Board Proceedings ~~Division~~ of the State Board of Equalization at Sacramento, California, or shall be deposited personally at the headquarters office of the Board's office at Sacramento. The Chief, of Board Proceedings ~~Division~~ may require the representative to demonstrate the representative's authority to represent the ~~claimant~~ petitioner.

(b) No later than 30 days after the date that the petition for hearing is received pursuant to subdivision (a), the Board Attorney assigned to the case shall schedule a meeting or telephone conference, at a time suitable for the petitioner and the assessor, for the purpose of establishing the agreed upon and contested facts and the legal issues under consideration.

(c) The Board Staff shall submit an analysis of the petition, related documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief, of Board Proceedings ~~Division~~ and a copy shall be sent to the petitioner.

(d) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief, of Board Proceedings ~~Division~~.

(e) The provisions of subdivisions (b) of Regulation 5075 shall apply to materials submitted pursuant to (a), (c) or (d) of this regulation.

(f) The Board Staff shall also prepare a summary for Board hearing, which shall be a neutral statement of the relevant facts, the issues, and the positions of the department and the ~~claimant-petitioner~~. The summary for Board hearing shall not be written by any staff person or persons who reviewed the claim and determined it should be denied, or who participated in the preparation of the staff analysis and recommendation.

(g) The ~~Chief~~, Board Proceedings Division shall distribute the petition and related documents, the staff analysis and recommendation, the petitioner's response, if any, and the summary for Board hearing to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

~~(h) A reasonable extension of time for filing materials under (c) or (d) above may be granted by the Chief, Board Proceedings Division, upon a showing of reasonable cause. The Chief of Board Proceedings, upon a showing of reasonable cause, may grant a reasonable extension of time for filing materials under (c) or (d) above.~~ The request for an extension of time shall be submitted in writing before the scheduled due date of any materials.

(i) The petition and related documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. ~~Any other documents received shall be returned by the Chief, Board Proceedings Division. The Board Proceedings Division shall return any other documents received to the person submitting the documents.~~

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 254.5 and 270, Revenue and Taxation Code.

ARTICLE 7. GENERAL BOARD HEARING PROCEDURES

5070. DEFINITIONS.

The following definitions apply to this chapter:

(a) "Appeals Staff," "Appeals Attorney" or "Appeals Auditor" means ~~and includes~~ an employee of the Board of Equalization assigned to the Appeals ~~Section~~ Division of the Legal ~~Division~~ Department.

(b) "Board" means the members of the State Board of Equalization meeting as a body.

(c) "Board Staff" or "Board Attorney" means ~~and includes~~ an employee of the Board of Equalization charged with a responsibility under this Chapter or appearing before the Board in any proceeding.

(d) "Brief" means a written document that includes discussion of, or citations to, laws or regulations or an argument of how the laws or regulations apply to the facts supporting the party's position. Notwithstanding this definition, affidavits or declarations submitted by the parties and documents produced by the Appeals ~~Section~~ Division, including, but not limited to, a Hearing Summary or Final Action Recommendation, are not briefs.

(e) "Delivery Service" means any delivery service provided by a trade or business if such service is available to the general public and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was given to the trade or business for delivery.

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

(g) "Party" means ~~and includes~~ the taxpayer and the taxpayer's representative; and the Department as defined in this section. In local tax reallocation appeals, the term party means those persons defined as parties in Regulation 1807."

(h) "Petition" means ~~and includes~~ any petition, including a petition for redetermination; claim, including a claim for refund; appeal from an action of the Franchise Tax Board on a claim for refund, deficiency assessment, or jeopardy assessment; request for administrative hearing; petition for ~~reconsideration-rehearing~~; petition for ~~reconsideration-rehearing~~ of successor liability; petition for review of local tax reallocation inquires; and any other matter for administrative decision or adjudication by the Board in any program listed in Regulation 5071. Any correspondence from a taxpayer directed to Board Staff, mailed within 30 days after the notice of determination has been issued, that includes a statement that the taxpayer (1) disagrees with an assessment and/or determination or (2) requests a hearing, shall be accepted as a petition for redetermination. Staff shall indicate to the taxpayer any specific deficiencies in the petition and offer the taxpayer a reasonable period of time to perfect the petition.

(i) "Tax" means ~~and includes~~ any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board.

(j) "Taxpayer" ~~includes~~ means a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing or who is a person directly interested in any matter before the Board under any of the programs listed in Regulation 5071. A taxpayer is not a party to a local tax reallocation appeal except as provided in, Regulation 1807.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19335, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5073. REPRESENTATION AT HEARINGS AND POWERS OF ATTORNEY.

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

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

(c) The Board, or Board Staff, may require a party to complete a Power of Attorney on a form provided by the Board. Such Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either Board of Equalization or Franchise Tax Board matters. This regulation applies to all forms of authorization filed with the Board, except that the more specific requirements of Regulation 5073.1 apply to petitions filed in a state assessee or private railroad car company matter under Article 4, Regulation 5041.

(d) The Power of Attorney form shall include the following information: taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address; the name, address, and telephone and FAX number of the appointed representative(s); the tax matters in which the representative is authorized to represent the taxpayer; the extent of the representative's authority; the tax period(s) for which the authorization is granted; a statement that the Power of Attorney revokes all prior Powers of Attorney with any exceptions to the revocation; the time period during which the Power of Attorney shall be in effect; the signature(s) and title of all affected taxpayers and the date of signature.

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Note: Authority: Section 15606(a), Government Code; Section 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5073.1. REPRESENTATION IN FILING PETITION FOR STATE ASSESSEE AND PRIVATE RAILROAD CAR MATTERS.

(a) This regulation applies to petitions filed in a state assessee or private railroad car company matter under Article 4, Regulation 5041.

(b) A statement of authorization shall accompany a petition filed by a tax representative on a form prescribed by the Board. The statement of authorization shall be attached to the petition filed with the Chief of Board Proceedings. A copy of the statement of authorization shall be mailed to the Chief of the Valuation Division at the time the petition is filed.

(c) A statement of authorization shall be executed for each annual filing period in which a petition is filed.

(d) A petition filed by a tax representative without the accompanying statement of authorization, as required by subdivision (b), shall be rejected by the Board Proceedings Division as an incomplete filing.

(e) For purposes of this section, tax representatives include attorneys, accountants, and other representatives other than personnel employed by the petitioner.

(f) The statement of authorization shall be signed by either an officer of the corporation or an authorized owner of any other legal entity or by an employee who has been designated in writing to sign such a statement on behalf of the legal entity.

Note: Authority: Section 15606(a), Government Code and 11651, Revenue and Taxation Code.

Reference: Sections 741, 747 and 11340 Revenue and Taxation Code.

5075. BRIEFS.

(a) Briefs are required in appeals of decisions of the Franchise Tax Board and are optional in all business taxes matters before the Board. This regulation applies to all briefs filed with the Board, except that the ~~more specific requirements-briefing schedule~~ of Regulation 5075.1 shall apply to appeals from actions of the Franchise Tax Board, the briefing schedule of Regulation 5075.3 shall apply to local tax reallocation appeals, and the schedule in subdivisions (e) through (h) of Regulation 5041 shall apply to the filings required by Regulation 5041. In property tax matters, the petition, the staff analysis, the petitioner's response to the staff analysis, and, where appropriate, a non-party brief submitted pursuant to subdivision (h), are briefs within the meaning of this regulation, and only these documents will be accepted for filing and distribution; however, where circumstances warrant, the Board may request that additional briefs be filed, and will set the briefing schedule. Except in those circumstances, additional briefs are not accepted in property tax matters.

(b) General. Any brief filed with the Board shall be filed within the time required by these regulations or, if no time is so specified, as directed by the Board or the Chief, ~~of Board Proceedings-Division~~. All briefs shall be addressed and mailed to the Chief, ~~of Board Proceedings-Division~~, at the headquarters office of the State Board of Equalization at Sacramento or deposited personally at the headquarters office of the Board in Sacramento. In addition, except as otherwise provided in the Rules of Practice, all briefs shall be mailed or personally delivered to the other parties. Excluding the Table of Contents and exhibits, no ~~No~~ brief shall exceed

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30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch (CPI), or the equivalent, excluding exhibits. Exceptions to the ~~30-page~~ 30-page limit may be granted prior to the deadline for filing the brief by the ~~Chief, of Board Proceedings Division~~, upon written application that establishes reasonable circumstances that justify the necessity for additional pages. In the event the brief does not conform to the form and page limit specified above, the Board Proceedings Division may return the submitted brief ~~may be returned by the Chief, Board Proceedings Division~~. The party shall be given 10 days to comply with the form and page limit. Failure to comply within 10 days shall constitute a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party may file an opening brief. An opening brief shall contain, along with any other information required by these regulations, a statement of the issue(s), a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief, of Board Proceedings Division ~~Division~~ no later than 45 days before the Board hearing.

(d) Reply Briefs. A reply brief is a brief that is filed by any party in response to any opening brief and shall contain a statement of the issue(s), including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and presentation of any affirmative defenses. ~~Reply briefs shall be filed with the Chief, Board Proceedings Division no later than 30 days before the Board hearing.~~ Reply briefs shall be filed with the Chief of Board Proceedings no later than 12 business days after the Board Proceedings Division sends the opening brief to the other party. If Board Staff submits the opening brief, the 12-day period shall begin on the day the opening brief is sent by overnight mail, fax, or electronic mail to the taxpayer.

(e) Briefs Filed by Unrepresented Taxpayer. A taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.

(f) Post-Hearing Briefs. The Board may permit the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a hearing. However, any post-hearing ~~submissions~~ brief shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.

(g) Extensions Of Time. A reasonable extension of time for the filing of briefs may be granted by the Chief, of Board Proceedings Division ~~Division~~, upon a showing of extreme hardship. The request for an extension of time shall be submitted in writing before the scheduled due date of any brief.

(h) Non-Party (Amicus) Briefs. A pre-hearing brief or letter from a non-party shall be filed with the Chief, of Board Proceedings Division ~~Division~~ no later than 30 days before the Board hearing, and the parties may file responses with the Chief, of Board Proceedings Division ~~Division~~ no later than 15 days before the hearing. The response by the party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in (b) above. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

(i) Additional ~~h~~ Briefing. In extraordinary situations, the Board or the Board Staff may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested brief shall be filed within the time specified by the Board or Board Staff.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270,

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Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5075.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: BRIEFING SCHEDULE.

(a) Appeals From Actions Of The Franchise Tax Board: General; Non-party (Amicus) Briefs. In all appeals from actions of the Franchise Tax Board, other than appeals contesting a finding of jeopardy status, the parties shall adhere to the following schedules and procedures for filing briefs. In jeopardy status appeals, Board Staff the Board Proceedings Division shall notify the parties of the schedule and procedure for filing briefs. Non-party (Amicus) briefs or letters may be filed up to and until the time that the briefing period, established pursuant to this Rule, for both the taxpayer and the Franchise Tax Board has ended. Either party may file a response to the non-party brief or letter no later than 30 days prior to the hearing. The response by the party shall address only the points of disagreement the party has with the non-party brief or letter. The response shall not extend the briefing period.

(b) Appeals From Actions Of The Franchise Tax Board: Opening And Reply Briefs.

(1) If the appeal is filed within the statutory period but is incomplete, the taxpayer shall be granted 90 days from the date of the acknowledgment letter from the Board Proceedings Division within which to perfect the appeal by submitting information requested in the letter from the Board Proceedings Division. Two copies of all submissions shall be mailed to the Board Proceedings Division, who will forward one copy to the Franchise Tax Board. The Chief of Board Proceedings may dismiss the appeal opening brief as required by these regulations. A copy of all such materials shall also be mailed by the taxpayer to the Franchise Tax Board. The appeal is subject to dismissal if it is not perfected within the 90-day period.

(2) ~~After filing of an appeal is perfected, the Board Proceedings Division will mail notification to all parties of the taxpayer's completed appeal. Except as provided in subdivision (b)(3), the Franchise Tax Board shall be allowed 90 days from the date of the notification letter Chief, Board Proceeding Division's letter acknowledging receipt of the taxpayer's complete appeal in which to file a reply brief in support of its position. The Franchise Tax Board shall mail a copy of the reply brief to the taxpayer.~~

(3) For Senior Citizens and Homeowners and Renters Property Tax Assistance appeals, after an appeal is perfected, the Franchise Tax Board shall be allowed 60 days from the date of the notification letter in which to file the reply brief. The Franchise Tax Board shall mail a copy of the reply brief to the taxpayer.

(c) Appeals From Actions Of The Franchise Tax Board: Supplemental Briefs.

(1) The taxpayer may file a supplemental brief, addressing only the points of disagreement the taxpayer has with the Franchise Tax Board's reply brief, within 30 days from the date of the Board's letter acknowledging receipt of the Franchise Tax Board's reply brief. The taxpayer shall mail ~~a copy~~ two copies of the supplemental brief to the Board Proceedings Division, which will forward one copy to the Franchise Tax Board. This brief shall ordinarily complete the briefing.

(2) In extraordinary circumstances, the Franchise Tax Board may be permitted to file a supplemental brief, addressing only the points of disagreement the Franchise Tax Board has with the taxpayer's supplemental brief, but only pursuant to previous written permission from Board Staff. Any such permissive supplemental briefs shall be filed within 30 days after receipt of permission to file. If the Franchise Tax Board is allowed to file a supplemental brief, the taxpayer shall have 30 days after receipt of the brief is acknowledged by the Board to file a response. This response shall then complete the briefing.

(d) Appeals From Actions Of The Franchise Tax Board: Extensions Of Time.

(1) At the discretion of the Chief, ~~of Board Proceedings Division~~, extensions of time for the filing of briefs may be granted upon a showing of extreme hardship or when the parties agree in writing to an extension of time and the request or agreement is filed with the Board Proceedings Division before the scheduled due date of any brief.

(2) Where ~~either a party fails to meet a briefing due date~~ a party fails to meet a briefing due date, with the exception of failure to perfect as described above in ~~Subsection subdivision (b)(1)~~, the briefing of the appeal shall end for that party and the other party shall have the option to have either an oral hearing or to have the Board ~~shall~~ take the matter under submission for decision on the existing written record.

(e) Additional Briefing or Evidence. If the Board or Board Staff, in either's discretion, determines that insufficient briefing or evidence has been provided, the Board or Board Staff may request additional briefing or evidence from either party. A request for additional briefing or evidence may be made during the briefing period or after the briefing period is ordinarily complete. Any such requested briefs or evidence shall be submitted within the time specified by the Board or Board Staff. If ~~additional briefing from the Franchise Tax Board is requested by Board staff~~ Board Staff requests additional briefing from the Franchise Tax Board, the taxpayer shall have 30 days after receipt of the brief is acknowledged by Board ~~s~~Staff to file a final response.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19405, 19406, 19047, 19048, 19072, 19084, 19085, 19087, 19331, 19332, 19333, 19334, 19345, 19346 and 20645, Revenue and Taxation Code.

5075.3. LOCAL TAX REALLOCATION APPEALS: BRIEFING SCHEDULE.

(a) Appeals of Local Tax Reallocation: General.

(1) Purpose and Definitions: The purpose of this regulation is to provide procedures for filing briefs prior to the hearing before the Board regarding local tax reallocation appeals as provided in Regulation 1807. The general requirements of Regulation 5075 are incorporated by reference as they now read or are hereinafter amended. The specific requirements of this regulation control over conflicting provisions of Regulation 5075.

(2) Filing Briefs: The parties shall adhere to the following schedule and procedures for filing briefs.

(b) Opening and Reply Briefs.

(1) Opening Briefs. The Inquiring Jurisdictions and their Consultants (IJC) shall file the opening brief with the Chief of Board Proceedings within 45 days of the date of mailing of notice that the appeal has been accepted for Board hearing. The opening brief shall contain a statement of the issue(s), a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief.

(2) Reply Briefs. A reply brief is a brief that is filed by any party, except for Board Staff, in response to the Opening Brief. Each party to the hearing shall be allowed 30 days from the date of the mailing of the letter from Board Proceedings Division acknowledging receipt of the IJC's appeal in which to file a reply brief in support of its position. The reply brief shall contain a statement of the issue(s), including relevant issues not raised by the opening brief, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the reply brief.

(3) Board Staff Reply Brief. The Board Staff shall be allowed 30 days from the date of mailing of the letter from the Board Proceedings Division acknowledging receipt of the last reply brief to file its own reply brief. The Board Staff reply brief shall conform to the requirements set forth above regarding reply briefs generally.

(4) IJC Response Brief. The IJC may file a response brief with the Chief of Board Proceedings no later than 15 days after the date of mailing of the letter from the Board Proceedings Division acknowledging receipt of the Board Staff reply brief. The IJC's response brief shall address only the points of disagreement that the IJC has with the reply brief(s) or Board Staff reply brief and shall present only arguments and authorities not previously presented in its opening brief.

(c) Failure to File Briefs. Where a party fails to meet a briefing due date, the briefing of the appeal shall end as to that party and the other parties shall have the option to have either an oral hearing or to have the Board take the matter under submission for decision on the existing written record.

(d) Extensions of Time. At the discretion of the Chief of Board Proceedings, extensions of time for the filing of briefs may be granted upon a showing of extreme hardship or when the parties agree in writing to an extension of time and the request or agreement is filed with the Board Proceedings Division before the scheduled due date of any brief.

(e) Scheduling for Board Hearing. The appeal shall be scheduled for the first Sacramento Board hearing that occurs more than 30 days after the Chief of Board Proceedings receives the IJC response brief or the last additional brief as provided in subdivision (i) of Regulation 5075. The hearing shall not be scheduled until briefing is complete.

Note: Authority: Section 15606(a), Government Code and Sections 7051, 7202 and 7203, Revenue and Taxation Code.

Reference: Sections 7209, Revenue and Taxation Code.

5076. NOTICE OF BOARD HEARING; WAIVER OR POSTPONEMENT OF HEARING; FAILURE TO RESPOND TO HEARING NOTICE OR TO APPEAR FOR HEARING; PLACE OF HEARING.

(a) This regulation applies to all Board hearings, except that the more specific provisions of Regulation 5076.1 apply to appeals from actions of the Franchise Tax Board.

(b) Notice of Board Hearing; and Waiver - General Requirements. Except as provided in subdivision (c), Board Staff shall send notice of the Board hearing to the taxpayer and the Department at least 60 days in advance of the hearing date, giving the parties 15 days to respond to the hearing notice. The 60-day notice period may be waived upon agreement among the parties and the Chief, of Board Proceedings Division. If the 60-day notice period is waived, the Chief, of Board Proceedings Division shall modify the briefing schedule set forth in Regulation 5075. The taxpayer shall respond to the hearing notice by indicating: that the taxpayer will appear at the time and place noted; or, that the taxpayer waives oral hearing and requests that the case be submitted to the Board for decision without oral hearing and based upon the written record; or, that the taxpayer requests that the hearing be postponed, stating the reason the postponement is requested.

(c) Notice of Board Hearing and Waiver - State Assessee and Private Railroad Car Matters. Board Staff shall send notice of the Board hearing to the taxpayer and the Department at least 45 days in advance of the hearing date, giving the parties 15 days to respond to the hearing notice. The 45-day notice period may be waived upon agreement among the parties and the Chief of Board Proceedings. If the 45-day notice period is waived, the Chief of Board Proceedings shall modify the briefing schedule set forth in Regulation 5041. The taxpayer shall respond to the hearing notice by indicating: that the taxpayer will appear at the time and place noted; or, that the taxpayer waives oral hearing and requests that the case be submitted to the Board for decision without oral hearing and based upon the written record; or, that the taxpayer requests that the hearing be postponed, stating the reason the postponement is requested.

(ed) Postponement Of Board Hearing. The Chief of Board Proceedings may grant one ~~One~~ postponement of a hearing ~~may be granted~~ upon agreement of the parties if the taxpayer or the Department requests it request for postponement is made by the deadline stated in the hearing notice, ~~and~~ provides sufficient

justification for the postponement, and the parties commit to a specific subsequent hearing date. The Chief of Board Proceedings may grant a ~~A~~ postponement requested after response to the hearing notice shall be granted upon agreement of the parties and upon a showing of extreme hardship. A postponement of a hearing may also be granted at the discretion of the Board. ~~At the Board's discretion, a postponement may be granted.~~

~~(de)~~ Removal From Calendar. The Chief, ~~of Board Proceedings Division,~~ may remove hearings or related proceedings from the hearing calendar ~~for upon a showing of~~ reasonable cause.

~~(ef)~~ Failure To Respond Or Appear. If the taxpayer fails to respond to the hearing notice by the deadline stated in the notice, or responds to the hearing notice but fails to appear for the hearing on the date and time stated in the notice, the case shall be submitted to the Board for decision without oral hearing and on the basis of the written record. At the Board's discretion of the Chief of Board Proceedings, exceptions ~~shall~~ may be made upon a showing of extreme hardship.

~~(fg)~~ Place Of Hearing. Except for a hearing on a property tax petition, a hearing involving a taxpayer or taxpayer's representative residing in the Southern part of the State shall ordinarily be held in the Los Angeles area. Other hearings and hearings on property tax petitions shall ordinarily be held in Sacramento. At its discretion, the Board may hold hearings at other locations.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5076.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: VOLUNTARY DISMISSAL; NEGOTIATIONS; DEFERRALS; SUBMISSION FOR DECISION; ORAL HEARINGS.

(a) Appeals From Actions Of The Franchise Tax Board: Voluntary Dismissal; Negotiations. At any time, the Chief of Board Proceedings may dismiss ~~An an~~ appeal from an action by the Franchise Tax Board may be dismissed at any time ~~at the written request of the taxpayer, upon at~~ the request of the Franchise Tax Board when it concedes the deficiency or the refund, or on the basis of a written stipulation between the taxpayer and the Franchise Tax Board. At any time prior ~~Prior~~ to a final decision by the Board, the taxpayer and the Franchise Tax Board may enter into negotiations ~~at any time~~ for settlement of an appeal.

(b) Appeals From Actions Of The Franchise Tax Board: Deferrals. The ~~Board or Board Staff Board Proceedings Division~~ may defer hearings or related proceedings, including briefing, for an indefinite period upon the filing of a written stipulation between the taxpayer and the Franchise Tax Board, or, ~~for upon a showing of~~ reasonable cause, for a specified period. The Board Proceedings Division shall notify the parties whether a deferral has been granted.

(c) Appeals From Actions Of The Franchise Tax Board: Submission For Decision; Oral Hearings. After all briefs have been filed in a Franchise Tax Board matter, the appeal shall be submitted for decision on the basis of the written record unless the taxpayer requests an oral hearing.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346 and 20645, Revenue and Taxation Code.

5079. HEARING PROCEDURE: ORDER OF PRESENTATION; WITNESSES; PRESENTATION OF EVIDENCE; STIPULATION OF FACTS; OFFICIAL NOTICE; CONCLUSION OF HEARING.

(a) ~~This~~ Except as to more specific requirements set forth in other regulations of these Rules of Practice, this regulation applies to all Board hearings.

(b) Order of Presentation. The hearing shall ordinarily proceed in the following manner. A member of the Board Staff shall report on the record whether campaign contribution disclosure statements have been filed in accordance with the requirements of Title 18, Division 2.2, Regulation 7011, and whether any disqualifying contributions have been reported. A Board Attorney shall summarize by oral statement the issues of each case. Taxpayers shall then state their position, and present evidence as they see fit, including by means of visual aids, subject to rulings by the Board Chair. The Department shall thereafter state its position and present its evidence. Taxpayers shall then be given an opportunity to reply.

(c) Witnesses.

(1) The taxpayer and the Department may offer witnesses to testify. The Board encourages the parties to provide the ~~Chief, Board Proceedings Division,~~ with the name and address of any witness who is going to testify and a brief description of the purpose of their testimony, in advance of the hearing. In addition, the Board Chair may, at the Board Chair's discretion or upon the request of a party, direct witnesses to testify under oath or affirmation. Each party may cross-examine opposing witnesses.

(2) Board Staff may, upon recognition by the Board Chair, question the parties, cross-examine persons called as witnesses, and explain Board Staff's view as to the validity of any argument made, the value of evidence submitted, and any other relevant matter.

(d) Presentation of Evidence.

(1) Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Each party shall be permitted to comment on or respond to any affidavits or declarations submitted. The Board shall be liberal in allowing the presentation of evidence, but objections to the presentation of and comments on the weaknesses of evidence shall be considered in assigning weight to the evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy or unduly repetitious.

Please note that there are three options set forth below for possible amendment of subdivision (d)(2) of Regulation 5079.

Option A

(2) For the purpose of facilitating the orderly consideration of issues at the hearing, absent a showing of reasonable cause as provided below, all items of documentary evidence to be considered by the Board at the hearing must be received by the Board Proceedings Division at least 14 days prior to the date of the hearing. At the discretion of the Board or Appeals Staff, upon a showing of reasonable cause documentary evidence may be accepted after the 14-day deadline. For purposes of this subdivision, Regulation 5074.5 shall not apply.

Option B

(2) For the purpose of facilitating the orderly consideration of issues at the hearing, all items of documentary evidence to be considered by the Board at the hearing must be received by the Board Proceedings Division at least 14 days prior to the date of the hearing. For purposes of this subdivision, Regulation 5074.5 shall not apply.

Option C

(2) The Board encourages documentary evidence to be submitted in advance of the hearing in order to facilitate the orderly consideration of the issues at the hearing. The hearing will not be delayed due to the submission of documentary evidence at the hearing. At the discretion of the Board, post-hearing briefing of evidence submitted at the hearing may be ordered as authorized by subdivision (f) of Regulation 5075.

~~(3) Items of documentary evidence and c~~Citations to judicial decisions issued after the briefing period has ended, and an analysis, discussion or arguments concerning the relevance of the ~~evidence or~~ decision, may be submitted to the ~~Chief, Board Proceedings Division,~~ at any time prior to or at the hearing on the matter, or at any time prior to the matter being submitted for decision if no hearing is held on the matter. The ~~Chief, Board Proceedings Division,~~ will send a copy of the ~~evidence or~~ citations and any analysis, discussion or arguments concerning the relevance of the ~~evidence or~~ decision to the members of the Board and to the other party. The Board or Board Staff will permit the other party an opportunity to submit a response that shall be limited to points of disagreement with the analysis, discussion or arguments.

~~The Board shall be liberal in allowing the presentation of evidence, but objections to the presentation of and comments on the weaknesses of evidence shall be considered in assigning weight to the evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy or unduly repetitious.~~

(e) Submission of Exhibits into Evidence. Any materials presented by any party which have been marked as exhibits during the matter and which the party elects to be entered into the record must be moved into evidence. The Chair will ask the parties if the exhibits are to be submitted. A party must make a motion to move the exhibits into evidence. If there are no objections, the exhibit will be entered into evidence and made a part of the record of the pending matter. If any member or party objects to the admission of evidence, the question shall be discussed and voted upon by the Board.

(f) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the case for decision, a stipulation of the facts upon which they agree, the facts that are in dispute, and the reasons for the dispute. The Board or Board Staff may require the parties to file such a stipulation.

(g) Official Notice. The Board may take official notice of:

(1) the records maintained by the Board;

(2) tax returns filed with the Franchise Tax Board for or on behalf of the taxpayer or an affiliated company, together with related records on file with the Franchise Tax Board;

(3) any fact which may be judicially noticed by the courts of this State. The parties may, at the hearing or through a petition for rehearing, request permission to refute any matter thus noticed.

(h) Conclusion of Hearing. That portion of the hearing in which evidence and argument are presented to the Board shall be concluded: upon a vote of the Board Members to conclude that portion of the hearing; by a declaration of the Board Chair that such portion of the hearing is concluded if there is no challenge to the Chair; or upon the making of a motion and a second that any action be taken on the matter.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5080. BURDEN OF PROOF.

DRAFT SUBSTANTIVE AMENDMENTS TO THE RULES OF PRACTICE - August 8, 2003
The Language Set Forth In This Draft Is Provided To Address Various Legal Issues Raised By Inquiries To The Legal Department. It Does Not Reflect Or Represent The Position Of The Board Or Any Board Member.

(a) Except as otherwise specifically provided by statute or in these regulations, the burden of proof shall ordinarily be upon the taxpayer as to all issues of fact.

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

(c) If the Franchise Tax Board first introduces and asserts a new theory during the course of the Board appeal process, then the burden of proof on issues of fact relating to that new theory will shift to the Franchise Tax Board. For purposes of this section:

(1) A "new theory" is any theory of tax liability first introduced and asserted during the course of the Board appeal process that will cause a greater deficiency or require the production of different evidence than the theory or theories of tax liability previously asserted or maintained by the Franchise Tax Board in its last administrative action prior to the date the appeal to the Board was filed.

(2) For purposes of this section, "administrative action" includes making an assessment and taking action on a refund claim, protest, or request for abatement of interest, but does not include failing to mail notice of action on a refund claim within six months after the date the claim was filed.

(3) If an appeal to the Board is filed on an issue before the Franchise Tax Board has taken administrative action on that issue, then any theory of tax liability introduced or asserted by the Franchise Tax Board with respect to that issue during the course of the Board appeal process shall not be considered to be a "new theory" for purposes of this section.

(4) Notwithstanding subdivision (c) (1) above, the introduction and assertion of a theory of tax liability by the Franchise Tax Board during the course of the Board appeal process that merely clarifies or develops the Franchise Tax Board's prior theory or theories of tax liability without increasing the amount of the deficiency or requiring the production of different evidence is not a "new theory" within the meaning of this section so as to require the shifting of the burden of proof to the Franchise Tax Board.

(5) Nothing set forth in this section shall be interpreted as relieving the taxpayer of the burden of proving that the Franchise Tax Board's original determination was incorrect.

(d) In appeals involving reallocation or redistribution of taxes levied by local jurisdictions, the burden of proof is on the petitioning jurisdiction.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5082.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: FORMAL WRITTEN OPINION; FINALITY OF DECISION; PETITION FOR REHEARING.

(a) When the Board votes to take a matter under submission and directs that a formal written opinion be drafted, the matter is not decided until the Board votes to adopt the formal opinion or subsequently decides the matter without adopting a formal written opinion.

(b) The Board's decision is final 30 days from the date the Board decides the matter unless a petition for rehearing is filed within that period by either party. A copy of the petition for rehearing shall be mailed to the other party. If a petition for rehearing is filed, the decision is final either: (1) 30 days after the Board denies the petition for rehearing; or (2) if, the Board grants a rehearing, 30 days after the Board decides the matter on rehearing.

(c) A petition for rehearing shall clearly state the legal and/or factual basis for the request. Reasons for requesting a rehearing include arguments that the Board made an error of law reaching its decision or that there is newly discovered evidence that was unavailable prior to the Board decision. Failure to state the legal and/or factual basis for a rehearing may result in denial of the petition for rehearing.

(d) If a petition for rehearing is timely filed, but is incomplete, the filing party shall be granted 30 days from the date of the acknowledgement letter from the Board Proceedings Division to perfect the petition for rehearing.

(e) The opposing party shall be given 30 days from the date of the letter from the Board Proceedings Division acknowledging receipt of a perfected appeal in which to file a reply brief.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19048, 19072, 19084, 19087, 19334, 19346 and 20645, Revenue and Taxation Code.

5082.2. PROPERTY TAX PETITIONS: FINALITY OF DECISION; PETITION FOR REHEARING.

(a) Property Tax petitions include petitions filed pursuant to Article 4 (State Assesseees and Private Railroad Car Companies), Article 5 (Taxable Property of a County, City, or Municipal Corporation), and Article 6 (Property Tax Welfare Exemptions).

(b) The decision of the Board upon a Property Tax petition is final. The Board shall not reconsider or rehear a petition.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Code Sections 254.5, 270, 744, 1841 and 11341, Revenue and Taxation.

5083. FEES: FILING, SUBPOENAS, TRANSCRIPTS, AND COPIES; ~~REMOVAL OF BOARD RECORDS AND FILES.~~

The Board shall not charge a fee. No fee shall be charged by the Board for the filing of any paper or the issuance of a subpoena. Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Section 69950 of the Government Code. ~~The records and files of the Board shall not be removed from its offices for use as evidence or other purposes.~~ Copies, including certified copies, of records which that the Board is permitted by law to divulge shall, ~~however,~~ be furnished to litigants or other interested persons at costs as specified in Section ~~6257-6253~~ 6253 of the Government Code and Section 1798.33 of the Civil Code.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections ~~6257~~ 6253 and 15613, Government Code; and Section 1798.33, Civil Code.

5087. ~~WITHDRAWAL OF EXHIBITS.~~

~~At the conclusion of a hearing any exhibit may be withdrawn on request of the party who produced the exhibit. In such case the party may be required to substitute an exact legible copy of the original thereof.~~

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

ARTICLE 9. TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS

5091. ELIGIBLE CLAIMS.

Only those expenses ~~which~~ that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Expenses incurred in a business tax or Timber Yield Tax case are "related to a hearing before the board" and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals ~~Section~~ Division and only if the Board disposed of the case at hearing by granting the petition in whole or in part. A taxpayer whose petition is denied in full, regardless of any adjustments that may have been made, does not have an eligible claim. ~~With the exception of expenses incurred in cases resolved through the Franchise Tax Board's Review and Write (RW) procedure, all~~ expenses incurred in corporate franchise or income tax appeals to the Board are "related to a hearing before the board."

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

5093. CLAIM PROCEDURE.

(a) Claim Form. The claim shall be filed with the Chief, of Board Proceedings ~~Division~~, on the Taxpayers' Bill of Rights Reimbursement Claim form (7/98), which is hereby incorporated by reference.

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

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings shall dismiss a claim when the Board previously disposed of the case at hearing by denying the petition in full, regardless of any adjustments that may have been made.

(~~e~~) Staff Statement. Within 60 days of the filing of a complete ~~the claim form~~, Board Staff and, when applicable, Franchise Tax Board ~~Staff~~, shall submit a statement in response to the claim. At the discretion of the Chief, of Board Proceedings ~~Division~~, extensions of time for the filing of a staff statement may be granted upon a showing of good cause if a written request is filed with the Chief, of Board Proceedings ~~Division~~, before the scheduled due date of the staff statement.

(~~e~~) Claimant Response. The staff statement(s) shall be mailed to the claimant, who shall be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. At the discretion of the Chief, of Board Proceedings ~~Division~~, extension of time for the filing of a response may be granted upon a showing of good cause if the written request for extension is filed with the Chief, of Board Proceedings ~~Division~~, before the scheduled due date of the response. If the claimant submits new information or

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The Language Set Forth In This Draft Is Provided To Address Various Legal Issues Raised By Inquiries To The Legal Department. It Does Not Reflect Or Represent The Position Of The Board Or Any Board Member.

documentation in the response, Board Staff or Franchise Tax Board staff may be given an additional 30 days to respond to the new material.

Note: Authority: Section 15606(a), Government Code; Section 42882; Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.