

**State of California
Office of Administrative Law**

In re:
Office of Tax Appeals

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections: 30100, 30101, 30102,
30201, 30202, 30203,
30204, 30205, 30301,
30302, 30303, 30304,
30305, 30401, 30402,
30403, 30501, 30502,
30601, 30602, 30603,
30604, 30605, 30606,
30701, 30702, 30703,
30704, 30705, 30707,
30708, 30709, 30710,
30711, 30800, 30801,
30802, 30803, 30804,
30805, 30806, 30807,
30808, 30809, 30810,
30811, 30812, 30813,
30814, 30815, 30816,
30817, 30818, 30819,
30820, 30821, 30822,
30823, 30824, 30825,
30826, 30827, 30828,
30829, 30830, 30831,
30832

Amend section:
Repeal section:

**NOTICE OF FILING AND PRINTING ONLY
OF EMERGENCY REGULATION(S) OR
ORDER(S) OF REPEAL**

Government Code Section 11343.8

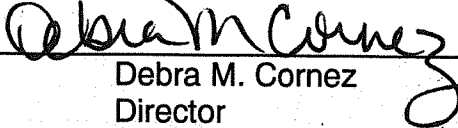
OAL Matter Number: 2018-0501-06

**OAL Matter Type: Emergency File and Print
Only (EFP)**

This emergency action by the Office of Tax Appeals is a readopt of prior emergency regulations (file no. 2018-0103-01EFP) that established the process for hearings and proceedings conducted by the Office of Tax Appeals for appeals filed for the various taxes and fees administered by the Franchise Tax Board and the California Department of Tax and Fee Administration. Pursuant to Government Code section 15679, this emergency action is deemed an emergency and exempt from OAL review.

OAL filed this emergency regulation(s) or order(s) of repeal with the Secretary of State, and will publish the emergency regulation(s) or order(s) of repeal in the California Code of Regulations. This action will go into effect on 7/6/2018 for 90 days. The Certificate of Compliance must be submitted to OAL by 10/4/2018 or the emergency regulations for this action will lapse by operation of law on the next day.

Date: May 8, 2018


Debra M. Cornez
Director

Original: Mark Ibele, Director
Copy: Kristen Kane

File
PRINT

EMERGENCY

FILE
PRINT

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION (See instructions on reverse) For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2018-0501-06 EFP

For use by Office of Administrative Law (OAL) only

2018 MAY -1 P 3:25

OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

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

MAY 08 2018
at 1:44 pm

AGENCY WITH RULEMAKING AUTHORITY Office of Tax Appeals	AGENCY FILE NUMBER (If any) 1802238
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Readopt Emergency Regulations	TITLE(S) 18	FIRST SECTION AFFECTED 30100	2. REQUESTED PUBLICATION DATE Upon receipt
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Kristen Kane	TELEPHONE NUMBER 916-206-0792	FAX NUMBER (Optional) 916-492-2089
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Appeals from actions taken by FTB and CDTFA	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-0103-01 EFP
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT See attached
	AMEND
	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) TITLE(S) 18	<i>all handwritten changes per agency request Dmk 5-8-18</i>

3. TYPE OF FILING	<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input checked="" type="checkbox"/> File & Print <input checked="" type="checkbox"/> Other (Specify) <u>Gov. Code, sec. 15679</u>	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only
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4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) <u>July 6, 2018</u>
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)
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7. CONTACT PERSON Kristen Kane, Chief Counsel	TELEPHONE NUMBER 916-206-0792	FAX NUMBER (Optional) 916-492-2089	E-MAIL ADDRESS (Optional) kristen.kane@ota.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Mark Ibele</i>	DATE <u>May 1 2018</u>
TYPED NAME AND TITLE OF SIGNATORY Mark Ibele, Director	

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

MAY 08 2018

Office of Administrative Law

Office of Tax Appeals
Attachment to Form 400
Notice Publication/Regulations Submission
First Readoption of Emergency Regulations

OAL FILE NUMBER 2018-0103-01

Sections affected

Title 18, California Code of Regulations

Readopt Sections with no change:

30100, 30101, 30102,
30201, 30202, 30203,
30204, 30205, 30301,
30302, 30303, 30304,
30305, 30401, 30402
30403, 30501, 30502,
30601, 30602, 30603,
30604, 30605, 30606,
30701, 30702, 30703,
30704, 30705, 30707,
30708, 30709, 30710,
30711, 30800, 30801,
30802, 30803, 30804,
30805, 30806, 30807,
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OFFICE OF TAX APPEALS RULES FOR TAX APPEALS

California Code of Regulations Title 18.

Public Revenues

ADOPT: Division 4. Office of Tax Appeals – Rules for Tax Appeals

**ADOPT ALL THE FOLLOWING CHAPTER HEADINGS, ARTICLE HEADINGS AND
REGULATION TEXT**

Chapter 1: Appeals from Actions of the Franchise Tax Board

ARTICLE 1: APPLICATION OF CHAPTER 1, DEFINITIONS, AND JURISDICTION

30100. APPLICATION OF CHAPTER 1

This chapter applies to appeals and petitions for rehearing submitted with or subject to the jurisdiction of OTA pursuant to:

- (a) The Administration of Franchise and Income Tax Laws (Part 10.2 of division 2 of the Revenue and Taxation Code.);
- (b) The Senior Citizens Homeowners and Renters Property Tax Assistance Law (Chapter 1 and chapter 4 of part 10.5 of division 2 of the Revenue and Taxation Code.); and
- (c) Part 9.5 of Division 3 of Title 2 of the Government Code.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30101. DEFINITIONS

The following definitions apply to this chapter:

- (a) “Appellant” means an individual or business entity who files an appeal from an action of the Franchise Tax Board. The term “appellant” also includes multiple individuals or business entities submitting an appeal jointly and, where appropriate, an authorized representative or representatives thereof.
- (b) “Delivery service” means a trade or business that delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records the date on which it accepts each document for delivery.
- (c) “Panel” means an assigned three-judge panel.

- (d) "OTA" means the Office of Tax Appeals.
- (e) "Party" means an appellant and respondent Franchise Tax Board. The term "party" also includes, where appropriate, the authorized representative of appellant and respondent Franchise Tax Board.
- (f) "Respondent" means the Franchise Tax Board and, where appropriate, an authorized representative or representatives thereof.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30102. JURISDICTION

- (a) Appeals from the Franchise Tax Board. In general, OTA has jurisdiction to hear and decide a timely submitted appeal under any of the following circumstances:
 - (1) The Franchise Tax Board mails a notice of action on a proposed deficiency assessment of additional tax, which may also include penalties, fees, and interest.
 - (2) The Franchise Tax Board mails a notice of action on a proposed carryover adjustment.
 - (3) The Franchise Tax Board mails a notice of action on cancellation, credit, or refund, or any other notice which denies any portion of a perfected claim for a refund of tax, penalties, fees, or interest.
 - (4) The Franchise Tax Board fails to act on a claim for a refund of tax, penalties, fees, or interest, within six months after the claim is filed with the Franchise Tax Board.
 - (5) The Franchise Tax Board mails a notice of determination not to abate interest, or any other notice, that denies an abatement, in whole or in part, of paid or unpaid interest, under Revenue and Taxation Code section 19104.
 - (6) The Franchise Tax Board fails to act on a request for abatement of interest within six months after the request is submitted with the Franchise Tax Board under Revenue and Taxation Code section 19104. This paragraph does not apply to requests for interest abatement made in connection with a protest or an appeal from a notice of action on a protest.
 - (7) The Franchise Tax Board mails a notice that disallows interest on a refund.
 - (8) The Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief under Revenue and Taxation Code section 18533, subdivision (b), (c), (f) or (i), or section 19006, subdivision (c).

- (9) The Franchise Tax Board mails a notice of determination, or fails to act within 90 days, on a petition for review of the Franchise Tax Board's finding of jeopardy.
- (10) The Franchise Tax Board mails any notice that denies, in whole or in part, a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law.
- (b) Issues that will not be considered. OTA's jurisdiction is limited to determining the correct amount owed by, or due to, the appellant for the year or years at issue in the appeal. OTA does not have jurisdiction to consider the following issues:
- (1) Whether a California statute is invalid or unenforceable under the Federal or California Constitutions, unless a federal or California appellate court has already made such a determination.
 - (2) Whether a provision of the California Constitution is invalid or unenforceable under the Federal Constitution, unless a federal or California appellate court has already made such a determination.
 - (3) Whether a liability has been or should have been discharged in bankruptcy.
 - (4) Whether the Franchise Tax Board violated the Information Practices Act (Civil Code sections 1798 et seq.), the Public Records Act (Government Code sections 6250 et seq.), or any similar provision of the law.
 - (5) Whether the appellant is entitled to a remedy for the Franchise Tax Board's actual or alleged violation of any substantive or procedural right, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal.
- (c) OTA does not have jurisdiction to accept an appeal from a notice of proposed assessment or notice of proposed overassessment.

Note: Authority cited: Government Code section 15679; Revenue and Taxation Code section 19570; Article III, section 3.5 of the California Constitution. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

ARTICLE 2: HOW TO FILE AN APPEAL FROM THE FRANCHISE TAX BOARD

30201. APPEAL FILING REQUIREMENTS

- (a) Every appeal from an action of the Franchise Tax Board must be in writing and adhere to the length limitations and other requirements of section 30301, subdivision (e), and must contain the following:
- (1) The name of the appellant, or appellants, submitting the appeal;

- (2) The social security number or taxpayer identification number, whichever is applicable, of each appellant submitting the appeal;
 - (3) The address and telephone number of each appellant and, if applicable, each appellant's authorized representative;
 - (4) The amount involved or an estimate of the amount involved, if known;
 - (5) The year(s) involved;
 - (6) A copy of the Franchise Tax Board's notice from which the appeal is made, unless the Franchise Tax Board has failed to act on a claim for refund or a request for interest abatement, in which case the appellant must provide a copy of the claim for refund or request for interest abatement;
 - (7) The facts involved and the specific reasons for the appellant's position (and should, if applicable, include any legal authorities upon which the appellant relies such as statutes, regulations, and judicial and administrative decisions);
 - (8) Any portion of the amount at issue conceded by the appellant; and
 - (9) The signature of each appellant who is submitting the appeal, whether jointly or separately, or the signature of an authorized representative made on behalf of each appellant who is submitting the appeal.
- (b) Senior Citizens Homeowners and Renters Property Tax Assistance Appeals. Every appeal from the Franchise Tax Board's denial, in whole or in part, of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law must be in writing and must contain the following:

- (1) The name of the appellant, or appellants, submitting the appeal;
- (2) The social security number or taxpayer identification number, whichever is applicable, of each appellant submitting the appeal;
- (3) The address and telephone number of the appellant and, if applicable, the appellant's authorized representative;
- (4) The amount of property tax assistance claimed;
- (5) The claim year(s) involved;
- (6) A copy of the Franchise Tax Board's notice from which the appeal is made;
- (7) The reasons the appellant is entitled to property tax assistance; and
- (8) The signature of each appellant who is submitting the appeal, whether jointly or

separately, or the signature of an authorized representative made on behalf of each appellant who is submitting the appeal.

- (c) An appeal may be written by hand, and may use ordinary and informal language to explain the facts involved and the specific reasons for the appellant's position.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30202. METHODS FOR DELIVERY OF WRITTEN DOCUMENTS AND CORRESPONDENCE

(a) Appeals, petitions for rehearing, briefs, and related documents and correspondence may be mailed to the address below or submitted electronically pursuant to this section, in accordance with instructions that will be provided on OTA's website at www.ota.ca.gov. OTA may allow other methods of electronic delivery. If OTA allows other means of electronic delivery, it will provide instructions for such methods on its website. Regardless of how a submission is submitted, the submitting party should retain a copy of the submission and evidence showing the date of the submission such as proof of mailing.

State of California, Office of Tax Appeals
PO BOX 989880
West Sacramento CA 95798-9880

(b) Appeals, petitions for rehearing, briefs, and related documents and correspondence may be hand delivered to OTA as specified on its website, provided that, the appellant obtains and retains a receipt to confirm the submission.

(c) When this chapter requires a written notification or written acknowledgement to one or more parties during the course of an appeal, mail or personal delivery will be used, unless the party to whom the document is provided consents to delivery by secure electronic means.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645.

30203. TIME FOR SUBMITTING AN APPEAL

An appeal is timely if it is mailed to or received by OTA within the time period specified by the Revenue and Taxation Code.

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

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

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

(3) Not later than 90 days from the date the Franchise Tax Board mails a notice of action on cancellation, credit, or refund, or any other notice, that denies a claim for a refund of tax, penalties, fees, or interest.

(4) At any time, if the Franchise Tax Board failed to act on a claim for a refund of tax, penalties, fees, or interest within six months after the claim was filed. However, if the Franchise Tax Board denies the claim for refund in writing, the appeal must be submitted not later than 90 days from the date the Franchise Tax Board mails notice of the denial.

(5) Not later than 30 days from the date the Franchise Tax Board mails a notice of determination not to abate interest, or any other notice, that specifically denies the abatement of unpaid interest.

(6) Not later than 90 days from the date the Franchise Tax Board mails a notice of determination not to abate interest, or any other notice, that specifically denies the abatement of paid interest.

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

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

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

(10) Not later than 60 days from the earlier of: (A) the date the Franchise Tax Board mails a

notice of its determination on a petition for review of a finding of jeopardy, or (B) the 91st day after a petition for review of a finding of jeopardy was submitted with the Franchise Tax Board.

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

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

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

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

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

(c) Date of Mailing. Generally, in the absence of other evidence, the submission date is the post-mark date, the date of delivery to a delivery service, or the date of receipt if the document is submitted electronically. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, then the submission deadline is extended to the next business day.

(d) On and after January 1, 2018, appeals must be submitted with OTA as set forth in this section. Notwithstanding this requirement, if an appeal or petition for rehearing should have been filed with OTA but is timely submitted with the State Board of Equalization or the California Department of Tax and Fee Administration, and it is received by OTA within sixty days of its submission, OTA may deem it to have been timely submitted with OTA if the error in submission was a good faith error and acceptance of the appeal or petition for rehearing will not interfere with the administration of tax.

Note: Authority cited: Government Code section 15679; Code of Civil Procedure section 1013.
Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30204. ACCEPTING AN APPEAL

(a) Acknowledgment of Appeal. OTA shall provide a written acknowledgment of any appeal or intended appeal to the appellant and the Franchise Tax Board.

(b) Issues of Jurisdiction and Timeliness.

(1) OTA may request additional information and briefing from the parties with regard to the appeal, including any issues related to jurisdiction or timeliness.

(2) If OTA accepts the appeal and does not raise any issues with regard to jurisdiction or timeliness, any such issues may be addressed in briefing and will be determined by an assigned

panel as part of the panel's deliberations with regard to the appeal.

(3) If OTA determines that there is an issue with regard to the timeliness of the appeal or OTA's jurisdiction to hear the appeal, the appeal will be assigned to a panel. The panel may;

- (A) Rule on such issues before it receives briefing pursuant to the general briefing schedule,
- (B) Request further information or briefing on such issues,
- (C) Direct that any such jurisdictional or timeliness issues should be addressed by the parties in briefs submitted pursuant to the general briefing schedule, or
- (D) Take such other action as it deems appropriate to determine such issues.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30205. PERFECTING AN APPEAL

(a) Generally. For purposes of this chapter, an appeal is "perfected" if it contains substantially all of the information required by section 30201. In addition, an appeal is not "perfected" until it contains sufficient information to identify and contact each appellant or authorized representative, along with the signature of each appellant or authorized representative.

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

(1) The appellant must perfect the appeal not later than 60 days from the date of the notice. However, OTA may extend the time period for perfection for reasonable cause. All parties will be notified in writing of any extension.

(2) Perfecting the appeal is accomplished by submitting the information necessary to perfect the appeal to OTA.

(3) If the taxpayer fails to perfect the appeal within the 60-day period, or within any extension period granted, the appeal may be dismissed. All parties will be notified in writing of the dismissal.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

ARTICLE 3: BRIEFING SCHEDULES AND PROCEDURES

30301. GENERAL REQUIREMENTS

- (a) Generally. The parties to an appeal must adhere to the briefing schedules and other requirements set forth in this article. Where this schedule refers to a "brief," the requested brief may take the form of a letter or other informal submission, rather than a formal legal brief.
- (b) Determining the briefing schedule; notification. OTA will provide written notification to each party that an appeal has been submitted and that briefing will begin.
- (1) If an appeal involves a jeopardy determination, OTA will compose a suitable briefing schedule after due consideration of all the facts and circumstances of that appeal.
 - (2) Throughout the briefing schedule, OTA will inform the parties of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence in the appeal.
- (c) Extensions. Any request to extend the period for submitting a brief must be in writing and must be made prior to the scheduled due date for that brief. OTA may extend, defer or postpone briefing deadlines for reasonable cause.
- (d) Submission and acknowledgment. Upon receipt of any brief submitted within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, OTA will provide written acknowledgement of receipt to all parties and will provide each opposing party with a copy of the brief and any supporting exhibits.
- (e) Formatting. Unless otherwise directed, all briefs must be no longer than 30 double-spaced 8½" by 11" pages, or 15 single-spaced 8½" by 11" pages, excluding any table of contents, table of authorities, and exhibits. Briefs may be handwritten or typed, and printed only on one side in a type-font size of at least 10 points or 12 characters per inch. OTA may grant an exception to these requirements for reasonable cause. If a brief is submitted that does not comply with the requirements of this subdivision, OTA may return the brief to the submitting party for correction or, in its discretion, accept the brief.
- (f) Failure to submit a brief. The failure to submit a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to submit that brief. However, OTA may request a further briefing.
- (g) Non-party briefing. At the discretion of OTA, non-party (amicus) briefs may be submitted. Any non-party briefs that are accepted by OTA will be provided to the parties, and OTA may, in its discretion, request responses thereto.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30302. GENERAL BRIEFING SCHEDULE

(a) Application. The general briefing schedule in this section applies to all appeals from actions of the Franchise Tax Board, unless the appeal involves an innocent spouse determination or a jeopardy determination, and unless OTA directs a modified briefing schedule or additional briefing is requested pursuant to Section 30304.

(b) Opening briefs.

(1) Appellant's opening brief. The appellant's appeal letter, if it is substantially perfected, will constitute the appellant's opening brief, unless the appellant requests the opportunity to submit a separate opening brief. If the appellant requests the opportunity to submit an opening brief, the appellant will make such a request in the appeal letter and submit the opening brief within 60 days, unless OTA grants additional time for the submission of the opening brief. The appeal letter and any opening brief cannot exceed a total of 30 pages, formatted pursuant to Section 30301, subdivision (e), unless otherwise permitted by OTA.

(2) Respondent's opening brief. The Franchise Tax Board must submit an opening brief not later than 60 days from the date OTA acknowledges receipt of the Appellant's opening brief, unless OTA grants additional time for the submission of the opening brief.

(c) Appellant's reply brief. The appellant may submit a reply brief and any such reply brief must be submitted not later than 30 days from the date OTA acknowledges receipt of the Respondent's opening brief, unless OTA grants additional time for the submission of the reply brief. The Appellant's reply brief, if submitted, may only address points of disagreement with the Respondent's opening brief.

(d) The submission of appellant's reply brief will generally end the briefing process, unless additional briefing is requested pursuant to section 30304.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30303. GENERAL BRIEFING SCHEDULE FOR INNOCENT SPOUSE APPEALS

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

(b) Definitions. For purposes of this section:

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

(2) The "non-appealing spouse" is the individual with whom the appealing spouse submitted a joint return for the year(s) at issue.

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

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

(c) Special Rules and Procedures.

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

(2) If only one spouse files a timely appeal, then upon receipt of a perfected appeal from the appealing spouse, OTA will provide one copy of the perfected appeal to the non-appealing spouse and notify the non-appealing spouse of his or her right to participate in the appeal.

(3) OTA will use the best available information to contact the non-appealing spouse.

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

(e) Opening briefs.

(1) Appealing spouse’s opening brief. The appealing spouse’s perfected appeal is the appealing spouse’s opening brief, unless the appealing spouse requests the opportunity to submit a separate opening brief. If the appealing spouse requests the opportunity to submit an opening brief, it will make such a request in its appeal letter and submit the opening brief within 30 days, unless OTA grants additional time for the submission of the opening brief. The appeal letter and any opening brief cannot exceed a total of 30 pages, formatted pursuant to Section 30301, unless otherwise permitted by OTA.

(2) Respondent’s opening brief. The Franchise Tax Board may submit an opening brief not later than 60 days from the date OTA acknowledges receipt of the appealing spouse’s opening brief.

(3) Non-appealing spouse’s opening brief. The non-appealing spouse may submit an opening brief not later than 60 days from the date of the notification of his or her right to participate in the appeal. The submission of the non-appealing spouse’s opening brief will join the non-appealing spouse as a party to the appeal. The failure to submit the non-appealing spouse’s

opening brief within the time provided is a waiver of the right to participate in the appeal, unless such failure is due to reasonable cause.

(f) Reply briefs.

(1) Appealing spouse's reply brief. The appealing spouse may submit a reply brief not later than 30 days from the later of:

(A) The date OTA acknowledges receipt of the Respondent's opening brief;

(B) The date OTA acknowledges receipt of the non-appealing spouse's opening brief, if one is submitted; or

(C) The date on which it becomes known that the non-appealing spouse will not submit an opening brief.

1. The appealing spouse's reply brief, if submitted, may only address points of disagreement with the Respondent's opening brief and the non-appealing spouse's opening brief.

2. If neither the non-appealing spouse nor the Franchise Tax Board submit a reply brief, the briefing schedule is concluded, unless briefing is requested pursuant to Section 30304.

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

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

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

(3) If the Franchise Tax Board and/or the non-requesting spouse provides information as permitted by paragraph (2) of this subdivision, the requesting spouse may submit an additional brief. If the Franchise Tax Board did not provide information as permitted by paragraph (2), it may also submit an additional brief. Additional briefs must be submitted not later than 30 days from the date OTA acknowledges receipt of the information described in paragraph (2) of this subdivision. Any brief submitted pursuant to this paragraph may only address points of disagreement with the information described in paragraph (2) of this subdivision.

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

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

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 19346.

30304. ADDITIONAL BRIEFING AND PREHEARING CONFERENCES

(a) Requests by OTA. OTA will determine whether additional briefing and/or a prehearing conference is necessary, and the order, deadlines, and conditions under which any briefing must be submitted or the timing and conditions of any prehearing conference.

(b) Requests by a Party to an Appeal. A party may request a prehearing conference and/or an opportunity to submit an additional brief. A prehearing conference and/or an opportunity to submit an additional brief may be requested regardless of whether an oral hearing has been requested. Any request by a party for a prehearing conference and/or an opportunity to submit an additional brief should be made in writing, should copy the other party to the appeal, and should be made as early in the appeal process as possible. If an additional brief is submitted outside of the applicable briefing schedule or any schedule set by OTA, OTA will determine whether there is reasonable cause to accept the brief, and whether to request a reply from the other party or parties.

(c) Informality of Prehearing Conferences and Briefing. Unless otherwise directed by OTA, additional briefing may be informal and use ordinary non-legal language. Briefing may take the form of a letter and may be written by hand. Similarly, unless otherwise directed by OTA, prehearing conferences will be informal in nature and accessible to individuals who are representing themselves or represented by non-lawyers.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645.

30305. TRANSITION APPEALS AND PETITIONS FOR REHEARING

(a) As of January 1, 2018, OTA has jurisdiction over any appeal covered by Part 9.5 of Division 3 of Title 2 of the Government Code.

(b) Where the State Board of Equalization has issued a decision in an appeal which is not final before January 1, 2018, for which a party had submitted a timely petition for rehearing with the State Board of Equalization pursuant to California Code of Regulations, title 18, section 5561 before January 1, 2018, OTA will treat that petition as a petition for rehearing under Article 6.

Where the State Board of Equalization has issued a decision for an appeal which is not final before January 1, 2018, before that decision becomes final, any party may submit a petition for rehearing with OTA pursuant to regulation 30601.

(c) If, prior to January 1, 2018, the State Board of Equalization, OTA or CDTFA has, in writing, set a briefing deadline of January 1, 2018 or later for an appeal, the briefing deadline will continue to be applicable, unless otherwise directed by OTA.

(d) When a brief submitted pursuant to this section is acknowledged by OTA, OTA's acknowledgment of the brief will inform the parties whether further briefing is requested at that time and of the order, deadlines, and conditions of any such briefing. This paragraph does not foreclose subsequent requests for additional briefing pursuant to section 30304.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645.

ARTICLE 4: REQUESTING AND SCHEDULING ORAL HEARINGS

30401. RIGHT TO REQUEST AN ORAL HEARING

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

(1) In order to exercise the right to an oral hearing, the appellant must submit a written request no later than the date of the appellant's reply brief and must timely respond to any request by OTA for confirmation that the appellant still seeks an oral hearing. A request for an oral hearing may be included in appellant's appeal letter or briefing and should indicate whether the appellant prefers a hearing in Sacramento, Los Angeles, or Fresno.

(2) Upon receipt of a timely request, OTA will send written acknowledgment of the request to all parties.

(3) An untimely request for oral hearing may be accepted if OTA determines that there is reasonable cause to accept an untimely request.

(b) **Innocent Spouse Appeals.** Both the appealing spouse and the non-appealing spouse, as those terms are defined in section 30303, subdivision (b), may request an oral hearing pursuant to subdivision (a) of this section. The non-appealing spouse may request an oral hearing only if he or she has been joined as a party to the appeal. If such a request is made by either or both spouses, a panel typically will conduct one oral hearing and invite both spouses to appear. However, a panel will conduct separate oral hearings if:

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

(2) OTA determines that conducting one oral hearing is likely to be unsafe, disruptive, or unjust.

(c) If a panel conducts separate oral hearings, the panel will not decide the appeal until both hearings have concluded.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11445.30, 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 19346.

30402. SUBMISSION FOR DECISION WITHOUT ORAL HEARING

(a) Generally. If the appellant does not request an oral hearing under section 30401, or if the appellant does not timely respond to a hearing notice, the appeal will be submitted for decision based upon the written record and without an oral hearing.

(b) Innocent Spouse Appeals. If neither the appealing spouse nor the non-appealing spouse request an oral hearing, or neither spouse responds to a hearing notice, the appeal will be submitted for decision based upon the written record and without an oral hearing.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30403. NOTICE OF ORAL HEARING AND RESPONSE

(a) If an oral hearing is granted under section 30401, OTA will notice the appeal for an oral hearing.

(b) Unless all parties agree to waive this notice requirement and agree to a shorter notice period of notice, a notice of oral hearing will be sent at least 45 days prior to the oral hearing date. The notice of oral hearing will contain the following information:

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

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

(3) The due date of the response to notice of oral hearing;

(4) A contact name, email address, mailing address, telephone number, and fax number at OTA for the party to submit briefs and correspondence; and

(5) The date the notice of oral hearing was mailed.

(c) Response to notice of oral hearing. Each party or each party's authorized representative must

return the Response to notice of oral hearing no later than 15 days from the date the notice of oral hearing was mailed. Each party or party's authorized representative must respond to the notice of oral hearing by indicating that:

- (1) The party or party's authorized representatives will appear at the hearing at the time and place noted;
 - (2) The party waives the opportunity to appear and be represented at the hearing and requests that the appeal be decided on the basis of the written record and without an oral hearing; or
 - (3) The party withdraws the party's request for a hearing.
 - (4) A party or party's representative may also include a request for an interpreter in the Response to notice of oral hearing. Persons participating in oral hearings who speak a language other than English, or are deaf, and require an interpreter are entitled to an interpreter at no charge.
 - (5) A party's response to notice of oral hearing should also provide OTA and the opposing party with the name and address of any witness who will testify, and a brief description of the purpose of their testimony.
- (d) Failure to Respond to Notice of Oral Hearing or to Appear.
- (1) If the party or parties who requested an oral hearing fail to return the response to notice of oral hearing by the deadline stated in the notice of oral hearing, or fail to appear at the hearing then, the matter will be submitted to a panel for a decision on the basis of the written record without an oral hearing, unless OTA determines otherwise pursuant to paragraph (3) below.
 - (2) OTA will notify the parties in writing that the matter has been removed from the oral hearing calendar.
 - (3) Prior to a panel decision, OTA, in its discretion, may make exceptions to return the matter to the oral hearing calendar upon a showing of reasonable cause or that other reasonable cause exists to return the matter to the oral hearing calendar.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11445.30, 11509, 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

ARTICLE 5: DECISIONS, OPINIONS, AND FRIVOLOUS APPEAL PENALTIES

30501. WRITTEN OPINIONS

(a) OTA shall publish a written opinion for each appeal decided by a panel. The panel that decides an appeal will issue a written opinion explaining its reasons for granting or denying the appeal, in whole or in part. All opinions shall appear on the OTA website.

(b) The written opinion will include findings of fact, the legal issue or issues presented, applicable law, analysis, the decision of the panel, and the names of the adopting administrative law judges and any administrative law judge(s) concurring in the result.

(c) In order to issue an opinion, at least two out of three panel members must concur in the disposition of each holding of the opinion. A concurring or dissenting member may provide a separate written opinion explaining the basis for the member's concurrence or dissent.

(d) Citation of Opinions and Precedential Effect.

(1) A published written opinion of OTA may be cited but is not precedential in any other appeal before OTA unless OTA designates the published written opinion as precedential in accordance with Government Code Section 11425.60.

OTA will consider the following in determining whether to designate an opinion as precedential:

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

(B) Whether the opinion would resolve an apparent conflict in the law;

(C) Whether the opinion would involve a legal issue of continuing public interest;

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

(E) Any other basis OTA determines justifies publishing a panel's decision as a precedential opinion.

(2) OTA may withdraw, in whole or in part, the precedential status of an opinion previously designated as precedential in a later appeal before OTA by explaining in the decision issued in that later appeal why the precedential status has been removed. Where OTA does so, the notation of the precedential status will be removed from the published version of the prior opinion, and replaced with a notation that the opinion was previously designated as precedential, but its precedential status had thereafter been removed. The notation will also include an explanation for removing the precedential designation.

(3) Precedential opinions of the State Board of Equalization which were adopted prior to

January 1, 2018, in accordance with applicable law and regulations, may be cited as precedential authority to OTA unless a panel removes, in whole or in part, the precedential status of the opinion as part of a written opinion that the panel issues pursuant to this section. Where OTA removes the precedential status of an opinion of the State Board of Equalization, it will publish on its website a specific notation that the previously precedential State Board of Equalization opinion is no longer precedential, along with the date of the OTA opinion removing the precedential status.

(e) A written opinion will become final 30 days following its issuance, unless a petition for rehearing is submitted in that period.

(f) A party may submit with OTA a petition for rehearing in an appeal where OTA's decision was adverse to that party, in whole or in part, provided the petition for rehearing is submitted no later than 30 days after the date OTA issues the written opinion. Within 100 days after the date upon which the panel's opinion becomes final, OTA will publish the panel's decision as OTA's written opinion for the appeal. The published opinion will include the names of the administrative law judges concurring and/or dissenting in each holding in the opinion.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11425.60, 15606, 15670, 15672, 15670, 15674, 15675, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645.

30502. FRIVOLOUS APPEAL PENALTY

(a) Generally. If a panel determines that an appeal is frivolous or is maintained for the purpose of delay, OTA may impose a penalty, under Revenue and Taxation Code section 19714, on the appellant or appellants that submitted the appeal.

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

(1) Whether the appellant is making arguments that OTA, in a precedential opinion, or the State Board of Equalization, in a Formal Opinion, or courts have rejected;

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

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

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

(c) The list of factors in this subdivision is not intended to be exclusive. OTA may consider other relevant factors.

Note: Authority cited: Government Code section 15679; Revenue and Taxation Code section 19714.
Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Reference: Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19714, and 20645.

ARTICLE 6: PETITIONS FOR REHEARING AND REHEARINGS

30601. FINALITY OF DETERMINATION

(a) Finality. A panel will determine the appeal by issuing a written opinion, and its determination becomes final 30 days from the date the panel issues its written opinion, unless within that 30-day period, a party to the appeal files a petition for rehearing. A petition for rehearing may be submitted to seek reconsideration of any written opinion issued by a panel, regardless of whether an oral hearing was held. A panel issues its written opinion on the date the written opinion is mailed to the parties at the address provided by the parties to OTA.

(b) The finality of a panel's determination is not dependent upon the date notice of the panel's written opinion is received.

(c) Number of Petitions for Rehearing.

(1) A party may not submit more than one petition for rehearing with regard to the same appeal.

(2) In addition, no party may submit a petition for rehearing in response to a decision on petition for rehearing or a panel's issuance of an opinion after a rehearing. If OTA receives a submission intended as such a petition for rehearing, OTA will reject the submission.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15670, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645.

30602. PETITIONS FOR REHEARING

(a) Definitions. For purposes of this article:

(1) The "filing party" is the party who files a petition for rehearing.

(2) The "non-filing party" is the party who does not submit a petition for rehearing.

(b) Time for Filing. A petition for rehearing is timely if it is mailed within the 30-day period described in section 30601, subdivision (a). The party should obtain and retain proof of timely mailing. If OTA finds that a timely petition for rehearing does not satisfy the requirements of regulation 30601, its notification of receipt will explain the deficiency and will allow the party who submitted the petition 30 days to cure the deficiency and satisfy the requirements of regulation

30601. If, by the end of that additional 30-day period, the party has still not provided sufficient information to satisfy the requirements of regulation 30601, OTA will reject the petition and mail written notification to the parties to the appeal of that rejection.

(c) Format and contents of the petition for rehearing. Every petition for rehearing must be in writing, must meet the formatting requirements of section 30301, subdivision (e), and must contain the following:

- (1) The name or names of the party or parties submitting the petition for rehearing;
- (2) The address and telephone number of each party and, if applicable, each party's authorized representative;
- (3) Any portion of the amount at issue conceded by the party;
- (4) The signature of each party or the signature of an authorized representative made on behalf of each party submitting the petition for rehearing; and
- (5) All the facts and legal authorities necessary to:
 - (A) Identify an irregularity in the proceedings that prevented the fair consideration of the appeal;
 - (B) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;
 - (C) Identify newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to the decision; or
 - (D) Demonstrate there was insufficient evidence to justify the decision or the decision is contrary to law.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30603. BRIEFING ON PETITION FOR REHEARING

(a) Section 30301 applies to the administration of this section and to any documents submitted under this section.

(b) Briefing Schedule.

(1) Unless otherwise directed by OTA, the filing party will not be permitted to submit any additional briefing after the submission of a perfected petition for rehearing.

(2) Not later than 30 days from the date on which OTA acknowledges receipt of a perfected petition for rehearing, the non-filing party may submit a reply to the petition for rehearing.

(3) If there is more than one filing party, then each party may submit a reply to each petition for rehearing under the requirements of paragraph (2).

(c) Additional Briefing. This section does not prevent a request for additional briefing under section 30304.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30604. DECISIONS ON PETITIONS FOR REHEARING

A "Decision on petition for rehearing" is a written decision that provides the basis of a panel's decision to grant or deny a rehearing. If the petition for rehearing is granted, then the initial determination in the appeal will be held in abeyance pending resolution of the rehearing. A panel, in its discretion, may limit the scope of the rehearing. If a panel denies a petition for rehearing, then the panel's decision to deny the petition becomes final 30 days from the date on which the panel issued its Decision on petition for rehearing.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

30605. BRIEFING ON REHEARING

(a) Section 30301 applies to the administration of this section and to any documents submitted under this section.

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

(1) Filing party's opening brief. The filing party may submit an opening brief not later than 30 days from the date on which the petition for rehearing was granted.

(2) Non-filing party's reply brief. The non-filing party may submit a reply brief not later than 30 days from the date on which OTA acknowledges receipt of the filing party's opening brief.

(3) Filing party's reply brief. The filing party may submit a reply brief not later than 30 days from the date on which OTA acknowledges receipt of the non-filing party's reply brief.

(c) **Briefing Schedule; Multiple Petitions Granted.** If there is more than one filing party and the panel grants more than one petition for rehearing, the following briefing schedule applies:

(1) **Opening briefs.** Each party may submit an opening brief not later than 30 days from the date on which the Petitions for Rehearing were granted.

(2) **Reply briefs.** Each party may submit a reply brief no later than 30 days from the date on which OTA acknowledges receipt of the last brief submitted pursuant to paragraph (1).

(d) **Additional Briefing.** This section does not prevent a request for additional briefing.

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

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

30606. DECISION ON REHEARING

(a) At the conclusion of briefing under section 30605, the provisions of articles 4 and 5 of this chapter will apply, except that any reference to a "decision" or "opinion" is deemed a reference to a decision or opinion on rehearing, and any reference to the briefing schedule is deemed a reference to the briefing schedule under section 30605.

(b) A panel's decision on rehearing becomes final 30 days from the date of the decision.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

ARTICLE 7: OTHER MATTERS

30701. CONSOLIDATION

(a) OTA may consolidate appeals for hearing or decision if the facts and issues are similar and no substantial right of any party will be prejudiced. OTA will promptly notify the parties if an appeal is consolidated.

(b) Any party may submit a written objection to consolidation. Any such objection should be submitted within 15 days of the party receiving notice of the consolidation and should establish that consolidation would have an adverse effect on a substantial right of the objecting party.

(c) OTA may deconsolidate appeals if it determines that consolidation would have an adverse effect on a substantial right of any party or if other reasonable cause exists to deconsolidate the appeals.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19047, 19085, 19104, 19333, 19345, and 20645.

30702. DISMISSAL AND POSTPONEMENT

(a) Dismissal. OTA will dismiss an appeal under any of the following circumstances:

- (1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;
- (2) The Franchise Tax Board submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or
- (3) The parties submit a written stipulation, signed by all the parties, in which all parties agree to dismissal.

(b) Postponement and Deferral. OTA may postpone or defer proceedings in an appeal, including hearings and briefing, for reasonable cause. "Reasonable cause" may include, among other things:

- (1) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;
- (2) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;
- (3) A party has obtained a new representative who requires additional time to become familiar with the case;
- (4) All parties desire a postponement;
- (5) A party seeking time to settle or otherwise resolve the appeal;
- (6) An appellant's involvement in a bankruptcy action; or
- (7) Pending court litigation, or proceedings at the Franchise Tax Board, that may impact the appeal proceedings or be relevant to the resolution of the issues on appeal, or the resolution of other pending appeals raising similar issues.

(c) OTA will provide written notification to the parties if an appeal is postponed or deferred.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19047, 19085, 19104, 19333, 19345, and 20645.

30703. REPRESENTATION

- (a) Representation. A person may be represented in an appeal by any authorized person or persons, at least 18 years of age, of the person's choosing, including, but not limited to, an attorney, appraiser, accountant, bookkeeper, employee, business associate, or any other person. For purposes of this section, a person whose only function is to interpret for the taxpayer is not a representative.
- (b) Recognition. OTA will recognize all authorized representatives who are identified in writing or orally by the taxpayer. Authorized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform in connection with an appeal before OTA.
- (c) Substitution or Withdrawal. Taxpayers must promptly notify OTA in writing of any substitutions or withdrawals of representation and must also notify the Franchise Tax Board.
- (d) Suspended or Disbarred Representatives. A person suspended or disbarred from practice before the Franchise Tax Board pursuant to Revenue and Taxation Code section 19523.5 may not represent any taxpayer in a franchise or income tax appeal after the Franchise Tax Board gives OTA notice of the suspension or disbarment.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, 15676, and 15679; Revenue and Taxation Code sections 20, 18533, 19047, 19085, 19104, 19333, 19345, and 20645.

30704. CONFIDENTIAL INFORMATION AND CLOSED HEARINGS

- (a) Oral hearings before a panel are open to the public, unless ordered otherwise in accordance with this section. The appellant's submission of an appeal constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to OTA by the appellant or the Franchise Tax Board. OTA may disclose information pursuant Revenue and Taxation Code section 19545, California Public Records Act (Gov. Code, §§ 6250 et seq.), Part 9.5 of Division 3 of Title 2 of the Government Code, and other applicable law.
- (b) An appellant may request that an oral hearing or a portion of the oral hearing be closed to the public, and may also request that the appeal record or a portion of the appeal record be sealed. Any such request should be made in writing, preferably at the time of submitting the appeal, but prior to the close of the general briefing schedule. The request should state the grounds upon which it is based, and copy all other parties, including the Franchise Tax Board. Any person may oppose or support such a request.

(c) OTA shall determine whether to grant the request, in whole or in part, based upon the following objective criteria:

(1) Whether the appeal involves trade secrets or other confidential research, development, or other information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person, and all of the following criteria are met:

(A) Whether such information is not otherwise publicly available and would ordinarily be considered to be private and sensitive;

(B) Where a request for a closed hearing is made, whether such information is likely to be disclosed during an oral hearing;

(C) Where a request for a closed hearing is made, whether any risk of disclosure of such information can be mitigated by instructing the parties to limit the content of their presentations at the oral hearing.

(2) To ensure the ability of the party to be represented by the person of their choice, in the circumstances of that particular case.

(3) Upon other grounds as necessary to ensure a fair hearing and provision of due process, in the circumstances of that particular case.

(d) This section will be applied and interpreted in a manner that recognizes the public interest in transparency. The mere presence of a tax dispute and allegations of noncompliance with tax law will not constitute sufficient grounds for closing an oral hearing or sealing appeal records.

(e) OTA shall issue a written order granting or denying any request to close an oral hearing or seal records, in whole or in part.

(f) Protection from Identity Theft.

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

(2) Nothing in this paragraph prohibits any party to an OTA hearing, administrative law judges, or OTA staff from referring to information described in this paragraph in briefs submitted under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a hearing.

(g) There is no right to confidentiality as to relevant information that OTA includes in a written opinion that is required to be published pursuant to Government Code section 15675.

Note: Authority cited: Government Code sections 15676.5, 15679. Reference: Government Code sections 6254, 11124.1, 11425.20, 15570.84, 15606, 15619, 15670, 15672, 15674, 15675, 15676, and 15679; Revenue and Taxation Code sections 20, 18533, 19047, 19085, 19104, 19333, 19345, 19542, 19545, and 20645.

30705. BURDEN OF PROOF

- (a) Except as otherwise specifically provided by law, the burden of proof is 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 is upon the Franchise Tax Board.
- (c) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645.

30707. TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS

- (a) **Eligible Claims.** Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund, are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before OTA do not include fees and expenses incurred in cases where an appeal has been submitted, but is resolved before the submission of the Franchise Tax Board's opening brief. Fees and expenses are reimbursable only if a panel issues a finding in writing that the action taken by the Franchise Tax Board was unreasonable. To determine whether the Franchise Tax Board has been unreasonable, a panel will consider whether the Franchise Tax Board has established that its position was substantially justified. An appellant whose appeal was not granted does not have an eligible claim. Reasonable fees for professional representation before OTA will be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).
- (b) **Claim Procedure.** The claim must be submitted with OTA and may use any form provided by OTA. The completed claim must be submitted within one year of the date the decision of the panel becomes final. OTA may grant extensions of time to submit a completed claim form upon a showing of reasonable cause, if the written request is submitted with OTA prior to the scheduled due date of the claim. If the claim is incomplete, the claimant will be granted 30 days additional time to complete the claim form. Failure to submit a complete claim within the time granted will result in dismissal of the claim by OTA.
- (c) **Dismissal of Ineligible Claim.** OTA must dismiss a claim if a panel previously disposed of the appeal without granting the appeal.

- (d) Franchise Tax Board Statement. Within 60 days of OTA's acknowledgement of a completed claim, the Franchise Tax Board must submit a statement in response to the claim. OTA may grant extensions of time to submit the statement upon a showing of reasonable cause, if a written request is submitted with OTA before the scheduled due date of the statement.
- (e) Claimant Response. The Franchise Tax Board statement must be mailed to the claimant, who must be given the opportunity to respond within 60 days of service of the statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. OTA may grant extensions of time to submit a response upon a showing of reasonable cause if the written request for extension is submitted with OTA before the scheduled due date of the response. If the claimant submits new information or documentation in the response, the Franchise Tax Board may be given an additional 30 days to respond to the new material.
- (f) Oral Hearing. After the submission of documents described in this section, the claim will be scheduled for oral hearing. The claimant and the Franchise Tax Board will receive at least 45 days notice of the hearing date and time. Oral hearing may be waived by the taxpayer, in which the matter will be submitted for decision on the basis of the written submissions.
- (g) Notice of Decision. OTA will send written notice of the decision to the claimant and to the Franchise Tax Board. The decision on the claim is final 30 days from the date it is mailed.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15606, 15670, 15672, 15674, 15676, and 15679; Revenue and Taxation Code sections 20, 7156, 18533, 19047, 19085, 19104, 19333, 19345, 20645, and 21013.

30708. GENERAL PROCEDURES

- (a) To the extent not inconsistent with Part 9.5 of Division 3 of Title 2 of the Government Code and these rules, hearings and proceedings will be conducted in accordance with the Administrative Procedure Act. Generally, to the extent permitted by the Administrative Procedure Act, hearings at OTA will be conducted using hearing procedures that are accessible to non-lawyers, including accountants, and to appellants who are representing themselves. As provided in the Administrative Procedure Act, any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.
- (b) However, panels will require an oath or affirmation for the presentation of oral evidence. In addition, a panel has the discretion to take or allow such actions as are permitted by the Administrative Procedure Act.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11400, *et seq.*, 11500, *et seq.*, 15606, 15670, 15672, 15674, 15676, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333,

19334, 19335, 19343, 19345, 19346 and 20645.

30709. APPLICATION OF ETHICS CODES

Each administrative law judge of OTA will abide by the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges, including, but not limited to, those canons governing conflicts of interest.

Note: Authority cited: Government Code section 15679. Reference: California Constitution article VI, section 18, subdivision (m); Government Code sections 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15606, 15670, 15672, 15674, 15676, and 15679.

30710. POSTING OF THE HEARING SCHEDULE ON OTA'S WEBSITE

Once a matter has been scheduled for a hearing date, it will be posted onto OTA's website fifteen (15) calendar days before the hearing date.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11400 and 11425.2

30711. CLOSING AN ORAL HEARING

At the close of a hearing proceeding, the panel will determine when the official hearing record will be closed for receipt of further evidence or argument (the submission date). The panel may extend the submission date at its discretion.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11400, 11425.50 and 11500.

OFFICE OF TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 4. Office of Tax Appeals- Rules for Tax Appeals
Chapter 2: Business Tax Appeals

ARTICLE 1: APPLICATION OF CHAPTER 2, DEFINITIONS, AND JURISDICTION**30800. APPLICATION OF CHAPTER 2**

This chapter applies to appeals and petitions for rehearing, with respect to a tax or fee administered by California Department of Tax and Fee Administration, under laws, including but not limited to:

- (a) Sales and Use Tax Law (pt. 1 of div. 2 of the Rev. & Tax. Code).
- (b) Uniform Local Sales and Use Tax Law (pt. 1.5 of div. 2 of the Rev. & Tax. Code).
- (c) Transactions and Use Tax Law and Additional Local Taxes (pt. 1.6 and pt. 1.7 of div. 2 of the Rev. & Tax. Code).
- (d) Motor Vehicle Fuel Tax Law (pt. 2 of div. 2 of the Rev. & Tax. Code).
- (e) Use Fuel Tax Law (pt. 3 of div. 2 of the Rev. & Tax. Code).
- (f) Cigarette and Tobacco Products Tax Law (pt. 13 of div. 2 of the Rev. & Tax. Code).
- (g) Cannabis Tax (pt.14.5 of div. 2 of the Rev. & Tax. Code).
- (h) Timber Yield Tax Law (pt. 18.5 of div. 2 of the Rev. & Tax. Code).
- (i) Energy Resources Surcharge Law (pt. 19 of div. 2 of the Rev. & Tax. Code).
- (j) Emergency Telephone Users Surcharge Law (pt. 20 of div. 2 of the Rev. & Tax. Code).
- (k) Hazardous Substances Tax Law, which is also applicable to the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee (pt. 22 of div. 2 of the Rev. & Tax. Code).
- (l) Integrated Waste Management Fee Law (pt. 23 of div. 2 of the Rev. & Tax. Code).
- (m) Oil Spill Response, Prevention, and Administration Fees Law (pt. 24 of div. 2 of the Rev. & Tax. Code).
- (n) Underground Storage Tank Maintenance Fee Law (pt. 26 of div. 2 of the Rev. & Tax. Code).
- (o) Fee Collection Procedures Law (pt. 30 of div. 2 of the Rev. & Tax. Code).

- (p) Diesel Fuel Tax Law (pt. 31 of div. 2 of the Rev. & Tax. Code).
- (q) Cigarette and Tobacco Products Licensing Act (div. 8.6 of the Bus. and Prof. Code).
- (r) Lead-Acid Battery Recycling Act (art. 10.5 of ch. 6.5 of the Health and Safety Code).
- (s) California Tire Fee (Pub. Resources Code, §§ 42860-42895).
- (t) Marine Invasive Species Fee Collection Law (Pub. Resources Code, §§ 71200-71271; Rev. & Tax. Code, §§ 44000-44008).
- (u) Natural Gas Surcharge Law (Pub. Util. Code, §§ 890-900).
- (v) Organizational Clearance Certificates (Rev. & Tax. Code, §§ 214-214.17, 254.6, 271).

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22970.2, 22977.2, 22973.1, and 22979; Health and Safety Code sections 25215.74 and 25215.45; Government Code sections 15570.54, 15672, and 15674; Public Resources Code section 42882; Public Utilities Code section 893; Revenue and Taxation Code sections 254.6, 271, 6538, 6538.5, 6561, 6562, 6901, 6906, 6981, 7051, 7202, 7203, 7210, 7211, 7261, 7262, 7700, 7700.5, 7710, 7711, 8126, 8191, 8251, 8828, 8828.5, 8851, 8852, 9151, 9196, 9251, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30261, 30262, 30361, 30365, 30451, 34013, 38433, 38435, 38441, 38443, 38601, 38605, 38631, 38701, 40091, 40093, 40111, 40115, 40121, 40171, 41085, 41087, 41100, 41104, 41107, 41128, 43056, 43057, 43301, 43303, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 43501, 45301, 45303, 45352, 45353, 45651, 45654, 45801, 45851, 46302, 46303, 46351, 46353, 46501, 46505, 46551, 46601, 50114, 50116, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 50152, 55081, 55083, 55102, 55103, 55221, 55221.5, 55224, 55281, 55301, 60332, 60333, 60350, 60352, 60501, 60502, 60505, 60521, 60581, and 60601.

30801. DEFINITIONS

The following definitions apply to this chapter:

- (a) "Appeal" means any matter for which a party, dissatisfied with a decision issued by the California Department of Tax and Fee Administration (CDTFA), may submit a brief challenging that decision to the Office of Tax Appeals (OTA), including, but not limited to:
 - (1) A petition, including a petition for redetermination, petition for rehearing of successor liability, petition for release of seized property, or petition for redistribution of local or district tax;
 - (2) Administrative protest, as that term is defined in the regulations of the California Department of Tax and Fee Administration;
 - (3) Claim for refund; or
 - (4) Application for administrative hearing.

(b) "Appeals Bureau" means the Appeals Bureau within the California Department of Tax and Fee Administration.

(c) "Appeals Bureau decision" includes any supplemental decision issued by the CDTFA Appeals Bureau. The Appeals Bureau decision is issued on the date it is mailed to the parties, except where the decision remands the appeal for reaudit. For purposes of this chapter, where the Appeals Bureau decision remands the appeal for reaudit, the Appeals Bureau decision is issued on the date on which the Appeals Bureau mails a letter to the parties explaining the results of the reaudit.

(d) "Brief" means a written document that contains an argument supporting a party's position, whether citing specific laws, regulations, or other authorities or making arguments without citing specific authorities. A brief may be in the form of a letter, other informal writing, or formal legal brief, any of which is subject to the requirements of regulation 30810.

(e) "CDTFA" means the California Department of Tax and Fee Administration.

(f) "Jurisdiction" means, except where context requires otherwise, any city, county, city and county, or special district or other jurisdiction which has adopted a local or district tax.

(g) "Local or district tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200 et seq., or a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251 et seq. or Revenue and Taxation Code section 7285 et seq.

(h) "Mail" includes mailing by United States Postal Service and by other carriers and also includes electronic transmission such as by email. Email containing confidential taxpayer information will be sent by the Office of Tax Appeals only with the taxpayer's written consent. Hard copy mail sent to the Office of Tax Appeals by United States Postal Service and by other carriers must be addressed to:

Office of Tax Appeals, P.O. BOX 989880
West Sacramento CA 95798-9880.

Email sent to the Office of Tax Appeals must be sent in accordance with instructions on its website at www.ota.ca.gov, or as otherwise instructed by the Office of Tax Appeals.

(i) "OTA" means the Office of Tax Appeals.

(j) "Panel" means a three-member panel of OTA administrative law judges.

(k) "Party" means a taxpayer, jurisdiction, or state agency, including CDTFA, that has standing before OTA to support or oppose a CDTFA decision. The term "party" also includes, where appropriate, the party's authorized representative. An authorized representative for a jurisdiction in a petition for redistribution of local or district tax must satisfy the requirements of Revenue and Taxation Code section 7056, subdivision (b).

(l) "Regulation" means a section of title 18 of the California Code of Regulations.

(m) "Representative" is any person who is at least 18 years of age that the taxpayer chooses

to represent the taxpayer before OTA.

(1) OTA will recognize as a taxpayer's representative any person who is at least 18 years of age for whom the taxpayer provides a written power of attorney to OTA for that person to act as the taxpayer's representative.

(2) A person authorized by a taxpayer to act as representative for the taxpayer will be permitted to receive the taxpayer's confidential information related to the appeal, and to perform, on the taxpayer's behalf, any act the taxpayer could perform in connection with the taxpayer's appeal before OTA.

(3) A person authorized to act as a taxpayer's representative will maintain that status, and the right to receive the taxpayer's confidential information and act on the taxpayer's behalf, unless and until the taxpayer notifies OTA in writing that the person is no longer authorized to act as the taxpayer's representative.

(n) "Tax" means any tax, fee, surcharge, or assessment administered by CDTFA.

(o) "Taxpayer" means the person who paid or was assessed the tax that is the subject of an appeal or any other person who submits an appeal to CDTFA. The term "taxpayer" also includes, where appropriate, the taxpayer's authorized representative.

(p) "Writing" or "written" means text, whether recorded on paper or electronically.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15671 and 15672.

ARTICLE 2: HOW TO FILE AN APPEAL FROM CDTFA

30802. REQUEST FOR OTA APPEAL

(a) Before filing an appeal with OTA, challenging a decision of CDTFA, a taxpayer must, in accordance with regulations of CDTFA, request review of that decision by CDTFA's internal Appeals Bureau, and participate in the Appeals Bureau review process. A taxpayer cannot appeal an action or decision of CDTFA to OTA in the absence of an Appeals Bureau decision.

(b) Where the Appeals Bureau decision is adverse to the taxpayer, in whole or in part, the taxpayer may file an appeal to OTA within 30 days of the date the Appeals Bureau decision is issued.

(c) The failure of the taxpayer to appeal to OTA within 30 days of the date the Appeals Bureau decision is issued constitutes a waiver by the taxpayer of any appeal to OTA.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, and 15764; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6537, 6538, 6538.5, 6561, 6562, 6564, 6901, 6906, 6981, 7699, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8827, 8828, 8828.5, 8851, 8852, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177,

30242, 30243, 30243.5, 30261, 30262, 30263, 30361, 30365, 38432, 38433, 38435, 38441, 38443, 38445, 38601, 38605, 38631, 40091, 40093, 40095, 40111, 40115, 40121, 41085, 41087, 41089, 41100, 41104, 41107, 43301, 43303, 43305, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45301, 45303, 45305, 45351, 45352, 45353, 45651, 45654, 45801, 46301, 46302, 46303, 46351, 46353, 46355, 46501, 46505, 46551, 50114, 50116, 50118, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55081, 55083, 55085, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60331, 60332, 60333, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

30803. APPEALS TO OTA BY OTHER STATE AGENCY

(a) Where a state agency other than CDTFA is a party to a taxpayer's appeal and the Appeals Bureau decision is adverse to that other state agency, the state agency may appeal that decision to OTA within 30 days of the date the Appeals Bureau decision is issued.

(b) The failure of the state agency to appeal to OTA within 30 days of the date the Appeals Bureau decision is issued constitutes a waiver by the state agency of any appeal to OTA.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6537, 6538, 6538.5, 6561, 6562, 6564, 6901, 6906, 6981, 7699, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8827, 8828, 8828.5, 8851, 8852, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30242, 30243, 30243.5, 30261, 30262, 30263, 30361, 30365, 38432, 38433, 38435, 38441, 38443, 38445, 38601, 38605, 38631, 40091, 40093, 40095, 40111, 40115, 40121, 41085, 41087, 41089, 41100, 41104, 41107, 43301, 43303, 43305, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45301, 45303, 45305, 45351, 45352, 45353, 45651, 45654, 45801, 46301, 46302, 46303, 46351, 46353, 46355, 46501, 46505, 46551, 50114, 50116, 50118, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55081, 55083, 55085, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60331, 60332, 60333, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

30804. APPEAL TO OTA IN PETITION FOR REDISTRIBUTION

(a) Where a jurisdiction, including a notified jurisdiction as that term is defined by CDTFA regulations, is a party to a petition for redistribution of local or district tax and the Appeals Bureau decision is adverse to that jurisdiction, in whole or in part, the jurisdiction may appeal to OTA within 60 days of the date the Appeals Bureau decision is issued.

(b) The failure of a jurisdiction to appeal to OTA within 60 days of the date the Appeals Bureau decision is issued constitutes a waiver by the jurisdiction of appeal to OTA.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15570.54, 15672, and 15674; Revenue and Taxation Code sections 7202, 7203, 7261, and 7262.

30805. REQUIREMENTS FOR APPEALS TO OTA

(a) An appeal to OTA of an Appeals Bureau decision may be submitted on a form provided by OTA or as a letter or other document, and may be typed or handwritten, but must include:

- (1) The taxpayer's CDTFA account number;
 - (2) The case identification number (case ID) assigned by CDTFA to identify the appeal;
 - (3) The date of the Appeals Bureau decision for which an appeal is requested;
 - (4) The identity of the party seeking an appeal;
 - (5) The telephone number, email address, and street address for the party or for the party's representative; and
 - (6) The signature of the party seeking an appeal or that party's authorized representative.
 - (A) If the appeal is signed by a representative on the taxpayer's behalf, the request for review must be accompanied by a power of attorney signed by the taxpayer authorizing the person to act as the taxpayer's representative in the appeal;
 - (B) The power of attorney may be on a form provided by OTA or by CDTFA, and if a power of attorney had already been submitted to CDTFA during the course of the appeal, a copy of that power of attorney will satisfy this requirement.
- (b) The party requesting an OTA appeal must mail a copy to CDTFA as follows:
- Assistant Chief Counsel, Tax and Fee Programs Bureau
California Department of Tax and Fee Administration
PO Box 942879
Sacramento, CA 94279-0082
- (c) The information required by subdivision (a) allows OTA to properly identify the appeal, and to contact the party or the party's representative. If the requirements of paragraph (a)(5) are satisfied and OTA can identify the appeal and the contact information for the party or the party's representative, OTA will accept the appeal as valid even if some of the information required by subdivision (a) is not provided. Otherwise, if all such information is not provided, OTA will mail notice advising the party what additional information is required, and will provide 30 days for the party to complete its filing of the appeal. If the party submits the required information within the 30-day period, OTA will accept the appeal. If the party does not submit the required information within that period, OTA may dismiss the appeal. If OTA dismisses the appeal, it will mail written notice of the dismissal to all parties.
- (d) Where OTA receives a timely appeal, OTA will mail an acknowledgement of receipt of the appeal to each party to the appeal. Where the appeal is a petition for redistribution of local or district tax, OTA will also mail a copy of the acknowledgement to the taxpayer whose allocations are the subject of the petition, and will inform the taxpayer that it will not be regarded as a party to the appeal unless it chooses to actively participate in the appeal process by either submitting a brief to OTA or making a presentation at a hearing before OTA.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15672, 15674, 15676,

and 15678; Revenue and Taxation Code sections 214.01, 254.6, 6486, 6515, 6539, 6561.5, 6566, 6904, 6906, 7663, 7671, 7707, 7710.5, 7712, 8129, 8781, 8805, 8829, 8851.5, 8855, 9153, 30206, 30225, 30244, 30261.5, 30265, 30363, 30365, 38416, 38425, 38434, 38442, 38447, 38603, 38605, 40076, 40085, 40092, 40097, 40113, 40115, 41075, 41084, 41086, 41091, 41102, 41104, 43201, 43302, 43307, 43452, 43454, 45201, 45302, 45307, 45652, 45654, 46202, 46255, 46352, 46357, 46503, 46505, 50113, 50115, 50120, 50140, 50142, 55061, 55082, 55087, 55222, 55224, 60173, 60304, 60311, 60340, 60351, 60354, and 60523.

30806. AUTHORITY OF OTA AND BURDEN OF PROOF

(a) Where an action or decision of another state agency is not subject to CDTFA review, that action or decision is likewise not subject to appeal to OTA.

(b) Except as otherwise specifically provided by law, the burden of proof is upon the taxpayer by a preponderance of evidence as to all issues of fact; where an issue in the appeal is whether the taxpayer committed fraud with intent to evade tax, the burden of proof with respect to that issue is upon CDTFA or, if applicable, other state agency, by clear and convincing evidence. For a petition for redistribution of local or district tax, the burden of proof is on the petitioning jurisdiction.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22974.7, 22977.2, 22978.7, 22979, and 22979.7; Government Code sections 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 20, 254.6, 271, 6480.4, 6485, 6514, 6514.1, 6538, 6538.5, 6561, 6562, 6901, 6906, 6981, 7209, 7662, 7673, 7700, 7700.5, 7710, 7711, 8126, 8191, 8780, 8804, 8828, 8828.5, 8851, 8852, 9151, 9196, 30176, 30176.1, 30176.2, 30175, 30177, 30205, 30224, 30243, 30243.5, 30261, 30262, 30361, 30365, 38415, 38424, 38433, 38435, 38441, 38443, 38601, 38605, 38631, 40075, 40084, 40091, 40093, 40111, 40115, 40121, 41074, 41083, 41085, 41087, 41100, 41104, 41107, 43201, 43301, 43303, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45201, 45301, 45303, 45352, 45353, 45651, 45654, 45801, 46201, 46254, 46302, 46303, 46351, 46353, 46501, 46505, 46551, 50113, 50114, 50116, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55061, 55081, 55083, 55102, 55103, 55221, 55221.5, 55224, 55281, 60303, 60313, 60332, 60333, 60350, 60352, 60501, 60502, 60505, 60521, 60581.

ARTICLE 3: REVISED APPEALS BUREAU DECISION AND REQUEST FOR RECONSIDERATION OF APPEALS BUREAU DECISION

30807. REVISED APPEALS BUREAU DECISION

If the Appeals Bureau issues a revised or supplemental decision during the period which a party may appeal to OTA, or if, within that period, mails notice to the parties of its intent to issue a revised or supplemental decision, the period for appealing to OTA is extended to 30 days after issuance of the revised or supplemental decision; for a petition for redistribution of local or district tax, the period during which a party may appeal to OTA review will not be less than 60 days from issuance of the original Appeals Bureau decision. An appeal to OTA submitted prior to issuance of the revised or supplemental decision remains valid except as provided in regulation 30808.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code

sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6537, 6538, 6538.5, 6561, 6562, 6564, 6901, 6906, 6981, 7699, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8827, 8828, 8828.5, 8851, 8852, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30242, 30243, 30243.5, 30261, 30262, 30263, 30361, 30365, 38432, 38433, 38435, 38441, 38443, 38445, 38601, 38605, 38631, 40091, 40093, 40095, 40111, 40115, 40121, 41085, 41087, 41089, 41100, 41104, 41107, 43301, 43303, 43305, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45301, 45303, 45305, 45351, 45352, 45353, 45651, 45654, 45801, 46301, 46302, 46303, 46351, 46353, 46355, 46501, 46505, 46551, 50114, 50116, 50118, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55081, 55083, 55085, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60331, 60332, 60333, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

30808. REQUEST FOR RECONSIDERATION OF APPEALS BUREAU DECISION

(a) Notwithstanding regulations 30802 through 30807, except as provided in subdivision (b), where a party to an appeal submits a timely request for reconsideration of the Appeals Bureau decision under CDTFA regulations, jurisdiction over the matter will remain with, or return to, the Appeals Bureau, and any pending OTA appeal will be rendered moot. When the Appeals Bureau issues its supplemental decision, the relevant provisions of regulations 30802 through 30807 will be applicable.

(b) Where a party submits a timely request for reconsideration of a supplemental decision of the Appeals Bureau and issuance of another supplemental decision is discretionary with the Appeals Bureau, any appeal to OTA of the issued supplemental decision will be held in abeyance until the Appeals Bureau advises the parties whether or not the request for reconsideration is accepted or rejected. If the request for reconsideration is accepted and another supplemental decision will be issued, any pending OTA appeal is rendered moot. The relevant provisions of regulations 30802 through 30807 will be applicable when the Appeals Bureau issues its supplemental decision. If the request for reconsideration is rejected, any previously submitted OTA appeal will be reinstated, and the parties will have an additional 30 days from the date the Appeals Bureau mails notices to the parties of the rejection to submit an appeal to OTA.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6537, 6538, 6538.5, 6561, 6562, 6564, 6901, 6906, 6981, 7699, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8827, 8828, 8828.5, 8851, 8852, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30242, 30243, 30243.5, 30261, 30262, 30263, 30361, 30365, 38432, 38433, 38435, 38441, 38443, 38445, 38601, 38605, 38631, 40091, 40093, 40095, 40111, 40115, 40121, 41085, 41087, 41089, 41100, 41104, 41107, 43301, 43303, 43305, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45301, 45303, 45305, 45351, 45352, 45353, 45651, 45654, 45801, 46301, 46302, 46303, 46351, 46353, 46355, 46501, 46505, 46551, 50114, 50116, 50118, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55081, 55083, 55085, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60331, 60332, 60333, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

ARTICLE 4: BRIEFS AND SCHEDULING

30809. BRIEFS

(a) Each party who appealed to OTA should submit an opening brief identifying what the party believes is in error or omitted from the CDTFA decision, and explaining why the identified error(s) or omission(s) justifies a different result.

(b) Any party to an appeal before OTA may submit a brief in response to an opening brief or briefs; if no opening brief as described in subdivision (a) is submitted, any party may submit a brief in response to the appeal.

(c) Any party to an appeal before OTA may submit a brief in reply to a reply brief, but only to address new facts, issues, or arguments raised in the response brief to which it replies. A reply brief shall not simply repeat arguments from another brief submitted to OTA by that party in the same appeal unless, with the permission of OTA, the reply brief is submitted to incorporate all arguments of that party and to supersede and replace any prior brief(s) the party submitted to OTA.

(d) OTA will establish a briefing schedule and will mail that schedule to the parties to the appeal. Absent an order by OTA indicating otherwise, the party who appealed to OTA will be allowed 30 days from the date the briefing schedule is mailed to submit an opening brief, the responding party will be allowed 30 days after the due date of the opening brief to submit a response brief, and the party requesting review will be allowed 30 days after the due date of the response brief to submit a reply brief. OTA may order additional briefing as it deems necessary. For a petition for redistribution of local or district tax, OTA will also mail a copy of the briefing schedule to the taxpayer whose allocations are the subject of the petition.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6538, 6561, 6901, 6906, 6981, 7081, 7700, 7710, 8126, 8191, 8828, 8851, 9151, 9196, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30261, 30361, 30365, 38433, 38441, 38601, 38605, 38631, 40091, 40111, 40115, 40121, 41085, 41100, 41104, 41107, 43301, 43351, 43451, 43451.5, 43452, 43454, 43491, 45301, 45352, 45651, 45654, 45801, 46302, 46351, 46501, 46505, 46551, 50114, 50120.2, 50139, 50139.5, 50142, 50151, 55081, 55102, 55221, 55221.5, 55224, 55281, 60332, 60350, 60501, 60502, 60505, 60521, and 60581.

30810. REQUIREMENTS FOR BRIEFS

(a) Excluding exhibits, briefs shall be submitted on 8 1/2" by 11" pages and may not exceed 30 double-spaced pages that are typed or handwritten, or 15 single-spaced pages that are typed or handwritten.

(b) Briefs shall be printed on only one side of the page using a type-font size of at least 10 points or 12 characters per inch, or the equivalent.

(c) OTA may increase the specified page limit based upon a written application setting forth circumstances that justify additional pages. In the event a brief does not conform to the form and page limits specified above, OTA may return the submitted brief and direct the party to comply with the form and page limits by the date specified by OTA. Failure to submit a compliant brief by the specified date will constitute a waiver of the opportunity to submit the brief.

(d) A party submitting a brief to OTA must mail a copy of that brief to each of the other parties in the appeal.

(e) A party may request an extension for filing a brief after the date specified by OTA for that filing. OTA will notify the party whether the request is granted or denied. Where OTA grants a request for extension, its notification will state the extended due date for the brief, and will be copied to all other parties. If warranted, the notification will include revised due date for briefs to be submitted by other parties.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 11440.20, 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6538, 6561, 6901, 6906, 6981, 7081, 7700, 7710, 8126, 8191, 8828, 8851, 9151, 9196, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30261, 30361, 30365, 38433, 38441, 38601, 38605, 38631, 40091, 40111, 40115, 40121, 41085, 41100, 41104, 41107, 43301, 43351, 43451, 43451.5, 43452, 43454, 43491, 45301, 45352, 45651, 45654, 45801, 46302, 46351, 46501, 46505, 46551, 50114, 50120.2, 50139, 50139.5, 50142, 50151, 55081, 55102, 55221, 55221.5, 55224, 55281, 60332, 60350, 60501, 60502, 60505, 60521, and 60581.

30811. REQUEST FOR ORAL HEARING BEFORE OTA

(a) OTA will mail a letter to the parties, generally after briefing is complete, asking each party to respond within 15 days of the mailing of the letter indicating whether the party wishes an oral hearing before a panel or wishes the panel to decide the appeal based on the record. The letter will also ask that, if the taxpayer requests an oral hearing, the taxpayer indicate a preference for Sacramento, Los Angeles, or Fresno as the location of the hearing.

(b) If the taxpayer, or a jurisdiction who is a party to a petition for redistribution of local or district tax, timely requests an oral hearing, that request shall be granted.

(c) Where the taxpayer does not timely request an oral hearing but another party does so, OTA will consider that request in deciding whether to schedule an oral hearing.

(d) If no party timely requests an oral hearing, OTA may nevertheless schedule an oral hearing if it believes such a hearing is necessary to resolve the issues at appeal.

(e) OTA will mail notice to the parties stating whether an oral hearing will be scheduled or if the appeal will be decided based on the record as submitted.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 11440.20, 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6538, 6538.5, 6561, 6562, 6901, 6906, 6981, 7081, 7700, 7700.5, 7710, 7711, 8126, 8191, 8828, 8828.5, 8851, 8852, 9151, 9196, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30261, 30262, 30361, 30365, 38433, 38435, 38441, 38443, 38601, 38605, 38631, 40091, 40093, 40111, 40115, 40121, 41085, 41087, 41100, 41104, 41107, 43301, 43303, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45301, 45303, 45352, 45353, 45651, 45654, 45801,

46302, 46303, 46351, 46353, 46501, 46505, 46551, 50114, 50116, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55081, 55083, 55102, 55103, 55221, 55221.5, 55281, 60332, 60333, 60350, 60352, 60501, 60502, 60505, 60521, and 60581.

30812. SETTLEMENT PROPOSAL

If CDTFA notifies OTA that it has accepted for settlement consideration a settlement proposal submitted by the taxpayer, OTA will hold the appeal for which that settlement proposal was submitted in abeyance pending resolution of the settlement negotiations. If settlement negotiations are not successful, and upon notification that settlement negotiations have terminated without a settlement, OTA will reactivate the appeal and will advise the parties as to the next step in the appeal.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code section 15672; Revenue and Taxation Code sections 254.6, 6537, 6564, 7093.5, 7699, 7712, 8853, 8827, 9271, 30174, 30242, 30263, 30459.1, 38432, 38445, 40095, 40211, 41089, 41171, 43305, 43350, 43522, 45305, 45351, 45867, 46301, 46355, 46622, 50118, 50120.1, 50156.11, 55085, 55101, 55332, 60331, 60354, and 60636.

30813. NOTICE OF HEARING

At least 45 days before the date of a scheduled oral hearing, OTA will mail a notice of hearing to each party to the appeal, unless all parties to the appeal waive this requirement and agree on a shorter period of notice. For a petition for redistribution of local or district tax, OTA will also mail a copy of the notice of hearing to the taxpayer whose allocations are the subject of the petition. The notice of hearing will identify the appeal and specify the time, date, and location of the hearing. OTA will include with the notice a response to notice of hearing form for completion and return to OTA in accordance with regulation 30814.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22970.2, 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 11440.20, 15570.54, 15672, and 15674; Health and Safety Code sections 25215.45 and 25215.74; Public Resources Code section 42882; Public Utilities Code section 893; Revenue and Taxation Code sections 254.6, 271, 6538, 6538.5, 6561, 6562, 6901, 6906, 6981, 7051, 7081, 7202, 7203, 7210, 7211, 7261, 7262, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8251, 8828, 8828.5, 8851, 8852, 9151, 9196, 9251, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30261, 30262, 30361, 30365, 30451, 34013, 38433, 38435, 38441, 38443, 38601, 38605, 38631, 38701, 40091, 40093, 40111, 40115, 40121, 40171, 41085, 41087, 41100, 41104, 41107, 41128, 43056, 43057, 43301, 43303, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 43501, 44003, 45301, 45303, 45352, 45353, 45651, 45654, 45801, 45851, 46302, 46303, 46351, 46353, 46501, 46505, 46551, 46601, 50114, 50116, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 50152, 55081, 55083, 55102, 55103, 55221, 55221.5, 55281, 55301, 60332, 60333, 60350, 60352, 60501, 60502, 60505, 60521, 60581, and 60601.

30814. RESPONSE TO NOTICE OF HEARING

(a) Within 15 days of the date of mailing of the notice of hearing, each party must return to OTA the completed response to notice of hearing form, indicating: whether the party will appear at the hearing at the time, date, and place stated in the notice, and if so, the person or persons who will appear on the party's behalf; whether the party waives the opportunity to appear at the hearing; or

whether the party requests that the hearing be rescheduled, and the reason for the request.

(b) A party must also indicate on the response to notice of hearing form if the assistance of an interpreter is required for the hearing because the party, or a person who will appear at the hearing as a representative or witness for the party, speaks a primary language other than English, or is deaf. The party must indicate on the response form the primary language spoken by the person requiring the assistance of an interpreter. Where a party requests such assistance of an interpreter for the oral hearing, an interpreter will be provided at no charge.

(c) Where OTA determines that there is good cause for a party's request that the hearing be rescheduled, OTA will generally reschedule the hearing to a date within 60 days of the originally scheduled hearing.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22970.2, 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 11425.10, 11435.15, 11435.20, 11435.25, 11435.55, 11435.60, 11440.20, 15570.54, 15672, and 15674; Health and Safety Code sections 25215.45 and 25215.74; Public Resources Code section 42882; Public Utilities Code section 893; Revenue and Taxation Code sections 254.6, 271, 6538, 6538.5, 6561, 6562, 6901, 6906, 6981, 7051, 7081, 7202, 7203, 7210, 7211, 7261, 7262, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8251, 8828, 8828.5, 8851, 8852, 9151, 9196, 9251, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30261, 30262, 30361, 30365, 30451, 34013, 38433, 38435, 38441, 38443, 38601, 38605, 38631, 38701, 40091, 40093, 40111, 40115, 40121, 40171, 41085, 41087, 41100, 41104, 41107, 41128, 43056, 43057, 43301, 43303, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 43501, 44003, 45301, 45303, 45352, 45353, 45651, 45654, 45801, 45851, 46302, 46303, 46351, 46353, 46501, 46505, 46551, 46601, 50114, 50116, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 50152, 55081, 55083, 55102, 55103, 55221, 55221.5, 55281, 55301, 60332, 60333, 60350, 60352, 60501, 60502, 60505, 60521, 60581, and 60601.

30815. FAILURE TO RESPOND TO NOTICE OF HEARING

Where each party who requested the oral hearing either fails to return the response to notice of hearing form by its due date, or returns the notice indicating that the party waives the opportunity to appear at the hearing, OTA may cancel the scheduled oral hearing and decide the appeal on the basis of the written record on file and without an oral hearing. If OTA decides to cancel the scheduled hearing on this basis, OTA will promptly mail written notice of the cancellation to the parties.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22970.2, 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 11440.20, 15570.54, 15672, and 15674; Health and Safety Code sections 25215.45 and 25215.74; Public Resources Code section 42882; Public Utilities Code section 893; Revenue and Taxation Code sections 254.6, 271, 6538, 6538.5, 6561, 6562, 6901, 6906, 6981, 7051, 7081, 7202, 7203, 7210, 7211, 7261, 7262, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8251, 8828, 8828.5, 8851, 8852, 9151, 9196, 9251, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30261, 30262, 30361, 30365, 30451, 34013, 38433, 38435, 38441, 38443, 38601, 38605, 38631, 38701, 40091, 40093, 40111, 40115, 40121, 40171, 41085, 41087, 41100, 41104, 41107, 41128, 43056, 43057, 43301, 43303, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 43501, 44003, 45301, 45303, 45352, 45353, 45651, 45654, 45801, 45851, 46302, 46303, 46351, 46353, 46501, 46505, 46551, 46601, 50114, 50116, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 50152, 55081, 55083, 55102, 55103, 55221,

55221.5, 55281, 55301, 60332, 60333, 60350, 60352, 60501, 60502, 60505, 60521, 60581, and 60601.

30816. CONFIDENTIAL INFORMATION AND CLOSED ORAL HEARING

(a) Oral hearings before a panel are open to the public, unless ordered otherwise in accordance with this section. The submission of an appeal to OTA constitutes a waiver of the right to confidentiality with regard to information provided to or obtained by OTA from a taxpayer or any other party to the appeal. OTA may disclose information pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.), Part 9.5 of Division 3 of Title 2 of the Government Code, and other applicable law.

(b) A taxpayer may request that an oral hearing or a portion of the oral hearing be closed to the public, and may also request that the appeal record or a portion of the appeal record be sealed. Any such request should be made in writing, preferably at the time the taxpayer appeals to OTA, but no later than the due date of the taxpayer's response to notice of hearing form set forth in regulation 30814. The request should state the grounds upon which it is based, and should copy all other parties to the appeal. Any person may oppose or support such a request.

(c) OTA shall determine whether to grant the request, in whole or in part, based upon the following objective criteria:

(1) Whether the appeal involves trade secrets, confidential research or development information, or other information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person, and all of the following criteria are met:

(A) Whether such information is not otherwise publicly available and would ordinarily be considered to be private and sensitive;

(B) For a request for closed hearing, whether such information is likely to be disclosed during the hearing; and

(C) For a request for closed hearing, whether any risk of disclosure of such information can be mitigated by instructing the parties to limit the content of their presentations at the oral hearing.

(2) To ensure the ability of the party to be represented by the person of their choice, in the circumstances of that particular case.

(3) Upon other grounds as necessary to ensure a fair hearing and provision of due process, in the circumstances of that particular case.

(d) This section will be applied and interpreted in a manner that recognizes the public interest in transparency. The mere presence of a tax dispute and allegations of noncompliance with tax law will not constitute sufficient grounds for closing an oral hearing or sealing records.

(e) OTA shall issue a written order granting or denying a request to close an oral hearing or seal records, in whole or in part.

(f) Protection from Identity Theft.

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

(2) Nothing in this paragraph prohibits any party to an OTA hearing, Administrative Law Judges, or OTA staff from referring to information described in this paragraph in briefs submitted under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a hearing.

(g) There is no right to confidentiality as to relevant information that OTA includes in a written opinion that is required to be published pursuant to Government Code section 15675.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22970.2, 22973.1, 22977.2, and 22979; Health and Safety Code sections 25215.45 and 25215.74; Government Code sections 6254, 11415.40, 11425.10, 11425.20, 11440.20, 15570.54, 15672, 15674, and 15676.5; Public Resources Code section 42882; Public Utilities Code section 893; Revenue and Taxation Code sections 40, 254.6, 271, 6538, 6538.5, 6561, 6562, 6901, 6906, 6981, 7051, 7056, 7057, 7057.5, 7081, 7202, 7203, 7210, 7211, 7261, 7262, 7700, 7700.5, 7710, 7711, 8126, 8191, 8251, 8255, 8828, 8828.5, 8851, 8852, 9151, 9196, 9251, 9255, 9255.1, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30261, 30262, 30361, 30365, 30451, 30455, 34013, 38433, 38435, 38441, 38443, 38601, 38605, 38631, 38701, 40091, 40093, 40111, 40115, 40121, 40171, 41085, 41087, 41100, 41104, 41107, 41128, 43056, 43057, 43301, 43303, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 43501, 43505, 43651, 44003, 45301, 45303, 45352, 45353, 45651, 45654, 45801, 45851, 45855, 45981, 45982, 45983, 45984, 46302, 46303, 46351, 46353, 46501, 46505, 46551, 46601, 50114, 50116, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 50152, 50159, 50160, 50161, 50162, 55081, 55083, 55102, 55103, 55221, 55221.5, 55224, 55281, 55301, 55381, 60332, 60333, 60350, 60352, 60501, 60502, 60505, 60521, 60581, 60601, 60608, and 60609.

ARTICLE 5: OTA ACTIONS ON APPEALS

30817. WRITTEN OPINIONS

(a) OTA will publish a written opinion for each appeal decided by a panel. The panel that decides an appeal will issue a written opinion explaining its reasons for granting or denying the appeal, in whole or in part.

(b) The written opinion will include findings of fact, the legal issue or issues presented, applicable law, analysis, the decision of the panel, and the names of the adopting administrative law judges and any administrative law judge(s) concurring in the result.

(c) In order to issue an opinion, at least two out of three panel members must concur in the disposition of each holding of the opinion. A concurring or dissenting member may provide a separate written opinion explaining the basis for the member's concurrence or dissent.

(d) The opinion becomes final 30 days after OTA mails a copy of the opinion to the parties

unless, within that 30-day period, a party to the appeal submits a petition for rehearing under regulation 30820.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 15570.54, 15672, 15674, and 15675; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 40, 254.6, 271, 6537, 6538, 6561, 6564, 6901, 6906, 6981, 7699, 7700, 7710, 7712, 8126, 8191, 8827, 8828, 8851, 8852, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30242, 30243, 30261, 30263, 30361, 30365, 38432, 38433, 38441, 38445, 38601, 38605, 38631, 40091, 40095, 40111, 40115, 40121, 41085, 41089, 41100, 41104, 41107, 43301, 43305, 43350, 43351, 43451, 43451.5, 43452, 43454, 43491, 45301, 45305, 45351, 45352, 45651, 45654, 45801, 46301, 46302, 46351, 46355, 46501, 46505, 46551, 50114, 50118, 50120.1, 50120.2, 50139, 50139.5, 50142, 50151, 55081, 55085, 55101, 55102, 55221, 55221.5, 55224, 55281, 60331, 60332, 60350, 60354, 60501, 60502, 60505, 60521, and 60581.

30818. PUBLICATION OF WRITTEN OPINION

(a) Within 100 days after the date upon which the panel's opinion becomes final, OTA will publish the panel's decision as OTA's written opinion for the appeal. The published opinion will include the names of the administrative law judges concurring and/or dissenting with each holding in the opinion.

(b) A published written opinion of OTA may be cited but is not precedential in any other appeal before OTA unless OTA designates the published written opinion as precedential. OTA will consider the following in determining whether to designate an opinion as precedential in accordance with Government Code section 11425.60:

- (1) Whether the opinion establishes a new interpretation of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies or repeals an existing rule;
- (2) Whether the opinion resolves an apparent inconsistency in the law;
- (3) Whether the opinion involves a legal issue of continuing public interest;
- (4) Whether the opinion makes a significant contribution to the law by reviewing the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law; or
- (5) Whether any other basis justifies designating the opinion as precedential.

(c) OTA may withdraw, in whole or in part, the precedential status of an opinion previously designated as precedential in a later appeal before OTA by explaining in the decision issued in that later appeal why the precedential status has been removed. Where OTA does so, the notation of the precedential status will be removed from the published version of the prior opinion and replaced with a notation that the opinion was previously designated as precedential, but its precedential status had thereafter been removed. The notation will also include an explanation for removing the precedential designation.

(d) Precedential opinions of the State Board of Equalization which were adopted prior to January 1, 2018, in accordance with applicable law and regulations, may be cited as precedential authority to OTA unless OTA removes the precedential status of the opinion in accordance with subdivision (c). Where OTA removes, in whole or in part, the precedential status of an opinion of the State Board of Equalization, it will publish on its website a specific notation that the previously precedential State Board of Equalization opinion is no longer precedential, along with the date of the OTA opinion removing the precedential status.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 11425.60, 15570.54, 15672, 15674, and 15675; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 40, 254.6, 271, 6537, 6538, 6561, 6564, 6901, 6906, 6981, 7699, 7700, 7710, 7712, 8126, 8191, 8827, 8828, 8851, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30242, 30243, 30261, 30263, 30361, 30365, 38432, 38433, 38441, 38445, 38601, 38605, 38631, 40091, 40095, 40111, 40115, 40121, 41085, 41089, 41100, 41104, 41107, 43301, 43305, 43350, 43351, 43451, 43451.5, 43452, 43454, 43491, 45301, 45305, 45351, 45352, 45651, 45654, 45801, 46301, 46302, 46351, 46355, 46501, 46505, 46551, 50114, 50118, 50120.1, 50120.2, 50139, 50139.5, 50142, 50151, 55081, 55085, 55101, 55102, 55221, 55221.5, 55224, 55281, 60331, 60332, 60350, 60354, 60501, 60502, 60505, 60521, and 60581.

30819. RETURN OF APPEAL TO CDTFA

When its decision becomes final, OTA will return the appeal to CDTFA to issue the notice of redetermination, notice of action on claim, or other applicable notification document to the taxpayer and other parties based on the panel's decision.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 214.01, 254.6, 271, 6486, 6515, 6537, 6538, 6539, 6561, 6564, 6566, 6901, 6906, 6981, 7663, 7671, 7699, 7700, 7707, 7710, 7712, 8126, 8191, 8781, 8805, 8827, 8828, 8829, 8851, 8853, 8855, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30206, 30225, 30242, 30243, 30244, 30261, 30263, 30265, 30361, 30365, 38416, 38425, 38432, 38433, 38434, 38441, 38445, 38447, 38601, 38605, 38631, 40076, 40085, 40091, 40095, 40097, 40111, 40115, 40121, 41075, 41084, 41085, 41089, 41091, 41100, 41104, 41107, 43201, 43301, 43305, 43307, 43350, 43351, 43451, 43451.5, 43452, 43454, 43491, 45201, 45301, 45305, 45307, 45351, 45352, 45651, 45654, 45801, 46202, 46255, 46301, 46302, 46351, 46355, 46357, 46501, 46505, 46551, 50113, 50114, 50118, 50120, 50120.1, 50120.2, 50139, 50139.5, 50142, 50151, 55061, 55081, 55085, 55087, 55101, 55102, 55221, 55221.5, 55224, 55281, 60173, 60304, 60311, 60331, 60332, 60340, 60350, 60354, 60501, 60502, 60505, 60521, and 60581.

ARTICLE 6: PETITION FOR REHEARING

30820. REQUIREMENTS FOR PETITION FOR REHEARING

A party may submit to OTA a petition for rehearing in an appeal where OTA's decision was adverse to that party, in whole or in part, provided the petition for rehearing is submitted in writing no later

than 30 days after the date the panel issues its written opinion. A panel issues its written opinion on the date the written opinion is mailed to the parties at the address provided by the parties to OTA. A party may not submit more than one petition for rehearing with regard to the same appeal. A petition for rehearing must:

- (a) Identify an irregularity in OTA's proceedings that prevented the fair consideration of the party's appeal;
- (b) Identify an accident or surprise that occurred with respect to the appeal which ordinary caution could not have prevented;
- (c) Identify and provide newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to OTA's decision; or
- (d) Demonstrate that there is insufficient evidence to justify OTA's decision or that the decision is contrary to law.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 15570.54, 15672, 15674, and 15675; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 254.6, 271, 6537, 6538, 6538.5, 6561, 6562, 6564, 6901, 6906, 6981, 7081, 7699, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8827, 8828, 8828.5, 8851, 8852, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30242, 30243, 30243.5, 30261, 30262, 30263, 30361, 30365, 38432, 38433, 38435, 38443, 38445, 38441, 38601, 38605, 38631, 40091, 40093, 40095, 40111, 40115, 40121, 41085, 41087, 41089, 41100, 41104, 41107, 43301, 43303, 43305, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45301, 45303, 45305, 45351, 45353, 45352, 45651, 45654, 45801, 46301, 46302, 46303, 46351, 46353, 46355, 46501, 46505, 46551, 50114, 50116, 50118, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55081, 55083, 55085, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60331, 60332, 60333, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

30821. TIMELY SUBMITTED PETITION FOR REHEARING

- (a) Where a party submits a timely petition for rehearing, OTA will notify the parties to the appeal of OTA's receipt of that timely petition.
- (b) If OTA finds that a timely petition for rehearing does not satisfy the requirements of regulation 30820, its notification of receipt will explain the deficiency and will allow the party who submitted the petition 30 days to cure the deficiency. If, by the end of that additional 30-day period, the party still has not satisfied the requirements of regulation 30820, OTA will reject the petition and mail written notification of that rejection to the parties to the appeal.
- (c) Where a timely petition for rehearing is rejected under subdivision (b), unless another party had submitted a timely and valid petition for rehearing, OTA's decision on the appeal will be final on the date it mails its notice of rejection of the petition for rehearing.
- (d) No party may submit a petition for rehearing in response to a decision on a petition for rehearing or a panel's issuance of an opinion after a petition for rehearing had been granted. If OTA receives a submission intended as such a petition for rehearing, OTA will reject the submission.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 214.01, 254.6, 271, 6486, 6515, 6537, 6538, 6538.5, 6539, 6561, 6562, 6564, 6566, 6901, 6906, 6981, 7081, 7663, 7671, 7699, 7700, 7700.5, 7707, 7710, 7711, 7712, 8126, 8191, 8781, 8805, 8827, 8828, 8828.5, 8829, 8851, 8852, 8853, 8855, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30206, 30225, 30242, 30243, 30243.5, 30244, 30261, 30262, 30263, 30265, 30361, 30365, 38416, 38425, 38432, 38433, 38434, 38435, 38441, 38443, 38445, 38447, 38601, 38605, 38631, 40076, 40085, 40091, 40093, 40095, 40097, 40111, 40115, 40121, 41075, 41084, 41085, 41087, 41089, 41091, 41100, 41104, 41107, 43201, 43301, 43303, 43305, 43307, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45201, 45301, 45303, 45305, 45307, 45351, 45353, 45352, 45651, 45654, 45801, 46202, 46255, 46301, 46302, 46303, 46351, 46353, 46355, 46357, 46501, 46505, 46551, 50113, 50114, 50116, 50118, 50120, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55061, 55081, 55083, 55085, 55087, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60173, 60304, 60311, 60331, 60332, 60333, 60340, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

30822. ACTION ON PETITION FOR REHEARING

(a) If OTA receives a timely petition for rehearing that it determines satisfies the requirements of regulation 30820, OTA will notify the parties whether it requests or authorizes any additional submissions. After any additional submissions are complete, OTA will notify the parties whether the petition for rehearing is granted or denied.

(b) If OTA grants the petition for rehearing, OTA will reconsider the appeal in accordance with the provisions of regulations 30809 through 30819. The written opinion issued by the panel reconsidering the appeal will supersede and replace the prior written opinion, though the panel reconsidering the appeal may adopt the prior decision as its own or may incorporate some or all of the prior decision into its own written decision.

(c) If OTA denies the petition for rehearing, the decision of the panel for which rehearing was requested will become final on the date that OTA mails notification of the denial, unless OTA had received a timely petition for rehearing submitted by another party to the appeal which OTA had granted or for which it has not yet granted or denied.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11440.20 11425.50, 15570.54, 15672, 15674, and 15675; Health and Safety Code section 25215.45; Public Utilities Code section 893; Revenue and Taxation Code sections 214.01, 254.6, 271, 6486, 6515, 6537, 6538, 6538.5, 6539, 6561, 6562, 6564, 6566, 6901, 6906, 6981, 7081, 7663, 7671, 7699, 7700, 7700.5, 7707, 7710, 7711, 7712, 8126, 8191, 8781, 8805, 8827, 8828, 8828.5, 8829, 8851, 8852, 8853, 8855, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30206, 30225, 30242, 30243, 30243.5, 30244, 30261, 30262, 30263, 30265, 30361, 30365, 38416, 38425, 38432, 38433, 38434, 38435, 38441, 38443, 38445, 38447, 38601, 38605, 38631, 40076, 40085, 40091, 40093, 40095, 40097, 40111, 40115, 40121, 41075, 41084, 41085, 41087, 41089, 41091, 41100, 41104, 41107, 43201, 43301, 43303, 43305, 43307, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45201, 45301, 45303, 45305, 45307, 45351, 45353, 45352, 45651, 45654, 45801, 46202, 46255, 46301, 46302, 46303, 46351, 46353, 46355, 46357, 46501, 46505, 46551, 50113, 50114, 50116, 50118, 50120, 50120.1,

50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55061, 55081, 55083, 55085, 55087, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60173, 60304, 60311, 60331, 60332, 60333, 60340, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

ARTICLE 7: OTHER MATTERS

30823. DISMISSAL AND POSTPONEMENT

(a) Dismissal. OTA will dismiss an appeal where the party who had appealed to OTA submits a written and signed request that the appeal be dismissed because the party accepts the results of the CDTFA Appeals Bureau decision. Where the taxpayer and a state agency other than CDTFA had both appealed to OTA, OTA will dismiss the appeal if both the taxpayer and the state agency submit, jointly or separately, a written and signed request that the appeal be dismissed because each party accepts the results of the CDTFA Appeals Bureau decision. Upon such dismissal, OTA will return the appeal to CDTFA to issue the notice of redetermination, notice of action on claim, or other applicable notification document to the taxpayer and other parties based on the CDTFA Appeals Bureau decision.

(b) Postponement and Deferral. OTA may postpone an appeal or defer particular proceedings in the appeal, including briefing or the oral hearing, for reasonable cause. Among the factors OTA may consider in determining whether there is reasonable cause for a postponement or deferral include:

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

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

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

(4) All parties desire a postponement;

(5) A stay has been imposed in the taxpayer's bankruptcy action; or

(6) Pending court litigation or pending regulatory action by CDTFA may be relevant to the resolution of the issues on appeal.

(c) OTA will mail notice to the parties if an appeal is postponed or if any proceedings in the appeals are deferred.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15570.54, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 214.01, 254.6, 271, 6486, 6515, 6537, 6538, 6538.5, 6539, 6561, 6562, 6564, 6566, 6901, 6906, 6981, 7663, 7671, 7699, 7700, 7700.5, 7707, 7710, 7711, 7712, 8126, 8191, 8781, 8805, 8827, 8828, 8828.5, 8829, 8851, 8852, 8853, 8855, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30206, 30225, 30242, 30243, 30243.5, 30244, 30261, 30262, 30263, 30265, 30361, 30365, 38416, 38425, 38432, 38433,

38434, 38435, 38441, 38443, 38445, 38447, 38601, 38605, 38631, 40076, 40085, 40091, 40093, 40095, 40097, 40111, 40115, 40121, 41075, 41084, 41085, 41087, 41089, 41091, 41100, 41104, 41107, 43201, 43301, 43303, 43305, 43307, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45201, 45301, 45303, 45305, 45307, 45351, 45353, 45352, 45651, 45654, 45801, 46202, 46255, 46301, 46302, 46303, 46351, 46353, 46355, 46357, 46501, 46505, 46551, 50113, 50114, 50116, 50118, 50120, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55061, 55081, 55083, 55085, 55087, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60173, 60304, 60311, 60331, 60332, 60333, 60340, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.

30824. GENERAL PROCEDURES

(a) To the extent not inconsistent with Part 9.5 of Division 3 of Title 2 of the Government Code and this chapter, hearings and proceedings before OTA will be conducted in accordance with the Administrative Procedure Act using hearing procedures that are accessible to all representatives, including those who are not lawyers, and to taxpayers who are representing themselves. A panel has the discretion to take or allow such actions as are permitted by the Administrative Procedure Act.

(b) Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make admission of the evidence improper in civil actions.

(c) Where a party offers oral testimony as evidence, the oral evidence may be taken only on oath or affirmation.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15674 and 15679.5.

30825. APPLICATION OF ETHICS CODES

Each administrative law judge of OTA will abide by the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges, including, but not limited to, those canons governing conflicts of interest.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15670, 15674, and 15679.5.

ARTICLE 8: TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS**30826. PROGRAMS**

This article applies to a claim for reimbursement under any of the following programs:

- (a) California Tire Fee (Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381).
- (b) Childhood Lead Poisoning Prevention Fee (Health and Safety Code Section 105310; Revenue and Taxation Code Sections 43001-43651).
- (c) Cigarette and Tobacco Products Tax (Revenue and Taxation Code Sections 30001-30481).
- (d) Diesel Fuel Tax (Revenue and Taxation Code Sections 60001-60709).
- (e) Emergency Telephone Users Surcharge (Revenue and Taxation Code Sections 41001-41176).
- (f) Energy Resources Surcharge (Revenue and Taxation Code Sections 40001-40216).
- (g) Hazardous Substances Tax (Revenue and Taxation Code Sections 43001-43651).
- (h) Integrated Waste Management Fee (Revenue and Taxation Code Sections 45001-45984).
- (i) Marine Invasive Species Fee Collection Law (Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381).
- (j) Motor Vehicle Fuel Taxes (Revenue and Taxation Code Sections 7301-8526).
- (k) Natural Gas Surcharge (Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381).
- (l) Occupational Lead Poisoning Prevention Fee (Health and Safety Code Section 105190; Revenue and Taxation Code Sections 43001-43651).
- (m) Oil Spill Response, Prevention and Administration Fees (Revenue and Taxation Code Sections 46001-46751).
- (n) Sales and Use Tax, including State-administered local sales, transactions and use taxes (Revenue and Taxation Code Sections 6001-7279.6).
- (o) Timber Yield Tax (Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908).
- (p) Underground Storage Tank Maintenance Fee (Revenue and Taxation Code Sections 50101- 50162).
- (q) Use Fuel Tax Law (Revenue and Taxation Code Sections 8601-9355).

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

30827. ELIGIBLE CLAIMS

Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination, or claim for refund are eligible for reimbursement. Fees and expenses are "related to a hearing before OTA" for purposes of the applicable statute authorizing reimbursement only if all of the following conditions are satisfied:

- (a) The claimant had previously submitted an appeal to OTA for review of an unfavorable decision issued by the Appeals Bureau;
- (b) OTA granted the taxpayer's petition for redetermination or claim for refund; and
- (c) OTA, after considering whether CDTFA has established that its position was substantially justified, finds that the action taken by CDTFA was unreasonable.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

30828. REASONABLE FEES

Reasonable fees for professional representation before OTA will be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

30829. CLAIM PROCEDURE

- (a) The claim for reimbursement must be submitted to OTA on the Taxpayers' Bill of Rights reimbursement claim form provided by OTA.
- (b) The completed claim form must be submitted within one year of the date the decision of OTA becomes final. OTA may, in its discretion, grant an extension of time to submit a completed claim form upon a showing of reasonable cause, if the written request is submitted to OTA prior to the scheduled due date of the claim form. If the claim form submitted is incomplete, the claimant will be granted 30 additional days to submit a completed claim form. Failure to submit a completed claim within the time granted will result in OTA's dismissal of the claim for reimbursement.
- (c) OTA must dismiss a claim for reimbursement submitted in connection with an appeal for which OTA did not grant the petition for redetermination or claim for refund.
- (d) OTA will notify CDTFA of the submission of a claim for reimbursement, and within 60 days of

that notice, CDTFA must submit its response to the claim and mail a copy to the claimant. OTA, in its discretion, may grant CDTFA an extension of time to submit its response upon a showing of reasonable cause, if a written request is submitted to OTA before the scheduled due date of the response.

(e) Within 60 days of the mailing of CDTFA's response, the claimant may submit a reply with any additional written argument or documentation, including, but not limited to, declarations under penalty of perjury. If the claimant submits a reply to OTA, on the same day the claimant must also mail a copy of the reply to CDTFA at the address specified in subdivision (b) of regulation 30805. OTA, in its discretion, may grant the claimant an extension of time to submit a reply upon a showing of reasonable cause if the written request for extension is submitted with OTA before the scheduled due date of the reply. If the claimant submits new information or documentation in the reply, CDTFA will be given an additional 30 days to respond to the new material. If CDTFA submits such a response, on the same day it must also mail a copy to the claimant. OTA, in its discretion, may grant CDTFA an extension of time to submit a response to the claimant's reply upon a showing of reasonable cause if the written request for extension is submitted to OTA before the scheduled due date of CDTFA's response.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11440.20, 15672, and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

30830. ORAL HEARING ON CLAIM FOR REIMBURSEMENT

The provisions of this chapter govern the holding and scheduling of an oral hearing before OTA on a claim for reimbursement, and the decision by OTA on that claim.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

30831. NOTICE OF DECISION

Whether or not an oral hearing is held on the claim, OTA will mail its written decision on the claim to the claimant and CDTFA. Notwithstanding any other provision of this chapter, OTA's decision on the claim for reimbursement is final 30 days from the date it is mailed. Any proposed award of reimbursement must be available as a public record for at least 10 days prior to the effective date of the award.

Note: Authority cited: Government Code section 15679. Reference: Government Code sections 11440.20, 15672, and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

ARTICLE 9: APPEALS TRANSITIONING TO OTA.

30832. TRANSITIONING APPEALS

(a) As of January 1, 2018, OTA has jurisdiction over any appeal which has been heard by the State

Board of Equalization but for which the State Board of Equalization either fails to issue a decision before January 1, 2018, or issues a decision that is not final before January 1, 2018.

(b) Where the State Board of Equalization has issued a decision in an appeal which is not final before January 1, 2018, for which a party had submitted a timely Petition for Rehearing with the State Board of Equalization pursuant to California Code of Regulations, title 18, section 5561 before January 1, 2018, OTA will treat that petition as a Petition for Rehearing under Article 6. Where the State Board of Equalization has issued a decision for an appeal which is not final before January 1, 2018, before that decision becomes final, any party may submit a petition for rehearing with OTA pursuant to regulation 30820.

(c) If, prior to January 1, 2018, the State Board of Equalization has, in writing, established a briefing scheduling providing for briefing to be submitted on or after January 1, 2018, that briefing schedule will remain applicable to the appeal unless otherwise directed by OTA. When a brief submitted pursuant to this subdivision is acknowledged by OTA, OTA's acknowledgment of the brief will inform the parties whether OTA requests further briefing, and if so, the contents and due dates of such additional briefs. This subdivision does not foreclose subsequent requests for additional briefing pursuant to regulation 30809.

(d) All other appeals for which OTA gains jurisdiction on January 1, 2018, because, as of that date, the Appeals Bureau had issued its decision and a party made a timely request for an oral hearing by the State Board of Equalization, are subject to the provisions of this chapter, and OTA will notify the parties to each of those appeals as to the next step in their respective appeals.

Note: Authority cited: Government Code section 15679. Reference: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15600, 15672, and 15674; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 20, 254.6, 271, 6537, 6538, 6538.5, 6561, 6562, 6564, 6901, 6906, 6981, 7699, 7700, 7700.5, 7710, 7711, 7712, 8126, 8191, 8827, 8828, 8828.5, 8851, 8852, 8853, 9151, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30242, 30243, 30243.5, 30261, 30262, 30263, 30361, 30365, 38432, 38433, 38435, 38441, 38443, 38445, 38601, 38605, 38631, 40091, 40093, 40095, 40111, 40115, 40121, 41085, 41087, 41089, 41100, 41104, 41107, 43301, 43303, 43305, 43350, 43351, 43352, 43451, 43451.5, 43452, 43454, 43491, 45301, 45303, 45305, 45351, 45352, 45353, 45651, 45654, 45801, 46301, 46302, 46303, 46351, 46353, 46355, 46501, 46505, 46551, 50114, 50116, 50118, 50120.1, 50120.2, 50120.3, 50139, 50139.5, 50142, 50151, 55081, 55083, 55085, 55101, 55102, 55103, 55221, 55221.5, 55224, 55281, 60331, 60332, 60333, 60350, 60352, 60354, 60501, 60502, 60505, 60521, and 60581.