

**State of California
Office of Administrative Law**

In re:
**California Department of Tax and Fee
Administration**

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections: 35001, 35002, 35003,
35004, 35005, 35006,
35007, 35008, 35009,
35010, 35011, 35012,
35013, 35014, 35015,
35016, 35017, 35018,
35019, 35020, 35021,
35022, 35023, 35024,
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35043, 35044, 35045,
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35049, 35050, 35051,
35052, 35053, 35054,
35055, 35056, 35057,
35058, 35060, 35061,
35062, 35063, 35064,
35065, 35066, 35067,
35101

Amend sections: 1032, 1124.1, 1249, 1336,
1422.1, 1705.1, 2251,
2303.1, 2433, 3022, 3302.1,
3502.1, 4106, 4703, 4903,
5200, 5202, 5210, 5211,
5212, 5212.5, 5213, 5214,
5216, 5217, 5218, 5219,
5220, 5220.4, 5220.6, 5221,
5222, 5222.4, 5222.6, 5223,
5224, 5225, 5226, 5227,
5228, 5229, 5230, 5231,
5231.5, 5232, 5233, 5234,
5234.5, 5235, 5236, 5237,
5238, 5240, 5241, 5242,
5244, 5245, 5246, 5247,
5248, 5249, 5249.4, 5249.6,
5260, 5261, 5262, 5263,
5264, 5265, 5266, 5267,
5268, 5700

Repeal sections: 1807, 1828, 4508, 4609,

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

OAL Matter Number: 2019-0220-01

OAL Matter Type: File and Print Only (FP)

4700, 4701, 4702, 5201,
5210.5, 5215, 5215.4,
5215.6, 5232.4, 5232.8,
5239, 5243, 5250, 5255,
5256

This file and print request adopts, amends, and repeals regulations governing appeal procedures for various taxes and fees administered by the Department of Tax and Fee Administration. Pursuant to Government Code section 15570.40(b), this action is exempt from the Administrative Procedure Act.

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: March 19, 2019



Nicole C. Carrillo
Attorney

Original: Nicolas Maduros, Director
Copy: Richard Bennion

NOTICE PUBLICATION/REGULATIONS SUBMISSION

FILE PRINT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <i>RM</i> Z-2018-1119-02	REGULATORY ACTION NUMBER 2019-0220-01FP	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE 	REGULATIONS
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2019 FEB 20 A 10:04
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California
MAR 19 2019
1:43 PM

AGENCY WITH RULEMAKING AUTHORITY
California Department of Tax and Fee Administration

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
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) Regulations implementing pt. 8.7 of div. 3 of tit. 2 of the Gov. Code	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <i>RM</i> 2018-0308-01EFP, 2018-0906-01EFP, 2018-1205-01EFP
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT See Attached
	AMEND See Attached
TITLE(S) 18	REPEAL See Attached

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code § 11346)	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"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§ 11349.3, 11349.4)		<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))		<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)	<input checked="" type="checkbox"/> Other (Specify) <u>Gov Code 15570.40</u>

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 checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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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)		

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 322-2958	E-MAIL ADDRESS (Optional) Richard.Bennion@cdfs.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 	DATE February 15, 2019
TYPED NAME AND TITLE OF SIGNATORY Nicolas Maduros, Director	

For use by Office of Administrative Law (OAL) only
AUTHORIZED FOR FILING AND PRINTING
MAR 19 2019
Office of Administrative Law

Attachment to Form 400 for

Regulations Implementing Part 8.7 of Division 3 of Title 2 of the Government Code

Response to Question B.2.

Adopt

The California Department of Tax and Fee Administration (CDTFA) proposes to adopt sections 35001, 35002, 35003, 35004, 35005, 35006, 35007, 35008, 35009, 35010, 35011, 35012, 35013, 35014, 35015, 35016, 35017, 35018, 35019, 35020, 35021, 35022, 35023, 35024, 35025, 35026, 35027, 35028, 35029, 35030, 35031, 35032, 35033, 35034, 35035, 35036, 35037, 35038, 35039, 35040, 35041, 35042, 35043, 35044, 35045, 35046, 35047, 35048, 35049, 35050, 35051, 35052, 35053, 35054, 35055, 35056, 35057, 35058, 35060, 35061, 35062, 35063, 35064, 35065, 35066, 35067, and 35101 in division 5 of title 18.

Amend

The CDTFA proposes to amend section 1032 in division 1 of title 18.

The CDTFA proposes to amend sections 1124.1, 1249, 1336, 1422.1, 1705.1, 2251, 2303.1, 2433, 3022, 3302.1, 3502.1, 4106, 4703, and 4903 in division 2 of title 18.

The CDTFA proposes to amend sections 5200, 5202, 5210, 5211, 5212, 5212.5, 5213, 5214, 5216, 5217, 5218, 5219, 5220, 5220.4, 5220.6, 5221, 5222, 5222.4, 5222.6, 5223, 5224, 5225, 5226, 5227, 5228, 5229, 5230, 5231, 5231.5, 5232, 5233, 5234, 5234.5, 5235, 5236, 5237, 5238, 5240, 5241, 5242, 5244, 5245, 5246, 5247, 5248, 5249, 5249.4, 5249.6, 5260, 5261, 5262, 5263, 5264, 5265, 5266, 5267, 5268, and 5700 in division 2.1 of title 18.

Repeal

The CDTFA proposes to repeal sections 1807, 1828, 4508, 4609, 4700, 4701, and 4702 in division 2 of title 18.

The CDTFA proposes to repeal sections 5201, 5210.5, 5215, 5215.4, 5215.6, 5232.4, 5232.8, 5239, 5243, 5250, 5255, and 5256 in division 2.1 of title 18.

Final Text of Amendments to
California Code of Regulations
Title 18. Public Revenues

Division 1. State Board of Equalization – Property Tax

(Changes to the Titles of Division 1 and Chapter 11 are Illustrated in Strikeout and Underline)

Division 1. State Board of Equalization – Property Tax (California Department of Tax and Fee Administration – Timber Yield Tax, see chapter 11)

Chapter 11. California Department of Tax and Fee Administration – Timber Yield Tax

1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Section 38454.5, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

Final Text of Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. State Board of Equalization – Business Taxes

(No Changes Made to the Text Currently Published in the California Code of Regulations)

Division 2. California Department of Tax and Fee Administration – Business Taxes (State Board of Equalization – Business Taxes, see chapters 6 and 9.9)

1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Section 7657.5, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Section 50112.6, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Section 8880, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Section 60210.5, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1705.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for sales and use tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6456, Revenue and Taxation Code; and Sections 297 and 297.5, Family Code.

1807. Petitions for Reallocation of Local Tax. [Repealed]

1828. Petitions for Distribution or Redistribution of Transactions and Use Tax. [Repealed]

2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Section 46159, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Section 41099, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

Chapter 6 State Board of Equalization – Alcoholic Beverage Tax

[Sections 2500–2571 – no change to text]

3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1 and 43159.2, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Section 45158, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Section 55045.1, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Section 30285, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

4508. Appeal - Denial of License. [Repealed]

Article 5. Appeal Procedures [Repealed]

4609. Right to Appeal. [Repealed]

4700. Appeal - Special Taxes and Fees Division. [Repealed]

4701. Appeal - Appeals Division. [Repealed]

4702. Appeal - Board Hearing. [Repealed]

4703. Seizures and Forfeitures.

(a) Seizures. The seizure of cigarette and tobacco products is authorized under the Cigarette and Tobacco Products Licensing Act Law and the Cigarette and Tobacco Products Tax Law.

(b) Seizure of Untaxed Products.

(1) In the absence of an applicable exemption from tax or other lawful possession of unstamped product under Revenue and Taxation Code (e.g., Revenue and Taxation Code sections 30102 through 30106 or 30431), the Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products that cannot be sold legally in California, including, but not limited to the following:

(A) Cigarette packages without any cigarette tax stamp that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(B) Cigarette packages with another state's tax stamp or the stamp of another taxing jurisdiction that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(C) Cigarette packages with a California tax stamp affixed and marked "Not for sale in the United States," "For Export Only" or similar wording indicating the manufacturer did

not intend the product to be sold in the United States, that are possessed, stored, owned by a retailer, wholesaler, distributor, manufacturer importer, or any other person.

(D) Tobacco products for which the California excise tax is due but has not been paid that are possessed, stored, owned, or for sale by a retailer, wholesaler or any other person except when possessed by a licensed distributor.

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized by the Board or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) Petition Procedure. The Board's seizure of such products as described under subsection (b) shall comply with the procedures set forth in Revenue and Taxation Code, Division 2, Part 13, Chapter 7.5, commencing with section 30435.

(A) An owner or any person owning an interest in the seized property may file a petition with the Board to request recovery of the seized property as permitted by Revenue and Taxation Code section 30438.

(B) The petitioner has the burden of proving in the petition that the seized cigarettes and/or tobacco products are legal to possess, store, own or sell and that taxes have been paid to obtain the recovery of the seized product(s).

(c) Seizure of Product From Persons Without a Valid License. The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid, when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

(1) Unlicensed Persons.

(A) Stamped cigarettes that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, manufacturer, importer, or any other person after notice by the Board or a law enforcement agency.

(B) Tobacco products for which the California excise tax has been paid, that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, or any other person after notice by the Board or a law enforcement agency.

(2) Persons with Suspended or Revoked Licenses.

(A) Stamped or unstamped cigarettes offered for sale at the time of seizure by a retailer, distributor, wholesaler, manufacturer or importer with a suspended or revoked license after notice by the Board of the suspension or revocation.

(B) Tobacco products, regardless of whether the California excise taxes have been paid, that are offered for sale at the time of seizure by a retailer, distributor or wholesaler with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) Forfeiture. Any cigarettes and tobacco products seized by the Board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

(4) Petition Procedure. The petitioner may file a petition to contest the citation(s) resulting in the suspension or revocation of the license issued under the Cigarette and Tobacco Products Licensing Act Law pursuant to Article 6 of Chapter 1 of Division 5.

(d) Evidence Relevant to Recovery of Product. Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

(1) The cigarette packages had valid California tax stamps affixed and the petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(2) The cigarette packages had valid California tax stamps affixed and the petitioner was not operating at the time of seizure with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) The cigarette packages without California tax stamps affixed were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(4) Cigarette packages that bear another state's tax stamp or the stamp of another taxing jurisdiction were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(5) Cigarette packages without a California tax stamp affixed and marked "Not for sale in the United States" or similar wording indicating that the manufacturer did not intend the product to be sold in the United States were in the possession of a distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law and intended for sale outside of California at the time of seizure.

(6) The petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law and the tax was paid for the seized tobacco products at the time of seizure.

(7) The petitioner was not operating with a suspended or revoked license after notice by the Board of the suspension or revocation and the tax was paid for the seized tobacco products at the time of seizure.

(8) The untaxed tobacco products were in the possession of a tobacco products distributor with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(e) Counterfeit Products. Counterfeit cigarette and tobacco products are defined as those with false manufacturing labels or false or fraudulent stamps, or both false labels and false stamps.

(1) The Board shall be authorized to seize counterfeit cigarette and tobacco products that are possessed, stored, owned or for sale by a retailer, distributor, wholesaler, manufacturer, importer, or any other person.

(2) The Board is not authorized to return seized counterfeit cigarettes and tobacco products as defined in this part as such products are illegal under California law.

(f) Additional grounds for seizure. The California Cigarette and Tobacco Products Tax Law at Revenue and Taxation Code section 30436 sets forth additional circumstances under which cigarettes or tobacco products may be seized by the Board and forfeited to the state.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22971(l) and (m), 22974.3(a) and (b), 22978.2(a) and (b) and 22980.2(c), Business and Professions Code; and Sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Revenue and Taxation Code.

Chapter 9.9. California Department of Tax and Fee Administration and State Board of Equalization – Special Taxes Administration – Miscellaneous

4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.

(a) In General.

(1) A spouse requesting innocent spouse relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is incurred under the Alcoholic Beverage Tax Law or Private Railroad Car Tax Law;

(B) The liability is attributable to the non-requesting spouse;

(C) The spouse requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the requesting spouse liable for the liability, taking into account whether the requesting spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) **Benefited.** Whether a requesting spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) **Attribution.** The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A request for innocent spouse relief may be filed if, at the time relief is requested, the requesting spouse is no longer married to or is legally separated from the non-requesting spouse, or the requesting spouse is no longer a member of the same household as the non-requesting spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) **Written Request for Relief.** To seek relief under subdivision (a), a requesting spouse must file a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) **Other Equitable Relief.** A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into

account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(g) Statute of Limitations. The provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed no later than one year after the Board's first contact with the spouse making the request.

Requests filed after one year from the Board's first contact with the spouse making the request shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(h) Refunds. A refund of any amounts under this regulation shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(i) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

(j) The Board shall send notification by mail of the request for innocent spouse relief from liability and the basis for that request to the non-requesting spouse.

(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections 11651 and 32451, Revenue and Taxation Code. Reference: Sections 11408.5, 11551-11555, 32258 and 32401-32407, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

Final Text of Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2.1. State Board of Equalization - Rules for Tax Appeals

Chapter 2. Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

(No Changes Made to the Text Currently Published in the California Code of Regulations)

Chapter 2. Special Taxes and Fees

5200. Application of Chapter 2.

This chapter applies to appeals filed with the Board under the:

(a) Tax on Insurers Law (pt. 7 of div. 2 of the Rev. & Tax. Code).

(b) Alcoholic Beverage Tax Law (pt. 14 of div. 2 of the Rev. & Tax. Code).

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428, 12978, 32301 and 32402, Revenue and Taxation Code.

5201. Application of the International Fuel Tax Agreement. [Repealed]

5202. Notice Requirements.

Any notice given under this chapter must be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority cited: Section 15606(a), Government Code; Sections 11651 and 32451, Revenue and Taxation Code. Reference: Sections 11352 and 32313, Revenue and Taxation Code.

5210. Persons Who May File Petitions for Redetermination.

(a) Any person, insurer or surplus line broker, against whom a notice of determination or notice of deficiency assessment is issued that disagrees with any item included in the notice of determination or notice of deficiency assessment may file a petition for redetermination requesting that the Board reconsider the notice of determination or notice of deficiency assessment.

(b) Any person directly interested in a notice of determination issued against a person described in subdivision (a) may file a petition for redetermination requesting that the Board reconsider the notice of determination, but only if the notice of determination was issued under section 32271 or 32291 of the Revenue and Taxation Code.

A person is directly interested in a notice of determination if the person would have an interest in the subject matter of potential litigation involving the determination that would permit the person to intervene in such potential litigation under Code of Civil Procedure section 387, subdivision (b). Such persons include, without limitation, predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors. A person directly interested does not include a consumer who owes or has paid tax reimbursement to a retailer, or persons such as lienholders.

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301, Revenue and Taxation Code.

5210.5. Successor's Petition for Reconsideration. [Repealed]

5211. Limitation Period for Filing Petitions and Stay of Collection Activities.

(a) A petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the person against which the notice was issued.

(b) A determination contained within a notice of determination or notice of deficiency assessment becomes final if a petition for redetermination is not filed within the time periods provided for in subdivisions (a).

(c) A petition for redetermination is premature and not valid if it is filed before a notice of determination or notice of deficiency assessment is issued. However, a premature petition for redetermination may be treated as an administrative protest under section 5220.

(d) The filing of a timely petition for redetermination will stay collection activities with regard to amounts contained in the notice of determination or notice of deficiency assessment being petitioned, until after the petition has been acted upon and the action becomes final.

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301, Revenue and Taxation Code.

5212. Contents of a Petition for Redetermination.

(a) A petition for redetermination must:

(1) Be in writing.

(2) Identify the amounts the taxpayer wishes to contest (the taxpayer may contest all or a portion of the amount shown on a notice), if known.

(3) State the specific grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered.

(4) Be signed by the taxpayer or the taxpayer's authorized representative.

(b) A petition for redetermination may include a request for an appeals conference, a request for a Board hearing, or both. If a petition for redetermination only includes a request for an appeals conference, a Board hearing may still be requested in accordance with section 5266.

(c) The filing of a completed form provided by the Board for use as a petition for redetermination will satisfy the requirements of subdivision (a).

(d) A taxpayer may submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301.5, Revenue and Taxation Code.

5212.5. Amendments to Petitions for Redetermination.

A petition for redetermination may be amended to state additional grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered at any time prior to the date on which the Board issues its order or decision upon the petition for redetermination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301.5, Revenue and Taxation Code.

5213. Accrual of Interest.

The filing of a petition for redetermination does not stop the accrual of interest.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12632, 32271 and 32291, Revenue and Taxation Code.

5214. Additional Copy of Petitions for Redetermination Filed Under the Tax on Insurers Law.

An insurer or surplus line broker filing a petition for redetermination of a deficiency assessment issued under the Tax on Insurers Law must file a copy of its petition with the Commissioner of

Insurance, c/o Premium Tax Audit Bureau, at the same time it files its petition for redetermination in accordance with section 5216.

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 12428, Revenue and Taxation Code.

5215. Scope of Petitions for Redetermination Filed Under Hazardous Substances Tax Law. [Repealed]

5215.4. Scope of Petitions for Redetermination Filed Under Covered Electronic Waste Recycling Fee. [Repealed]

5215.6. Scope of Petition for Redetermination Filed Under Water Rights Fee Law. [Repealed]

5216. Filing Petitions for Redetermination.

(a) A petition or related document may be electronically transmitted (e.g., facsimile, e-mail, etc.) to the Board if an electronic copy of such document is transmitted to the fax number or email address specified in subdivision (b). A petition or related document may also be electronically transmitted to the Board in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) A petition for redetermination and related documents may be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below:

Appeals and Data Analysis Branch, MIC: 33
State Board of Equalization
P.O. BOX 942879
Sacramento, CA 94279-0033
adab@boe.ca.gov
916-323-9497

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301, Revenue and Taxation Code.

5217. Acknowledgment of Petitions for Redetermination.

(a) After receipt of a petition for redetermination, the assigned section will promptly send the taxpayer a letter acknowledging receipt of the petition for redetermination and containing the assigned section's contact information.

(b) If necessary, the acknowledgement letter may request additional documentary evidence to support the petition for redetermination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429 and 32302, Revenue and Taxation Code.

5218. Review of the Petition by the Assigned Section.

(a) Initial Review of Petition. The assigned section must review the petition, notice of determination, and any other relevant information.

(b) Referral of Petition. The assigned section may refer the petition to the district office or Board section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section shall promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the district office or other Board section to which the petition is referred, and respond to the taxpayer's requests for updates regarding such progress.

(c) Scope of Review. The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.

(d) Notice of Findings. Upon completion of the review, the assigned section must advise the taxpayer of its findings in writing.

(e) All Findings are in Taxpayer's Favor. Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer's favor, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director approval if applicable, unless, within 30 days of the date of that letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that there does remain some matter in dispute. If the taxpayer responds within 30 days advising the assigned section that there does remain a dispute, the assigned section will consider the remaining dispute.

(1) If the assigned section concludes that the dispute should be resolved in the taxpayer's favor, it will so notify the taxpayer, and the appeal will be resolved in accordance with the assigned section's findings, subject to Deputy Director approval.

(2) If the assigned section finds that the remaining dispute should not be resolved in the taxpayer's favor, the provisions of the next subdivision are applicable.

(f) Any Finding is Not in Taxpayer's Favor.

(1) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested a Board hearing or appeals conference, the assigned section will send the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that the appeal will be resolved in accordance with those findings, subject to Deputy Director approval if applicable, unless, within 30 days of the date of that letter, the taxpayer makes a written request to the assigned section for an appeals conference or Board hearing. If the taxpayer submits a written request within 30 days for an appeals conference or Board hearing, the appeal will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director approval if applicable.

(2) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has previously requested an appeals conference or Board hearing, then the assigned section will send a letter to the taxpayer either advising the taxpayer that the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference or Board hearing.

(A) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(B) If the assigned section asks the taxpayer to confirm its prior request, then the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter, subject to Deputy Director approval if applicable.

(C) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference or Board hearing, the petition will be forwarded to the Board Proceedings Division for the scheduling of an appeals conference; otherwise, the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer, subject to Deputy Director approval if applicable.

(g) Deputy Director Approval. Where the findings of the assigned section are that an appeal should be granted in whole or in part and that tax and penalty in excess of \$100,000 should be

refunded, credited, or canceled or that a fraud or evasion penalty in any amount should be canceled, the assigned section's findings shall be submitted to the Deputy Director of the assigned section's Department for approval. At such time, the Deputy Director may approve the assigned section's findings or exercise discretion to make the Deputy Director's own findings as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's findings, then the appeal will be resolved in accordance with the assigned section's findings.

(2) If the Deputy Director makes his or her own findings, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the findings. If the result of the Deputy Director's findings will be more favorable to the taxpayer than the result based on the findings of the assigned section, then the Deputy Director's letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings. However, if the Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, then:

(A) The letter shall advise the taxpayer that the appeal will be resolved in accordance with the Deputy Director's findings, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing, the Board Proceedings Division will schedule an appeals conference; otherwise, the appeal will be resolved in accordance with the Deputy Director's findings.

(h) If the assigned section's findings are not subject to Deputy Director approval, but the Deputy Director of the Department that issued the notice of determination or notice of deficiency assessment concludes that the findings of the assigned section are in error, he or she may revise the findings at any time prior to the date the taxpayer's Notice of Redetermination becomes final, and, if so, must send the taxpayer a letter advising the taxpayer accordingly. If a Deputy Director changes a finding that was in favor of a taxpayer to a finding that is not in favor of the taxpayer, his or her letter to the taxpayer advising of the change will also advise that, unless the taxpayer makes a written request for an appeals conference or Board hearing within 30 days of the date of the letter, the taxpayer's appeal will be resolved in accordance with the change.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429 and 32302, Revenue and Taxation Code.

5219. Preparation and Mailing of the Summary Analysis.

Before the assigned section forwards an appeal to the Board Proceedings Division for the scheduling of an appeals conference, it will first prepare a summary analysis which sets forth the taxpayer's contentions regarding the notice of determination or notice of deficiency assessment,

the position of the Department that issued the notice, and the reasons the assigned section believes that the Department's position should be sustained in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and forward the petition file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429 and 32302, Revenue and Taxation Code.

5220. Premature or Untimely Petition May Be Treated as an Administrative Protest.

(a) If an appeal is filed as a petition for redetermination prior to or after the expiration of the applicable time periods provided for in section 5211, the appeal does not qualify as a valid petition for redetermination. However, such an appeal may be treated as an administrative protest if the Deputy Director of the Department that issued the notice being disputed by the taxpayer determines, in his or her discretion, that there is a reasonable basis to believe that there may be an error in the taxpayer's notice.

(b) If a premature or untimely appeal is treated as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination, except that requests for an appeals conference or Board hearing may be denied, although such requests will be liberally granted.

(c) A claim for refund should be filed for each payment made on an administrative protest.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12951 and 32440, Revenue and Taxation Code.

5220.4. Accrual of Interest.

The treatment of a premature or untimely petition for redetermination as an administrative protest does not stop the accrual of interest.

Note: Authority cited: Section 15606, Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12632, 32271 and 32291, Revenue and Taxation Code.

5220.6. No Stay of Collection Activities.

In general, the treatment of a premature or untimely petition for redetermination as an administrative protest does not stay efforts to collect any unpaid amounts at issue in the administrative protest. This is because the amounts contained in the notice of determination or

notice of deficiency assessment being protested became final and collectible when the time to file a timely petition for redetermination expired.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428 and 32301, Revenue and Taxation Code.

5221. Notice of Jeopardy Determination.

(a) If the collection of any tax or any amount of tax required to be collected and paid to the state, or of any determination or other amount required to be paid to the state will be jeopardized by delay, a notice of jeopardy determination may be issued.

(b) The notice of jeopardy determination shall state the tax, or amount of tax required to be collected or other amount.

(c) The amounts stated in the notice of jeopardy determination are immediately due and payable.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32311, Revenue and Taxation Code.

5222. Filing a Petition for Redetermination of a Jeopardy Determination.

(a) The person against whom a jeopardy determination is made or the person's authorized representative may file a petition for redetermination of the jeopardy determination and related documents.

(b) A petition for redetermination of a jeopardy determination or related document may be filed as specified in section 5216. Such documents may also be mailed or electronically transmitted to the Board at the mailing address, fax number, or email address provided on the Notice of Jeopardy Determination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5222.4. Contents of Petition for Redetermination of Jeopardy Determination.

A petition for redetermination of a jeopardy determination must satisfy all the requirements for a petition for redetermination as provided in article 2A of this chapter.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5222.6. Limitation Period for Petition for Redetermination of Jeopardy Determination.

(a) A petition for redetermination of a jeopardy determination must be filed within the earlier of 10 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) The provisions of article 2A of this chapter do not apply to the time period in which to file a petition for redetermination of a jeopardy determination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5223. Security Requirement for Petition.

A petition for redetermination of a jeopardy determination will not be accepted unless the petitioner deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5222.6.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5224. Review of Petition for Redetermination of Jeopardy Determination.

(a) A petition for redetermination of a jeopardy determination may raise any objections the taxpayer has to the notice of jeopardy determination, including objections to the appropriateness of issuing the notice of jeopardy determination.

(b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination under article 2A of this chapter and will be done promptly.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32312, Revenue and Taxation Code.

5225. Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.

(a) The person against whom a jeopardy determination is made may file an application for an administrative hearing for one or more of the following purposes:

- (1) To establish that the jeopardy determination is excessive.

(2) To establish that the sale of the property that may be seized after issuance of the jeopardy determination, or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(3) To request the release of all or part of the property to the person.

(4) To request a stay of collection activities.

(5) To request administrative review of any other issue raised by the jeopardy determination.

(b) An application for an administrative hearing or related document may be filed in the manner specified in section 5222 for the filing of a petition for redetermination of a jeopardy determination.

(c) If an application is filed under this section and a petition is filed under section 5222, the application and petition will be consolidated into one administrative hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 13170, 32313 and 32451, Revenue and Taxation Code. Reference: Section 32313, Revenue and Taxation Code.

5226. Limitation Period for Filing Application for Administrative Hearing.

(a) An application for administrative hearing shall be filed within the earlier of 30 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) An application for administrative hearing filed after the expiration of the time period provided for in subdivision (a) should be accompanied by a statement demonstrating why the person believes there was good cause for the person's failure to file a timely application.

(c) If good cause existed for failing to file a timely application, an administrative hearing may still be granted.

Note: Authority cited: Section 15606, Government Code; and Sections 13170, 32313 and 32451, Revenue and Taxation Code. Reference: Section 32313, Revenue and Taxation Code.

5227. Contents of Application for Administrative Hearing.

Every application for administrative hearing must:

(a) Be in writing.

(b) Identify the purpose for which the person has applied for an administrative hearing.

(c) State the specific factual or legal grounds upon which the application is founded.

(d) Be signed by the person or the person's authorized representative.

Note: Authority cited: Section 15606, Government Code; and Sections 13170, 32313 and 32451, Revenue and Taxation Code. Reference: Section 32313, Revenue and Taxation Code.

5228. Option to Post Security with Application for Administrative Hearing.

(a) A person is not required to post security to obtain an administrative hearing.

(b) Property seized under a notice of jeopardy determination or jeopardy assessment may not be sold without the consent of the owner during the first 30 days after service of such notice, nor while a timely application for administrative hearing is pending. The storing of the property during the period the application is pending will be at the applicant's expense. Storage expenses may be waived, credited, or refunded.

(c) The filing of an application for an administrative hearing will not stay other collection activities not identified in subdivision (b). A stay of other collection activities will only arise if the person deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5223.

Note: Authority cited: Section 15606, Government Code; and Sections 13170, 32313 and 32451, Revenue and Taxation Code. Reference: Section 32313, Revenue and Taxation Code.

5229. Assignment of Application for Administrative Hearing to Appeals Division for Appeals Conference.

(a) Upon receipt of an application for administrative hearing, Board Staff shall promptly:

- (1) Acknowledge its receipt;
- (2) Assign the application to the Appeals Division for an appeals conference;
- (3) Schedule an appeals conference; and
- (4) Notify the applicant regarding the date, time and location of the appeals conference.

(b) Upon completion of the appeals conference, Appeals Staff will promptly issue a determination as to each issue raised in the application and provide notice of the determination to the applicant in a Decision and Recommendation. Appeals Staff may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property will not be sold; that the property, or a portion thereof, be released to the applicant or to

the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

(c) If the applicant disagrees with the Decision and Recommendation in whole or in part, the applicant may request an oral hearing before the Board. A request for an oral hearing may be denied on an application for administrative hearing. If an oral hearing is granted, the matter shall be scheduled for hearing as soon as practicable.

Note: Authority cited: Section 15606, Government Code; and Sections 13170, 32313 and 32451, Revenue and Taxation Code. Reference: Section 32313, Revenue and Taxation Code.

5230. Persons Who May File a Claim for Refund; Limitations on Certain Claims.

Any person, insurer or surplus line broker, who believes that it has overpaid a tax, or interest or penalty thereon, or other refundable amount to the Board may file a claim for refund. An authorized representative may file a claim for refund on such a person's behalf.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 32401, 32402 and 32407, Revenue and Taxation Code.

5231. Limitation Period for Claim for Refund.

(a) A refund requested in a claim for refund cannot be approved, unless the claim for refund is filed within the time periods provided in this section.

(b) General Limitation Periods. In general, a claim for refund is timely if it is filed prior to the expiration of the last of the following time periods:

(1) Three years from the last day of the calendar month following the close of the reporting period for which the overpayment was made;

(2) Six months from the date the determination became final, if the overpayment was made under the notice of determination; or

(3) Six months from the date of the overpayment.

(c) Alcoholic Beverages Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Alcoholic Beverage Tax Law. In lieu thereof, any such claim for refund is timely if filed within three years from the 15th day of the calendar month following the close of the period for which the overpayment being claimed was made.

(d) Tax on Insurers Law. Subdivision (b)(1) does not apply to claims for refund filed under the Tax on Insurers Law. In lieu thereof, any such claim for refund is timely if filed within four years

after April 1st of the year following the year for which the overpayment was made. A claim for refund filed under the Tax on Insurers Law may be filed in accordance with section 5233 or may be filed with the Commissioner of Insurance.

(e) Waivers.

(1) In addition, where a claimant has executed a waiver extending the statute of limitation for assessment applicable to a reporting period, any claim for refund filed with regard to that reporting period during the time agreed to in the waiver will be timely filed.

(2) This subdivision regarding waivers does not apply to claims for refund filed under the Tax on Insurers Law.

(f) Financially Disabled Individuals.

(1) The periods described in subdivisions (b) of this section are suspended during any period of an individual's life that the individual is financially disabled.

(2) An individual is financially disabled if:

(A) The individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months; and

(B) Proof of the individual's impairment is provided.

(3) An individual is not financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(4) This subdivision does not apply to claims for refund filed under the Tax on Insurers Law.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12978, 32402, 32402.1 and 32407, Revenue and Taxation Code.

5231.5. Failure to File Timely Claim for Refund.

A claim for refund must be reviewed to determine whether it is timely. The claimant's failure to file a claim within the applicable time period, as provided for in section 5231, is a waiver of any demand against the State on account of the overpayment.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12980 and 32403, Revenue and Taxation Code.

5232. General Contents of Claims for Refund.

(a) All Claims. Every claim for refund must be in writing, must be signed by the claimant or the claimant's authorized representative, and must include:

- (1) The specific grounds or reasons upon which the claim is founded.
- (2) The reporting period with regard to which the claimant made the overpayment being claimed as a refund.
- (3) The amount of the refund being claimed, if known.
- (4) Information necessary to contact the claimant or claimant's authorized representative.

(b) Multiple Claims. If a single claim for refund is filed for more than one reporting period, the claimant may separately state the information required by subdivisions (a) and (b) for the periods of the claim.

(c) Supporting Documentation. Claims for refund may be accompanied by whatever copies of supporting written arguments and documentary evidence is necessary to verify and approve the claim. Failure to include such information along with a claim may delay its processing.

(d) Forms. The use of a completed form provided by the Board for use as a claim for refund will satisfy the requirements of this section (other than subdivision (c)). However, this subdivision does not require taxpayers to use a form.

(e) Returns and Payments. In no event may the claimant deduct amounts included in a claim for refund from the amount required to be reported and paid for any reporting period.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12979, 32402, 32402.1 and 32407, Revenue and Taxation Code.

5232.4. Contents of Claims for Refund Under Diesel Fuel Tax Law. [Repealed]

5232.8. Additional Requirements for Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law. [Repealed]

5233. Filing Claims for Refund.

A claim for refund or related document may be filed as specified in section 5216 for the filing of a petition for redetermination.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12978, 32402, 32402.1 and 32407, Revenue and Taxation Code.

5234. Assignment and Acknowledgment of Claim for Refund.

Once a claim for refund is received, it will be assigned to the appropriate section or group listed in section 5233 based upon the type of tax or fee at issue, and Board Staff from the assigned section will promptly send the claimant a letter acknowledging the claim, which will contain the contact information for the assigned section or group.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 32401, 32402, 32402.1 and 32407, Revenue and Taxation Code.

5234.5. Review Process for Claims for Refund and Requests for Additional Information.

Claims for refund are generally reviewed in the order that they are received. If additional documentary evidence is needed to verify and approve a claim, Board Staff from the assigned section or group will contact the claimant and request such information. The failure to provide such information upon request may result in a denial of the claim for refund.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 12981, 32401, 32402, 32402.1, 32404 and 32407, Revenue and Taxation Code.

5235. Action on the Claim for Refund.

(a) Once a claim for refund has been reviewed, the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If the assigned section recommends that a claim be granted in its entirety, it will:

(1) Send the taxpayer a notice of refund showing the amount to be refunded (subject to the Deputy Director approval requirements of section 5237, if applicable); and

(2) Have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If the assigned section recommends that any claim be denied in whole or in part, it will send the taxpayer a letter containing its recommendation and an explanation of its reasons for making such recommendation. The letter will also advise that, unless the taxpayer makes a written request to the assigned section within 30 days of the date of the letter for an appeals conference or Board hearing, the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings, subject to Deputy Director approval pursuant to section 5237, if applicable.

(1) If the taxpayer submits a written request for an appeals conference or Board hearing within 30 days of the date of the letter and the request is not denied under section 5236, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons the assigned section believes that the claim for refund should be denied, in whole or in part. The assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the claim file to the Board Proceedings Division for the scheduling of an appeals conference in accordance with article 6 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference or Board hearing within 30 days of the date of the letter or where such a request is submitted but denied under section 5236, the assigned section will, subject to Deputy Director approval pursuant to section 5237, if applicable, send the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 12981, 32401, 32402, 32402.1, 32404 and 32407, Revenue and Taxation Code.

5236. Discretion to Grant or Deny Appeals Conferences and Oral Hearings on Claims for Refund.

A request for an appeals conference conducted under article 6 of this chapter or oral hearing before the Board may be denied on a claim for refund. Requests will be liberally granted, however, requests may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue, and has not submitted any additional arguments or evidence.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977, 12978, 12981, 32401, 32402, 32402.1, 32404 and 32407, Revenue and Taxation Code.

5237. Deputy Director Approval Required for Refunds Over \$100,000.

(a) If the assigned section determines that a refund in excess of \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Deputy Director of the assigned section's Department for approval except where such a claim is for overpayment of insurance tax prepayments.

(b) Once the recommendation is submitted to the Deputy Director, the Deputy Director may approve the assigned section's recommendation or exercise discretion to make the Deputy Director's own determination as to whether the claim for refund should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer.

(1) If the Deputy Director approves the assigned section's recommendation to grant a refund, the assigned section will send the taxpayer a notice of refund showing the amount to be refunded, and will have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the assigned section's recommended determination, then the Deputy Director's letter shall advise the taxpayer that its claim for refund will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the assigned section's recommended determination, then:

(A) The letter shall advise the taxpayer that the claim for refund will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests an appeals conference or Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests an appeals conference or Board hearing and the request is not denied under section 5236, the Board Proceedings Division will schedule an appeals conference; otherwise, the claim for refund will be granted or denied in accordance with the Deputy Director's findings.

(c) If the assigned section determines that a refund in excess of \$100,000 should be denied, and the taxpayer has not requested an appeals conference with the Appeals Division or Board hearing, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Deputy Director of the assigned section's Department for approval as provided in subdivision (b). If the Deputy Director approves the assigned section's determination, the assigned section will send the taxpayer a notice of denial of claim for refund in accord with that determination.

(d) If the assigned section or the Deputy Director of the assigned section's Department determines that a refund in excess of \$50,000 should be granted, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12977 and 32401, Revenue and Taxation Code.

5238. Credits and Offsets May Reduce Refunds.

(a) The amount shown as a refund on a notice of refund is the amount due to the claimant. However, that amount will not be paid directly to the claimant if it is subject to being credited or offset against other amounts owed by the claimant, which are then due and payable.

(b) Any portion of a claimant's refund remaining after the refund has been credited or offset against other amounts that are then due and payable from the claimant will be refunded to the claimant and paid to the claimant.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12426 and 12977, Revenue and Taxation Code.

5239. Combined Claims for Refund on Behalf of Class of Taxpayers. [Repealed]

Article 4a. Requests for Innocent Spouse Relief

5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief.

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes imposed under the Alcoholic Beverage Tax Law.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse relief.
- (4) Identify the tax ~~or~~ fee from which relief is sought.

(5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 4903.

(e) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at www.boe.ca.gov. Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

OFFER IN COMPROMISE SECTION, MIC 52
STATE BOARD OF EQUALIZATION
P.O. BOX 942879
SACRAMENTO, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Section 32451, Revenue and Taxation Code. Reference: Section 32258, Revenue and Taxation Code.

5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.

(a) Acknowledgment. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

(1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

(b) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 4903. The Offer in Compromise Section may request

additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) **Written Findings.** Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

Note: Authority cited: Section 15606, Government Code; and Section 32451, Revenue and Taxation Code. Reference: Section 32258, Revenue and Taxation Code.

5242. Requests for Reconsideration by the Board.

(a) If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 4903. A request for a Board hearing may be denied on a request for reconsideration, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the letter described in section 5241, subdivision (c).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Section 32451, Revenue and Taxation Code. Reference: Section 32258, Revenue and Taxation Code.

Article 4b. Successor's Request for Relief of Penalty Under the Sales and Use Tax Law [Repealed]

5243. Successor's Request for Relief. [Repealed]

5244. No Independent Right to Oral Board Hearing on a Request for Relief; Applicable Procedures for Requests Included in Petitions or Claims; and Association with Related Petitions or Claims.

(a) In general, a person filing a request for relief described in this article does not have a right to an oral hearing before the Board on such request. A request for an oral hearing on a request for relief may be granted or denied.

(b) If a request for relief described in this article is included in a timely filed petition for redetermination or claim for refund, the procedures applicable to such petitions or claims apply to the request for relief. A request for relief included in a petition for redetermination or claim for refund must satisfy the requirements of this article applicable to such request.

(c) Any request for relief filed under this article may be associated with any pending petition for redetermination or claim for refund filed by the same person and covering the same periods as the request for relief.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12636, 12637, 32255, 32256, 32256.5 and 32257, Revenue and Taxation Code.

5245. Authority to Grant Relief for Reasonable Cause and Contents of Requests for Relief for Reasonable Cause.

(a) Authority to Grant Relief. If a person's failure to make a timely return, report, payment, or prepayment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the following penalties imposed under:

(1) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12282, 12287, 12631, 12632, and 12633.

(2) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32260, 32291, and 32305.

(b) Contents of Request.

(1) A request for relief based upon reasonable cause and circumstances beyond the person's control must be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request is based, and be signed by the person requesting relief under penalty of perjury.

(2) Form BOE-735, Request for Relief of Penalty, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12636 and 32255, Revenue and Taxation Code.

5246. Authority to Grant Relief Due to Unreasonable Error or Delay and Contents of Requests for Relief Due to Unreasonable Error or Delay.

(a) A person may be relieved of interest imposed under the tax and fee laws described in subdivision (b), if the person was charged interest due to:

(1) Unreasonable error or delay:

(A) By Board Staff acting in his or her official capacity; and

(B) No significant aspect of the error or delay is attributable to an act or failure to act by the tax or fee payer.

(b) This section applies to interest imposed under the Alcoholic Beverage Tax Law.

(c) A request for relief of interest based upon the ground set forth in subdivision (a) of this section must:

(1) Be in writing;

(2) Specifically identify the error or delay that caused the person requesting relief to be charged interest;

(3) Specifically identify the period for which interest relief is sought; and

(4) Be signed by the person requesting relief under penalty of perjury.

(d) Form BOE 735-A, Request for Relief of Interest Unreasonable Error or Delay, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32256.5, Revenue and Taxation Code.

5247. Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice.

(a) A person may be relieved from liability for the payment of a tax imposed under the tax and fee laws identified in subdivision (c), including any penalties and interest added thereto, where the liabilities resulted from the person's failure to make a timely report, return or payment and such failure is found to be due to reasonable reliance on:

(1) Written advice given under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (b);

(2) Written advice given in a prior audit of that person under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (c);

(3) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (d); or

(4) Written advice requested by a trade or industry association, on the person's behalf, under the conditions set forth in California Code of Regulations, title 18, section 4902, subdivision (e).

(b) Written advice may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person.

(c) This section applies to taxes and fees imposed under the Alcoholic Beverage Tax Law.

(d) A request for relief due to reasonable reliance upon written advice must:

(1) Be in writing;

(2) Include the specific facts upon which the request for relief is based;

(3) Be signed by the person requesting relief under penalty of perjury; and

(4) Include an attached copy of the person's written request for written advice and a copy of the written advice relied upon.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Section 32257, Revenue and Taxation Code.

5248. Authority to Grant Relief Due to Disaster and Contents of Requests for Relief Due to Disaster.

(a) If a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest imposed under:

(1) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12287, 12307, 12631, and 12632.

(2) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32253, 32260, and 32291.

(b) A request for relief of interest due to a disaster must:

(1) Be in writing;

(2) Identify the disaster due to which relief is sought;

(3) Identify the period for which relief is sought; and

(4) Be signed by the person requesting such relief under penalty of perjury.

(c) Form BOE-27, Penalty and Interest Relief for Disaster Victims, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Section 15606, Government Code; and sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12637 and 32256, Revenue and Taxation Code.

5249. Filing Requests for Relief.

(a) A request for relief of an unpaid amount may be filed in the manner provided in section 5216 for the filing of a petition for redetermination concerning the same tax law at issue in the request for relief.

(b) A request for relief of a previously paid amount may be filed in the manner provided in section 5233 for the filing of a claim for refund concerning the same tax law at issue in the request for relief.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12636, 12637, 32255, 32256, 32256.5 and 32257, Revenue and Taxation Code.

5249.4. Assignment and Acknowledgement of Requests for Relief.

(a) A request for relief will be assigned to and reviewed by Board Staff in the appropriate section responsible for the particular tax ~~or fee~~ law concerned.

(b) If the request for relief concerns previously paid amounts, the request will be treated as a claim for refund and assigned to and reviewed by Board Staff in the appropriate section under the procedures contained in article 3 of this chapter.

(c) Once the request for relief is assigned, the assigned Board Staff will promptly send the person requesting relief an acknowledgement letter containing the contact information for the assigned section, which may include a request for additional information.

(d) This section does not apply to requests for relief included in a petition for redetermination or claim for refund that are reviewed in accordance with the procedures applicable to such petitions or claims.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12636, 12637, 32255, 32256, 32256.5 and 32257, Revenue and Taxation Code.

5249.6. Reviewing Requests for Relief.

(a) The assigned Board Staff will review a request for relief to:

(1) Determine if the request satisfies the requirements of this article 4C; and

(2) Determine if relief is warranted.

(b) In reviewing a request for relief, the assigned Board Staff may request additional information from the person requesting relief.

(c) Once the review is completed, the assigned Board Staff may determine that:

(1) No relief is warranted;

(2) Partial relief is warranted; or

(3) Full relief is warranted.

(d) Once the determination in subdivision (c) is made, the assigned Board Staff shall prepare and mail the person requesting relief a letter containing his or her decision and an explanation thereof.

(e) If the person requesting relief disagrees with the assigned Board Staff's decision, the person requesting relief may request reconsideration of the decision by the Deputy Director responsible for the tax law concerned. Thereafter, the Deputy Director will prepare and mail the person requesting reconsideration a letter containing his or her decision on the request for reconsideration.

(f) If the person requesting relief disagrees with the Deputy Director's decision under subdivision (e), the person may request an oral hearing before the Board. While a person requesting relief under this section does not have a right to an oral hearing before the Board, a request for an oral hearing on a request for relief may be granted. If a request for an oral hearing is granted, the Board may require that the person requesting relief participate in an appeals conference conducted under article 6 of this chapter prior to the oral hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12636, 12637, 32255, 32256, 32256.5 and 32257, Revenue and Taxation Code.

Article 5. Petitions for Reallocation of Local and District Taxes [Repealed]

5250. Petitions for Reallocation of Local and District Taxes. [Repealed]

Article 5.5: Cigarette and Tobacco Products Licensing Act Appeals and Petitions for Recovery of Seized Cigarette and Tobacco Products [Repealed]

5255. Cigarette and Tobacco Products Licensing Act Appeals. [Repealed]

5256. Petitions for Recovery of Seized Cigarette and Tobacco Products. [Repealed]

5260. Referral to Appeals Division for Appeals Conference; Preferred Location for Appeals Conference.

(a) If a petition for redetermination, claim for refund, or request for innocent spouse or other equitable relief is referred to the Appeals Division for an appeals conference, Board Staff will contact the petitioner, claimant, or person requesting relief:

(1) To verify and update the person's contact information; and

(2) Inquire as to whether the person would prefer that the appeals conference be held at a specific location.

(b) Unless the petitioner, claimant, or person requesting relief indicates another preference, the appeals conference will be held in the district office that conducted the petitioner's audit, recommended denial of the claimant's claim for refund, or recommended denial of a person's request for relief.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5261. Notice of Appeals Conference: Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences.

(a) Board Proceedings Staff will prepare and mail the petitioner, claimant, or person requesting relief a Notice of Appeals Conference, which must include the date, time, and location of the appeals conference.

(b) Board Proceedings Staff will include a Response to Notice of Conference form with each Notice of Appeals Conference. A recipient of a Notice of Appeals Conference should complete

and return the Response to Notice of Conference within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(c) If the petitioner, claimant, person requesting relief, or other person described in section 5264 (other than the conference holder) has not already submitted all of its written arguments and documentary evidence prior to the issuance of the Notice of Appeals Conference, the arguments and evidence should be submitted to the Appeals Division within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(d) Appeals conferences are not recorded. If the petitioner, claimant or person requesting relief would like to record the appeals conference the person must check the appropriate box on the Response to Notice of Conference and agree to provide a copy of any recording or transcript to the Appeals Division upon request.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code

5262. Requests to Reschedule or Postpone Appeals Conferences.

(a) A request to postpone or reschedule an appeals conference may be submitted to the Board Proceedings Division at the fax number or email address below or in accordance with instructions provided for the return of the Response to Notice of Appeals Conference form or instructions provided on the Board's website at www.boe.ca.gov. Requests to postpone or reschedule an appeals conference may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Board Proceedings Division, MIC: 97
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0097
ConferenceInfo@boe.ca.gov
(916) 324-3984

(b) Rescheduling. An appeals conference will be rescheduled only to a date within 30 days of the previously scheduled conference date, and only for a video or telephone conference or an in-person conference either at the Board's headquarters or at an office in southern California designated by the Board Proceedings Division. A party's initial written request to reschedule an appeals conference will be granted. A party's subsequent written request to reschedule an appeals conference will only be granted if the Chief of Board Proceedings determines that there is reasonable cause.

(c) Postponement. An appeals conference will not be rescheduled to a date more than 30 days after the previously scheduled conference date, but may, instead, be postponed. When an appeals

conference is postponed, the appeal is placed back into the inventory of unassigned cases and reassigned to a conference holder at a later date. When that appeal is thereafter scheduled for an appeals conference, the Board Proceedings Division will notify the taxpayer as specified in section 5261. If a party files a written request for a postponement of an appeals conference by the return date specified in the Response to Notice of Appeals Conference form, the request will be granted if the Chief of Board Proceedings determines that there is reasonable cause. If a party requests a postponement of the appeals conference after the return date specified in the Response to Notice of Appeals Conference form, or files a second or subsequent request for a postponement, the request will be granted only if the Chief of Board Proceedings determines that there is reasonable cause and that the postponement will not unduly delay the appeal.

(d) The Board Proceedings Division may also reschedule or postpone an appeals conference at the request of the Appeals Division for reasonable cause, including unavailability of the scheduled conference holder due to illness or because of the departure of the scheduled conference holder from the Appeals Division.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5263. Ways to Expedite an Appeals Conference.

(a) Board Proceedings Staff will schedule an appeals conference within 60 days of receiving written notice that the petitioner, claimant, or person requesting relief has agreed to:

(1) Attend an appeals conference at the Board's headquarter located at 450 N Street, Sacramento, California;

(2) Attend a video conference at one of the Board's district offices with the necessary equipment; or

(3) Participate in a telephone conference (Board Staff will place the call).

(b) Subdivision (a) only applies to written notices sent to the Board Proceedings Division at or before the due date of the Response to Notice of Conference. Such a written notice may be included in the Response to Notice of Conference.

(c) Once the deadline to file the written notice described in subdivision (a) has expired, Board Proceedings Staff will attempt to schedule an appeals conference as soon as practicable, if the petitioner, claimant, or person requesting relief notifies the Board Proceedings Division that it is willing to appear on shortened notice.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978,

12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5264. Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Additional Submissions.

(a) The appeals conference will be held by an Appeals Division conference holder who has not had any prior involvement in the appeal being discussed at the appeals conference. It is the responsibility of the Appeals Division to take a fresh look at the law and the facts and make the Appeals Division's own objective recommendation.

(b) Generally, one or more representatives from the appropriate Department will be present at the appeals conference to provide the Department's position in the appeal. Where appropriate, other Board Staff may be present at the appeals conference.

(c) A representative from another state agency may be present at appeals conferences where the tax at issue is administered by the representative's agency. Such a representative will provide his or her agency's position in the appeal.

(d) The appeals conference is not an adversarial proceeding; it is an informal discussion of the relevant facts and applicable laws. It is important that all relevant information be presented to the Appeals Division. A party may submit additional written arguments and documentary evidence to the Appeals Division at any time before or during the appeals conference, but may do so after the conference only with the consent of the Appeals Division.

(1) If any party requests permission to submit additional written arguments, documentary evidence, or both after the appeals conference and the conference holder concludes that the additional submission should be accepted, he or she will grant that party at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Division, to submit such arguments and evidence from the date the request is made. The conference holder will also grant the other party at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Division, to respond after that submission.

(2) The Appeals Division may, at any time before the appeal is final, request additional written argument, analysis, or documentation from any party, and when it does so, will determine how long to provide the party to respond and will so inform the party. The Appeals Division will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5265. Issuance and Contents of a Decision and Recommendation.

(a) Within 90 days after the submission of any additional documents as authorized in section 5264, subdivision (d), Appeals Staff must issue a written report containing Appeals Staff's findings, called a Decision and Recommendation, copies of which must be sent to all parties. The Chief Counsel may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time must be in writing and copies provided to all parties to the appeals conference.

(b) If a party does not appear at the appeals conference, the Decision and Recommendation will be based on all of the information in the file and any additional information provided by the parties, including information provided at the appeals conference.

(c) The Decision and Recommendation must include all of the following:

(1) A concise statement of each issue raised by the petitioner, claimant, or person requesting relief;

(2) The position of Board Staff in the appropriate Department on each issue raised by the petitioner, claimant, or person requesting relief;

(3) A statement of the relevant law applicable to each issue raised by the petitioner, claimant, or person requesting relief;

(4) A clear application of the relevant law to all the relevant information presented to Appeals Staff;

(5) Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information; and

(6) A summary of any additional information or documentation that was not presented to Appeals Staff, which might be relevant to a resolution of the issues raised by the petitioner, claimant, or person requesting relief.

(d) Any party receiving a Decision and Recommendation that discovers a significant factual error should contact Appeals Staff immediately. Appeals Staff may revise the Decision and Recommendation or issue a supplemental Decision and Recommendation to correct such errors.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5266. Appeals Division Recommendations; Requests for Reconsideration; Requests for Board Hearings; Supplemental Decision and Recommendation.

(a) The Appeals Division may make the following recommendations in the Decision and Recommendation:

- (1) Deny the appeal in its entirety.
- (2) Grant the appeal in its entirety.
- (3) Grant the appeal in part.
- (4) That the appropriate Department perform a reaudit as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the appeal in whole or in part or a reaudit, the taxpayer may submit, within 30 days after the issuance of the Decision and Recommendation or the issuance of the letter from the Appeals Division explaining the results of the reaudit:

- (1) A written request for reconsideration to the Appeals Division. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the taxpayer disagrees with the Decision and Recommendation, the results of the reaudit, or both; or
- (2) A written request for a Board hearing to the Board Proceedings Division if the taxpayer has not previously done so.

(A) If a Board hearing has been requested, but the Appeals Division believes the taxpayer accepts the recommendation of the Appeals Division or it is unclear whether the taxpayer disagrees with any portion of its Decision and Recommendation, the Appeals Division may ask the taxpayer to confirm the request for Board hearing.

(B) If a Board hearing is requested and, if applicable, confirmed, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

(c) If the Decision and Recommendation recommends that the appeal be granted in whole or in part or a reaudit:

- (1) The Department and any state agency represented at the appeals conference may submit a written request for reconsideration to the Appeals Division within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the Department or other state agency disagrees with the Decision and Recommendation, the results of the reaudit, or both.

(2) Any state agency represented at the appeals conference may submit a written request for a Board hearing to the Board Proceedings Division, within 30 days after the issuance of the Decision and Recommendation or letter from the Appeals Division explaining the results of the reaudit. If a Board hearing is requested, the Board Proceedings Division will schedule a Board hearing, unless that request is waived. However, a Board hearing will not be provided if a request for a discretionary Board hearing is denied.

(d) If a party submits a timely request for reconsideration, as provided in subdivisions (b) and (c)(1) of this section, the Appeals Division will prepare a Supplemental Decision and Recommendation to respond to the request for reconsideration and address any other matter the Appeals Division deems warranted. The Appeals Division may also issue a Supplemental Decision and Recommendation when it deems it appropriate to do so, including where no party has filed a timely request for reconsideration. For example, while the Appeals Division is not required to do so, it may issue a Supplemental Decision and Recommendation to respond to a request for reconsideration submitted in response to a Supplemental Decision and Recommendation or otherwise filed more than 30 days after the issuance of the Decision and Recommendation or the letter explaining the results of a reaudit.

(1) When the Appeals Division receives a request for reconsideration, it will send a letter to acknowledge receipt of the request and, if the request had not been submitted within the period specified in subdivisions (b) and (c)(1) of this section, to advise the parties whether the Appeals Division will issue a Supplemental Decision and Recommendation in response to the request. Where the Appeals Division will issue a Supplemental Decision and Recommendation, the letter will offer the other party the opportunity to respond to the request for reconsideration. Where the Appeals Division decides to issue a Supplemental Decision and Recommendation where no party has submitted a request for reconsideration, it will promptly send a letter to the parties to notify them of the forthcoming Supplemental Decision and Recommendation.

(2) The Appeals Division may request additional written argument, analysis, or documentation from any party if it determines that the information may be relevant to the preparation of a Supplemental Decision and Recommendation, and when it does so, will determine how long to provide the party to respond and will so inform the party. The Appeals Division will also determine whether a response should be submitted by the other party, and if so will advise that party when the response is due.

(3) The Appeals Division must issue a Supplemental Decision and Recommendation within 90 days after the submission of any additional documents requested under paragraph (2), a copy of which will be sent to each party. The Chief Counsel may allow additional time beyond the 90 days to prepare a Supplemental Decision and Recommendation; however, both the request for additional time and the granting of additional time must be in writing and copies provided to each party to the appeal.

(4) A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c), as relates to the issues addressed in the Supplemental Decision and Recommendation, and may make the recommendations listed in subdivision (a) above.

(5) The provisions for requesting a Board hearing following the issuance of a Decision and Recommendation set forth in subdivisions (b) and (c)(2) of this section are applicable to the issuance of a Supplemental Decision and Recommendation.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5267. Issuance of Post Appeals Conference Notices; Board Approval.

The following rules apply where there is no timely request for Board hearing, or a request for a discretionary Board hearing has been denied, following the issuance of the Decision and Recommendation or, if applicable, Supplemental Decision and Recommendation.

(a) The recommendation of the Appeals Division will be held in abeyance, if:

(1) The facts and circumstances involved in the taxpayer's appeal are similar to the facts and circumstances involved in another pending matter;

(2) The Appeals Division's recommendation to grant or deny the taxpayer's appeal in whole or in part may have a direct or indirect effect on the outcome of the other pending matter; and

(3) The Chief Counsel determines that the Department, the Appeals Division, or the Board needs to review or decide the other pending matter in conjunction with the taxpayer's appeal.

(b) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty (excluding for fraud or evasion) not exceeding \$100,000 be refunded, credited, or canceled, a Notice of Redetermination, Statement of Account, or Notice of Refund will be promptly issued based on that recommendation.

(c) Except as provided in subdivision (a), where the Appeals Division recommends that an appeal be granted in whole or in part and that tax and penalty in excess of \$100,000 be refunded, credited, or canceled or that a fraud or evasion penalty in any amount be canceled, the recommendation will be submitted to the Deputy Director of the Board's Department responsible for administering the tax for approval, at which time:

(1) The Deputy Director may approve the recommendation.

(2) The Deputy Director may exercise discretion to make the Deputy Director's own determination as to whether the appeal should be granted, denied, or granted in part and denied in part, and may do so without further documentation or testimony from the taxpayer. If the Deputy Director makes his or her own determination, then the Deputy Director will send the taxpayer a letter notifying the taxpayer of the determination. If the result of the Deputy Director's determination will be more favorable to the taxpayer than the result of the Appeals Division's recommendation, then the Deputy Director's letter shall advise the taxpayer that its appeal will be granted or denied in accordance with the Deputy Director's determination. However, if the result of the Deputy Director's determination will be less favorable to the taxpayer than the result of the Appeals Division's recommendation, then:

(A) The letter shall advise the taxpayer that the appeal will be granted or denied in accordance with the Deputy Director's determination, unless the taxpayer requests a Board hearing within 30 days of the date of the letter; and

(B) If the taxpayer thereafter timely requests a Board hearing, the Board Proceedings Division will schedule the requested hearing. However, the appeal will be granted or denied in accordance with the Deputy Director's findings if the taxpayer does not timely request a Board hearing or a timely request for a discretionary Board hearing is denied.

(d) If the Appeals Division or a Deputy Director recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, the proposed action to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Section 15606, Government Code; and Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12429, 12636, 12637, 12951, 12977, 12978, 12981, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407 and 32440, Revenue and Taxation Code.

5268. Procedures for Conducting Board Hearings.

Board hearings will be conducted under the hearing procedures set forth in chapter 5 of this division.

Note: Authority cited: Section 15606(a), Government Code; Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 12428, 12978, 32301 and 32402, Revenue and Taxation Code.

Final Text of Amendments to
California Code of Regulations
Title 18. Public Revenues
Regulation 5700. Annotations

(No Changes Made to the Text Currently Published in the California Code of Regulations)

5700. Annotations.

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Annotations" are published in either the Business Taxes Law Guide or the Property Taxes Law Guide and are summaries of the conclusions reached in selected legal rulings of counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law.

(2) "Legal ruling of counsel" means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government agency, or board staff.

(3) "Current Legal Digest" means a publication containing drafts of new annotations proposed to be added, and/or annotations proposed to be amended or deleted in the Business Taxes Law Guide or Property Taxes Law Guide.

(4) "Tax" means any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board or any tax over which the Board has oversight or advisory responsibility.

(5) "Taxpayer" means person liable for the payment of any tax as the term tax is defined above.

(6) "Board" means the State Board of Equalization.

(b) Elements of Annotated Legal Rulings of Counsel. In order to qualify for annotation, a legal ruling of counsel must include the following elements:

(1) A summary of pertinent facts,

(2) An analysis of the issue(s),

(3) References to any applicable statutes, regulations, or case law, and

(4) A conclusion supported by the analysis of the issue(s).

(c) Use of Annotations.

- (1) Annotations provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance.
- (2) Annotations are a research tool to locate selected legal rulings of counsel and thus provide guidance regarding the interpretation of statutes and Board regulations as applied by the Board staff to specific factual situations in legal ruling of counsel.
- (3) Except as provided in Regulation 5247, following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest and penalty.

(d) Publication of Annotations.

- (1) Before new annotations are added, or existing annotations are amended or deleted, the Board shall publish the proposed changes in a Current Legal Digest and shall provide interested persons not less than 30 days to comment on and, if necessary, challenge the proposed changes.
- (2) Any person may request, and shall be entitled to receive, Current Legal Digests. Requests to be added to the mailing list to receive Current Legal Digests may be directed to the Board's Legal Division.

(e) Request for Depublication of an Annotation. An annotation published in the Business Taxes Law Guide or the Property Taxes Law Guide believed to be in error and/or appearing to conflict with another annotation may be depublished using the following procedure:

- (1) A request for depublication of an annotation shall be directed to the Chief Counsel.
- (2) A request for depublication of an annotation shall be approved or denied by the Chief Counsel within sixty (60) days from the date the request is received.
- (3) If a request for the depublication of an annotation is approved by the Chief Counsel, the Board shall publish the proposed depublication in a Current Legal Digest.
- (4) If a request for the depublication of an annotation is denied, the requestor may bring the request before the Board's Business Taxes or Property Taxes Committee for consideration.

(f) Copies of Legal Rulings of Counsel. Any person may request, and shall be entitled to receive, a copy of a legal ruling of counsel, with confidential taxpayer information excised, that has been annotated in the Business Taxes Law Guide or Property Taxes Law Guide. Requests may be directed to the Board's Legal Division.

Note: Authority cited: Sections 13170 and 32451, Revenue and Taxation Code. Reference: Sections 15606(c) and (e), Government Code; and Sections 13170 and 32462, Revenue and Taxation Code.

Final Text of California Code of Regulations

Title 18. Public Revenues

Division 5. California Department of Tax and Fee Administration

(No Changes Made to the Text Currently Published in the California Code of Regulations)

Division 5. California Department of Tax and Fee Administration

Chapter 1. Appeals

Article 1. Application, Definitions, Burden, and Notice

35001. Application.

This chapter applies to appeals filed under the following laws that are administered by the California Department of Tax and Fee Administration:

- (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 (pt. 1.6 of div. 2 of the Rev. & Tax. Code), and additional local taxes (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 Act (pt. 20 of div. 2 of the Rev. & Tax. Code).
- (k) Prepaid Mobile Telephony Services Surcharge Collection Act (pt. 21 of div. 2 of the Rev. & Tax. Code).
- (l) Local Prepaid Mobile Telephony Services Collection Act (pt. 21.1 of div. 2 of the Rev. & Tax. Code).
- (m) 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).

- (n) Marine Invasive Species Fee Collection Law (pt. 22.5 of div. 2 of the Rev. & Tax. Code).
- (o) Integrated Waste Management Fee Law (pt. 23 of div. 2 of the Rev. & Tax. Code).
- (p) Oil Spill Response, Prevention, and Administration Fees Law (pt. 24 of div. 2 of the Rev. & Tax. Code).
- (q) Underground Storage Tank Maintenance Fee Law (pt. 26 of div. 2 of the Rev. & Tax. Code).
- (r) Fee Collection Procedures Law (pt. 30 of div. 2 of the Rev. & Tax. Code).
- (s) Diesel Fuel Tax Law (pt. 31 of div. 2 of the Rev. & Tax. Code).
- (t) Cigarette and Tobacco Products Licensing Act of 2003 (div. 8.6 of the Bus. & Prof. Code).
- (u) Lead-Acid Battery Recycling Act of 2016, which imposes lead-acid battery fees (art. 10.5 of ch. 6.5 of div. 20 of the Health & Saf. Code).
- (v) Lumber Products Assessment (art. 9.5 of ch. 8 of pt. 2 of div. 4 of the Pub. Resources Code).
- (w) Covered Electronic Waste Recycling Fee (art. 3 of ch. 8.5 of pt. 3 of div. 30 of the Pub. Resources Code).
- (x) California Tire Recycling Act, which imposes the California Tire Fee (ch. 17 of pt. 3 of div. 30 of the Pub. Resources Code).
- (y) Marine Invasive Species Act, which imposes the Marine Invasive Species Fee (div. 36 of the Pub. Resources Code).
- (z) Natural Gas Surcharge (art. 10 of ch. 4. of pt. 1 of div. 1 of the Pub. Util. Code).
- (aa) Water Right Fees (ch. 8 of pt. 2 of div. 2 of the Water Code).

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 7202, 7203, 7261, 7262, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Section 22970.2, Business and Professions Code; Sections 15570.22 and 15570.24, Government Code; Sections 25215.45, 105190 and 105310, Health and Safety Code; Sections 4629.5, 42464.2, 42882 and 71215, Public Resources Code; Section 893, Public Utilities Code; Sections 20, 20.5, 7051, 7202, 7270, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code; Section 1537, Water Code.

35002. Definitions.

The following definitions apply to this chapter:

(a) "Appeal" means:

- (1) A petition, including a petition for redetermination and a petition for reconsideration of successor liability;
- (2) Administrative protest;
- (3) Claim for refund;
- (4) Application for administrative hearing;
- (5) A request for relief of taxes, interest, or penalties; or
- (6) Any other matter for which this chapter provides for review by the Appeals Bureau of the California Department of Tax and Fee Administration, if warranted.

(b) "Appeals Bureau" means the Appeals Bureau of the California Department of Tax and Fee Administration's Legal Division.

(c) "Assigned section" means the division, bureau, section, branch, unit, or group within the California Department of Tax and Fee Administration which is assigned the initial duty and responsibility of reviewing, or managing the review of, an appeal.

(d) "BTFD" means the Business Tax and Fee Division of the California Department of Tax and Fee Administration.

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

(f) "CDTFA staff" means an employee or employees of CDTFA.

(g) "Deputy Director" means the Deputy Director of BTFD, or any person to whom the Deputy Director delegates his or her official duties.

(h) "File" or "filed" means a written submission provided to CDTFA. If the last day for filing a written submission falls on a Saturday, Sunday, or holiday, the time for filing such written submission is extended to the next business day.

(i) "Mail" means mailing by United States Postal Service and by other carriers and also means electronic transmission such as by email, but email containing confidential taxpayer information will be sent by CDTFA only with the taxpayer's written consent. In the absence of other evidence, the mailing date is the date of receipt for electronic submissions and the mailing date is the post-mark date or the date of delivery to the carrier for all other submissions.

(j) "Party" means a taxpayer or other person filing an appeal with CDTFA, and also means BTFD or applicable bureau of CDTFA, and any other state agency with a role in administering the subject tax program that notifies CDTFA it will actively participate in the appeal.

(k) "Person" has the same meaning as set forth in Revenue and Taxation Code section 19.

(l) "Regulation" means a section of title 18 of the California Code of Regulations, except when specified otherwise.

(m) "Representative" is any person who is at least 18 years of age that the taxpayer chooses to represent the taxpayer before CDTFA.

(1) CDTFA 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 CDTFA authorizing that person to act as the taxpayer's representative.

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

(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, until the taxpayer notifies CDTFA 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 a person that pays or is assessed a tax administered by CDTFA, or any other person who files an appeal with CDTFA. "Taxpayer" also means, where appropriate, a taxpayer's authorized representative.

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

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 7202, 7203, 7261, 7262, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. References: Section 11, Business and Professions Code; Sections 8, 6707, 15606, 15570, and 15671, Government Code; Sections 8, 19, 20, 20.5, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7202, 7203, 7209, 7223, 7261, 7262, 7269, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8880, 9151, 9152, 9196, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103,

40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code; Section 1537, Water Code.

35003. Burden of Proof.

(a) Except as otherwise specifically provided by law, the burden of proof is upon the taxpayer to prove all issues of fact by a preponderance of evidence.

(b) Where an appeal involves the issue of fraud with intent to evade tax, the burden of proof is upon BTFD or, if applicable, other state agency to prove fraud with intent to evade tax by clear and convincing evidence.

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 7202, 7203, 7261, 7262, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Section 22970.2, Business and Professions Code; Sections 15570.22, 15570.24 and 15606, Government Code; Sections 25215.45, 105190 and 105310, Health and Safety Code; Sections 4629.5, 42464.2, 42882 and 71215, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202, 7270, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code; Section 1537, Water Code.

35004. Notice Requirements.

Any notice given under this chapter must be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Section 893, Public Utilities Code; Sections 7051, 7202, 7203, 7261, 7262, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Section 22971.5, Business and Professions Code; Sections 6486, 7202, 7203, 7261, 7262, 7671, 8781, 30206, 38416, 40076, 41075, 43201, 45201, 46202, 50113, 55061 and 60311, Revenue and Taxation Code.

Article 2A. Petitioning Notices of Determination

35005. Persons Who May File a Petition for Redetermination.

(a) A person who disagrees with any item included in a notice of determination issued to that person may file a petition for redetermination requesting that CDTFA reconsider the notice of determination. CDTFA will not, however, consider any item outside the scope of its review, such as specified in regulations 35011 through 35014.

(b) Any person directly interested in a notice of determination issued by CDTFA may file a petition for redetermination requesting that CDTFA reconsider the notice of determination, but only if the notice of determination was issued under one of the following:

- (1) Revenue and Taxation Code section 6481 or 6511 (Sales and Use Tax Law).
- (2) Revenue and Taxation Code section 38411 or 38421 (Timber Yield Tax Law).
- (3) Revenue and Taxation Code section 43201 (Hazardous Substances Tax Law).
- (4) Revenue and Taxation Code section 45201 (Integrated Waste Management Fee Law).
- (5) Revenue and Taxation Code section 46201 or 46251 (Oil Spill Response, Prevention, and Administration Fees Law).
- (6) Revenue and Taxation Code section 50113 (Underground Storage Tank Maintenance Fee Law).
- (7) Revenue and Taxation Code section 55061 (Fee Collection Procedures Law).

(c) A person is directly interested in a notice of determination if Code of Civil Procedure section 387, subdivision (d), would permit the person to intervene in potential litigation regarding the subject matter at issue. Such persons include predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors. A person directly interested does not include a consumer who owes or has paid tax reimbursement to a retailer, or persons such as lienholders.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561, 7710, 8851, 30175, 30261, 38441, 40091, 41033, 41085, 43301, 45301, 46351, 50114, 55081 and 60350, Revenue and Taxation Code.

35006. Successor's Petition for Consideration.

A successor served with a notice of successor liability under Revenue and Taxation Code sections 6814, 9024, 38564, 46454, or 60474 may file a petition for reconsideration of successor liability in the manner provided in this article for petitioning any other liability imposed under the Sales and Use Tax Law, Use Fuel Tax Law, Timber Yield Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, or Diesel Fuel Tax Law, respectively. The provisions in this chapter applicable to a petition for redetermination are applicable to a successor's petition for reconsideration.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Sections 7051, 9251, 38701, 46601 and 60601, Revenue and Taxation Code. Reference: Sections 6814, 9024, 38564, 46454 and 60474, Revenue and Taxation Code.

35007. Limitation Period for Filing a Petition; Collection Activities.

(a) A petition for redetermination must be filed within 30 days from the date that the notice of determination was mailed to the person against whom the notice was issued.

(b) Notwithstanding subdivision (a), a petition for redetermination of a determination issued under Revenue and Taxation Code section 30173 (Cigarette and Tobacco Products Tax Law) must be filed within 10 days from the date that the notice of determination was mailed.

(c) Notwithstanding subdivision (a), a petition for redetermination of a determination issued under Revenue and Taxation Code section 41033 (Emergency Telephone Users Surcharge Law) must be filed within 60 days from the date that the notice of determination was mailed.

(d) A determination contained within a notice of determination becomes final if a petition for redetermination is not filed within the applicable time period set forth in subdivision (a), (b), or (c).

(e) A petition for redetermination is premature and not valid if it is filed before a notice of determination or notice of successor liability is issued. However, a premature petition for redetermination may be treated as an administrative protest under regulation 35019.

(f) Except for a jeopardy determination, collection activities will not commence until a liability is final. The filing of a timely petition for redetermination will prevent the liability in the notice of determination being petitioned from becoming final, and will prevent the commencement of collection activities with regard to amounts contained in the notice of determination being petitioned, until the petition has been acted upon and the assessed liability becomes final.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561, 7710, 8851, 30174, 30175, 30261, 38441, 40091, 41033, 41085, 43301, 45301, 46351, 50114, 55081 and 60350, Revenue and Taxation Code.

35008. Contents of a Petition for Redetermination.

(a) A petition for redetermination must:

- (1) Be in writing.
- (2) Identify the amounts the taxpayer wishes to contest (the taxpayer may contest all or a portion of the amount shown on a notice), if known.
- (3) State the specific grounds or reasons why the notice of determination should be reconsidered.
- (4) Be signed by the taxpayer or the taxpayer's authorized representative.

(b) A petition for redetermination may include a request for an appeals conference.

(c) The filing of a completed form provided by CDTFA for use as a petition for redetermination will satisfy the requirements of subdivision (a).

(d) A taxpayer may submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561.5, 7710.5, 8851.5, 30261.5, 38442, 40092, 41033, 41086, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

35009. Amendments to a Petition for Redetermination.

A petition for redetermination may be amended to state additional grounds or reasons why the notice of determination should be reconsidered at any time prior to the date on which CDTFA issues its order or decision upon the petition for redetermination.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561.5, 7710.5, 8851.5, 30261.5, 38442, 40092, 41033, 41086, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

35010. Accrual of Interest.

The filing of a petition for redetermination does not stop the accrual of interest.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6482, 6513, 7674, 7661, 8777, 8803, 30174, 30202, 30223, 38412, 38423, 40072, 40083, 41033, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302 and 60314, Revenue and Taxation Code.

35011. Scope of a Petition for Redetermination Filed Under Hazardous Substances Tax Law.

(a) Hazardous or Extremely Hazardous Waste. A petition for redetermination filed under Revenue and Taxation Code section 43301 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A petition for redetermination based upon such grounds will be forwarded to the Director of the California Department of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43301, and may not be considered until after the Director of the California Department of Toxic Substances Control has made his or her determination.

(b) Childhood Lead Poisoning Prevention Fee.

(1) A petition for redetermination of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including:

(A) The taxpayer's industry did not contribute in any manner to environmental lead contamination;

(B) The taxpayer's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(C) The amount of the fee assessed does not reflect the taxpayer's market share or is incorrectly computed.

(2) CDTFA will not act on a petition founded upon grounds described in subdivision (b)(1)(A), (B), or (C) until the California Department of Public Health has acted upon the taxpayer's application for exemption from or reassessment of the fee. Applications for exemption must be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment must be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33050.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 43501, Revenue and Taxation Code. Reference: Section 105310, Health and Safety Code; Section 43301, Revenue and Taxation Code.

35012. Scope of a Petition for Redetermination Filed Under Covered Electronic Waste Recycling Fee.

A petition for redetermination of the Covered Electronic Waste Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. A petition for redetermination based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 55301, Revenue and Taxation Code. Reference: Section 42464.6, Public Resources Code.

35013. Scope of a Petition for Redetermination File Under Water Rights Fee Law.

A determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee is subject to review under chapter 4 of part 1 of division 2 of the Water Code and is not subject to review by CDTFA as part of a petition for redetermination.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 55301, Revenue and Taxation Code. Reference: Section 1537, Water Code.

35014. Scope of a Petition for Redetermination Filed Under the Lead-Acid Battery Recycling Act.

A petition for redetermination of the California battery fee or manufacturer battery fee will be acknowledged. However, no determination will be made as to whether an item is or is not a lead-acid battery. A petition for redetermination based on such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Health and Safety Code section 25215.45.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 55301, Revenue and Taxation Code. Reference: Section 25215.45, Health and Safety Code.

35015. Filing a Petition for Redetermination.

(a) A petition for redetermination under the Sales and Use Tax Law and related documents may be filed as set forth in this subdivision, or as otherwise expressly provided on CDTFA's website at www.cdtfa.ca.gov.

(1) By hand delivery to: Petitions Section, MIC 38, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(2) By mail addressed to: Petitions Section, MIC 38, California Department of Tax and Fee Administration P.O. Box 942879, Sacramento, CA 94279-0038.

(3) By email sent to: BTDFDPetSection@cdtfa.ca.gov or sutdpet@cdtfa.ca.gov.

(4) By facsimile to: (916) 324-0678.

(b) A petition for redetermination under the tax and fee laws listed in this subdivision and related documents may be filed as set forth in this subdivision, or as otherwise expressly provided on CDTFA's website at www.cdtfa.ca.gov.

(1) Hazardous Substances Tax Law, Occupational Lead Poisoning Prevention Fee, Water Rights Fee, Covered Electronic Waste Recycling Fee, Tire Recycling Fee, Integrated Waste Management Fee Law, Marine Invasive Species Fee Collection Law, Cigarette and Tobacco Products Tax Law, Cannabis Tax, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, Natural Gas Surcharge, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Diesel Fuel Tax Law, Lead-Acid Battery Recycling Act, and Childhood Lead Poisoning Prevention Fee.

(A) By hand delivery to: Appeals and Data Analysis Branch, MIC 33, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(B) By mail addressed to: Appeals and Data Analysis Branch, MIC 33, California Department of Tax and Fee Administration, P.O. Box 942879, Sacramento, CA 94279-0033.

(C) By email sent to: adab@cdtfa.ca.gov.

(D) By facsimile to: (916) 323-9497.

(2) Timber Yield Tax Law.

(A) By hand delivery to: Timber Tax Section, MIC 60, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(B) By mail addressed to: Timber Tax Section, MIC 60, California Department of Tax and Fee Administration, P.O. Box 942879, Sacramento, CA 94279-0060.

(C) By email sent to: MeetingInfo@cdtfa.ca.gov.

(D) By facsimile sent to: (916) 285-0134.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference:

Sections 6561, 7710, 8851, 30175, 30261, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081 and 60350, Revenue and Taxation Code.

35016. Acknowledgement of a Petition for Redetermination.

After receipt of a petition for redetermination, the assigned section will promptly mail the taxpayer a letter acknowledging receipt of the petition for redetermination and containing the contact information for the applicable staff within the assigned section.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 30175, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

35017. Review of a Petition by the Assigned Section.

(a) The assigned section must review the petition, notice of determination, and all other relevant information available to it in reaching findings on behalf of BTFD, subject to the oversight of the Deputy Director.

(b) The assigned section may refer the petition to the CDTFA office or section that issued the notice being petitioned for further investigation and comment, but any findings resulting from such referral are tentative and subject to review by the assigned section. The assigned section will promptly notify the taxpayer of such a referral, provide assistance needed to complete the investigation, monitor the progress of the CDTFA office or other section to which the petition is referred, and respond to the taxpayer's requests for updates regarding such progress.

(c) Where the assigned section, or the CDTFA office or other section to whom the petition is referred, believes additional documentary evidence is needed as support for the petition for redetermination, it will contact the petitioner and request such information. The failure to provide such information upon request may result in the assigned section's conclusion that the petition for redetermination should be denied.

(d) The assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law or regulatory changes or precedential opinions from the Office of Tax Appeals that may affect the audit or investigation findings, where appropriate.

(e) Upon completion of the review, the assigned section will mail the taxpayer a letter to advise the taxpayer of its findings.

(f) Where the findings of the assigned section are that all matters put into dispute by the petition should be resolved in the taxpayer's favor, the assigned section will mail the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that, except as provided in subdivision (j), the appeal will be resolved in accordance with those findings unless, within 30

days of the date of the letter, the taxpayer advises the assigned section that its findings do not resolve all matters and that some matter remains in dispute.

(g) If, within 30 days of a letter issued pursuant to subdivision (f), the taxpayer responds advising the assigned section that some matter remains in dispute, the assigned section will consider the remaining dispute. If the assigned section's findings are that the dispute should be resolved in the taxpayer's favor, the assigned section will mail a letter notifying the taxpayer of those findings and advising that, except as provided in subdivision (j), the appeal will be resolved in accordance with those findings. Otherwise, the provisions of subdivision (h) are applicable.

(h) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer has not previously requested an appeals conference, the assigned section will mail the taxpayer a letter notifying the taxpayer of the assigned section's findings and advising that, except as provided in subdivision (j), the appeal will be resolved in accordance with those findings unless, within 30 days of the date of that letter, the taxpayer makes a written request to the assigned section for an appeals conference. If the taxpayer submits a written request within 30 days for an appeals conference, the appeal will be forwarded to the Appeals Bureau for the scheduling of an appeals conference; otherwise, unless an appeals conference is requested by another party as provided in subdivision (j), the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer. However, the Deputy Director may, in the Deputy Director's sole discretion, reinstate an appeal if, before the taxpayer's Notice of Redetermination is issued, the taxpayer submits a written request for an appeals conference and documentation that establishes that the taxpayer was unavailable (e.g., out of town, hospitalized, or incarcerated) to reply to the assigned section's letter within the 30 days allowed and the taxpayer submitted the request for an appeals conference within 30 days of the date the taxpayer became available.

(i) Where the findings of the assigned section are that some or all of the matters put into dispute by the petition should not be resolved in the taxpayer's favor and the taxpayer had previously requested an appeals conference, the assigned section will mail a letter to the taxpayer either advising the taxpayer that the appeal will be forwarded to the Appeals Bureau for the scheduling of an appeals conference, or requesting the taxpayer to confirm its prior request for an appeals conference.

(1) Reasons for asking for confirmation include that the taxpayer failed to respond to requests for additional supporting information or documentation, or that the assigned section believes that the taxpayer accepts its findings.

(2) If the assigned section asks the taxpayer to confirm its prior request, the assigned section will state the reason it is asking for confirmation, and will also explain that, unless the taxpayer confirms in writing to the assigned section within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference, the taxpayer's petition will be resolved in accordance with the findings of the assigned section as stated in its letter.

(3) If the taxpayer confirms in writing within 30 days of the date of the letter from the assigned section that the taxpayer still wants an appeals conference, the appeal will be forwarded to the Appeals Bureau for the scheduling of an appeals conference; otherwise, unless an appeals conference is requested by another party as provided in subdivision (j), the appeal will be resolved in accordance with the assigned section's findings as stated in its letter to the taxpayer.

(j) Where a state agency other than CDTFA is a party to the appeal and the findings of the assigned section are in favor of the taxpayer and adverse to the state agency, in whole or in part, the state agency may request an appeals conference. The state agency must submit its written request for appeals conference to the assigned section within 30 days of any letter mailed pursuant to this regulation notifying the taxpayer of the assigned section's findings that the taxpayer's appeal should be granted, in whole or in part. Where a state agency makes such a timely written request for an appeals conference, the assigned section will forward the appeal to the Appeals Bureau for the scheduling of an appeals conference.

(k) If the assigned section determines that a cancellation, including an adjustment, in excess of \$50,000 (or \$15,000 for Integrated Waste Management Fee) should be granted, the fact that CDTFA will cancel or adjust such amount must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 6981, 7711, 8191, 8852, 9196, 30175, 30262, 30421, 38443, 38631, 40093, 40121, 41087, 41107, 43303, 43491, 45303, 45801, 46353, 46551, 50116, 50151, 55083, 55281, 60352 and 60581, Revenue and Taxation Code.

35018. Preparation and Mailing of the Summary Analysis.

Before the assigned section forwards an appeal to the Appeals Bureau for the scheduling of an appeals conference, it will first prepare a summary analysis which sets forth the taxpayer's contentions regarding the notice of determination, the position of BTFD, and the reasons the assigned section believes that BTFD's position should be sustained. The assigned section will then mail a copy of the summary analysis to the taxpayer and forward the petition file to the Appeals Bureau for the scheduling of an appeals conference in accordance with article 8 of this chapter.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6562, 7711, 8852, 30175, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

Article 2B. Treatment of Premature or Untimely Petition as an Administrative Protest

35019. Administrative Protest.

(a) If an appeal satisfying the requirements of regulation 35008 is filed before the applicable notice of determination is issued or is filed after the due date of a timely petition for redetermination as provided by regulation 35007, the appeal does not qualify as a valid petition for redetermination. However, such an appeal may be accepted as an administrative protest if the Deputy Director determines, in his or her discretion, that there is a reasonable basis to believe that there may be an error in the taxpayer's notice.

(b) If an appeal is accepted as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination, except that a request for an appeals conference may be denied.

(c) Unpaid liabilities may be cancelled as a result of action on an administrative protest. An amount can be refunded only pursuant to a valid and timely claim for refund filed in accordance with article 3 of this chapter, and no amount paid by a taxpayer can be refunded as the result of action on an administrative protest. An appeal will not be accepted as an administrative protest as to amounts that have been paid, and where an appeal has been accepted as an administrative protest, the protest is moot as to any amounts which are paid. Where the amounts put in dispute by an appeal accepted as an administrative protest are paid in full, the administrative protest will be dismissed, but the same appeal may continue as a claim for refund provided that the taxpayer files a timely claim for refund prior to CDTFA's dismissal of the administrative protest.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6981, 8191, 9196, 30421, 38631, 40121, 41107, 43491, 45801, 46551, 50151, 55281 and 60581, Revenue and Taxation Code.

35020. Accrual of Interest.

The acceptance of an appeal as an administrative protest does not stop the accrual of interest.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6482, 6513, 7674, 7661, 8777, 8803, 30174, 30202, 30223, 38412, 38423, 40072, 40083, 41033, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302 and 60314, Revenue and Taxation Code.

35021. No Stay of Collection Activities.

An appeal is accepted as an administrative protest only where the taxpayer failed to file a timely petition for redetermination and the liability for which the administrative protest is accepted is final. The acceptance of the appeal as an administrative protest does not stay CDTFA's efforts to collect any such final liability that remains unpaid. However, BTFD may, in its sole discretion, stay efforts to collect a final liability.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6561, 7710, 8851, 30174, 30261, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081 and 60350, Revenue and Taxation Code.

Article 2C. Contesting a Jeopardy Determination

35022. Notice of Jeopardy Determination.

(a) If the collection of any amount of tax or fee due to the state will be jeopardized by delay, a notice of jeopardy determination may be issued that will render such amounts immediately due and payable.

(b) The notice of jeopardy determination will state the amount of tax or fee due that is covered by the jeopardy determination and that such amounts are immediately due and payable. The notice of jeopardy determination will also state the amount of security the taxpayer must deposit with CDTFA as a condition to filing a petition for redetermination of the jeopardy determination.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6536, 6538, 7698, 7700, 8826, 8828, 30241, 30243, 38431, 38433, 43350, 43351, 45351, 45352, 46301, 46302, 50120.1, 50120.2, 55101, 55102, 60330 and 60332, Revenue and Taxation Code.

35023. Filing a Petition for Redetermination of a Jeopardy Determination.

The person against whom a jeopardy determination is made may file a petition for redetermination of the jeopardy determination and related documents as specified in regulation 35015.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

35024. Contents of a Petition for Redetermination of Jeopardy Determination.

A petition for redetermination of a jeopardy determination must satisfy all the requirements for a petition for redetermination as provided in article 2A of this chapter.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

35025. Limitation Period for a Petition for Redetermination of Jeopardy Determination.

Notwithstanding the provisions of article 2A of this chapter, a petition for redetermination of a jeopardy determination must be filed within the earlier of 10 days from the date that the notice of jeopardy determination was mailed or 10 days from the date that the notice of jeopardy determination was personally served.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

35026. Security Requirement for a Petition; Stay of Collection Activities.

(a) A petition for redetermination of a jeopardy determination will not be accepted unless the taxpayer deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period for filing the petition as provided in regulation 35025.

(b) Where the person against whom a notice of jeopardy determination is issued files a timely petition of the determination along with the security indicated in the notice of jeopardy determination, collection activities for the amounts assessed by the jeopardy determination will be stayed pending resolution of the petition.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

35027. Review of a Petition for Redetermination of Jeopardy Determination.

(a) A petition for redetermination of a jeopardy determination may raise any objections the taxpayer has to the notice of jeopardy determination, including objections to the appropriateness of issuing the notice of jeopardy determination.

(b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination under article 2A of this chapter.

(c) The scope of CDTFA's review of a petition for redetermination of a jeopardy determination issued under the Hazardous Substances Tax Law, Covered Electronic Waste Recycling Fee, Water Rights Fee Law, or Lead-Acid Battery Recycling Act is limited as provided in regulations 35011, 35012, 35013, and 35014, respectively.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538, 7700, 8828, 30243, 38433, 43351, 45352, 46302, 50120.2, 55102 and 60332, Revenue and Taxation Code.

35028. Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.

(a) The person against whom a jeopardy determination is made may file an application for an administrative hearing for one or more of the following purposes:

- (1) To establish that the jeopardy determination is excessive.
- (2) To establish that the sale of the property that may be seized after issuance of the jeopardy determination, or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
- (3) To request the release of all or part of the property to the person.
- (4) To request a stay of collection activities.
- (5) To request administrative review of any other issue raised by the jeopardy determination.

(b) An application for an administrative hearing and related document may be filed as specified in regulation 35015.

(c) The scope of CDTFA's review of an application for administrative hearing for a jeopardy determination issued under the Hazardous Substances Tax Law, Covered Electronic Waste Recycling Fee, Water Rights Fee Law, or Lead-Acid Battery Recycling Act is limited as provided in regulations 35011, 35012, 35013, and 35014, respectively.

(d) If an application is filed under this regulation and a petition is filed under regulation 35023, the application and petition will be consolidated into one administrative hearing.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 38435, 43352, 45353, 50120.3, 55103 and 60333, Revenue and Taxation Code.

35029. Limitation Period for Filing an Application for Administrative Hearing.

(a) An application for administrative hearing must be filed within the earlier of 30 days from the date that the notice of jeopardy determination was mailed or 30 days from the date that the notice of jeopardy determination was personally served.

(b) An application for administrative hearing filed after the expiration of the time period provided for in subdivision (a) should be accompanied by a statement demonstrating why the person believes there was good cause for the person's failure to file a timely application.

(c) If good cause existed for failing to file a timely application, an administrative hearing may still be granted.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

35030. Contents of an Application for Administrative Hearing.

Every application for administrative hearing must:

(a) Be in writing;

(b) Identify the purpose for which the person has applied for an administrative hearing;

(c) State the specific factual or legal grounds upon which the application is founded; and

(d) Be signed by the person against whom the jeopardy determination was made or the person's authorized representative.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501,

45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

35031. Option to Post Security with an Application for Administrative Hearing.

- (a) A person is not required to post security to obtain an administrative hearing.
- (b) Property seized under a notice of jeopardy determination may not be sold without the consent of the owner during the first 30 days after service of the notice of jeopardy determination, nor while a timely application for administrative hearing is pending. The storing of the property during the period the application is pending will be at the applicant's expense.
- (c) The filing of an application for an administrative hearing will not stay other collection activities not identified in subdivision (b) unless the person deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in regulation 35025. If the person deposits the amount of security indicated in the notice of jeopardy determination after the 10-day period specified in regulation 35025, BTFD will consider whether a stay of collection activities is warranted.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: sections 6538.5, 7700.5, 8828.5, 30243.5, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

35032. Review by the Assigned Section and Assignment of an Application for Administrative Hearing to Appeals Bureau for Appeals Conference.

- (a) Upon receipt of an application for administrative hearing, the assigned section will promptly mail the taxpayer a letter acknowledging receipt of the application and containing the contact information for the applicable staff within the assigned section. The assigned section will review the application in accordance with article 2A of this chapter, and may find that no relief is warranted, or may find that one or more of the following types of relief should be granted: that the sale of the property will irreparably damage the applicant and that the property will not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; or that the tax as determined is excessive and that the amount of the determination be reduced accordingly. Unless the taxpayer is satisfied with the findings of the assigned section, the assigned section will forward the application to the Appeals Bureau for the scheduling of an administrative hearing in accordance with regulations 35017 and 35018.
- (b) An administrative hearing will be scheduled and held as provided in article 8 of this chapter for the scheduling and holding of an appeals conference. The Appeals Bureau may find that no relief is warranted, or may find that one or more of the following types of relief should be

granted: that the sale of the property will irreparably damage the applicant and that the property will not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; or that the tax as determined is excessive and that the amount of the determination be reduced accordingly.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; sections 7051, 8251, 9251, 30451, 34013, 38701, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: sections 6538.5, 7700.5, 8828.5, 30243.5, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

Article 3. Claims for Refund

35033. Persons Who May File a Claim for Refund; Limitations on Certain Claims.

(a) Any taxpayer who believes that it has overpaid tax, or interest or penalty thereon, or believes it has paid to CDTFE any other refundable amount, may file a claim for refund, subject to the limitations and conditions set forth in this regulation.

(b) Motor Vehicle Fuel Tax Law. A claim for refund based upon any of the following grounds must be filed with the Controller and is not governed by this chapter:

(1) The motor vehicle fuel was purchased and used for a purpose other than operating motor vehicles on public highways in California.

(2) The motor vehicle fuel was exported for use outside of California.

(3) The motor vehicle fuel was sold to the armed forces of the United States for use in ships or aircraft, or for use outside of California in a manner that would qualify for an exemption under Revenue and Taxation Code section 7401.

(4) The motor vehicle fuel was purchased for and used in construction equipment, which is exempt from vehicle registration under the Vehicle Code.

(5) The claimant is a supplier who sold motor vehicle fuel to a consulate office or consulate employee under circumstances that would have entitled the supplier to an exemption under Revenue and Taxation Code section 7401, subdivision (a)(4).

(6) The claimant is a supplier that:

(A) Removed motor vehicle fuel from a rack and paid tax on that removal, or purchased tax-paid motor vehicle fuel outside the bulk transfer/terminal system; and

(B) Delivered the tax-paid motor vehicle fuel to another approved terminal from which

the supplier subsequently removed the tax-paid motor vehicle fuel at the terminal rack and paid a second tax on the same amount of motor vehicle fuel.

(7) The claimant is a supplier who purchased tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removed the tax-paid motor vehicle fuel at the terminal rack, and paid tax upon the same amount of motor vehicle fuel twice.

(8) The claimant provides public transportation services and used tax-paid motor vehicle fuel to propel passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit.

(9) The claimant paid tax attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel operated by its owner on waters located on private property owned or controlled by it.

(c) Hazardous Substances Tax Law.

(1) A claim for refund under Revenue and Taxation Code section 43452 will be acknowledged. However no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A claim for refund based solely on such grounds will be forwarded to the Director of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43452, and will not be considered by CDTFA until after the Director of Toxic Substances Control has made his or her determination.

(2) Childhood Lead Poisoning Prevention Fee.

(A) A claim for refund of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

1. The taxpayer's industry did not contribute in any manner to environmental lead contamination;
2. The taxpayer's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or
3. The amount of the fee assessed does not reflect the taxpayer's market share or is incorrectly computed.

(B) A claim for refund based on any of the grounds set forth in subdivision (c)(2)(A) will not be acted upon until after the California Department of Public Health has acted upon the taxpayer's application for exemption from the fee or reassessment of the fee. An application for exemption must be submitted to the California Department of Public Health in the manner provided in California Code of Regulations, title 17, section 33040. An application for reassessment must be submitted to the California Department of

Public Health in the manner provided in California Code of Regulations, title 17, section 33050.

(d) Covered Electronic Waste Recycling Fee. All claims for refund of the Covered Electronic Waste Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. Claims for refund based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

(e) Water Rights Fee Law. A claim for refund filed under the Fee Collection Procedures Law that is based upon the assertion that the State Water Resources Control Board improperly or erroneously determined that a person or entity was required to pay a water rights fee or the amount of such fee will not be accepted. However, CDTFA will accept a claim for refund based upon such grounds if the determination referred to in the claim for refund has already been set aside by the State Water Resources Control Board or a court reviewing the determination. A determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee is subject to review under chapter 4 of part 1 of division 2 of the Water Code.

(f) Lead-Acid Battery Recycling Fee. A claim for refund of the Lead-Acid Battery Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a lead-acid battery. A claim for refund based upon such grounds will be forwarded to the California Department of Toxic Substances Control for determination in accordance with Health and Safety Code section 25215.45.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 8101, 8101.1, 8101.6, 8101.7, 8102, 8126, 8128, 9151, 9152, 30176, 30176.1, 30176.2, 30177, 30361, 30362, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code; Section 1537, Water Code.

35034. Limitation Period for a Claim for Refund.

(a) A refund requested in a claim for refund cannot be approved unless the claim for refund is filed within the time periods provided in this regulation.

(b) Except as stated in this regulation, a claim for refund is timely if it is filed prior to the expiration of the last of the following time periods:

(1) Three years from the last day of the calendar month following the close of the reporting period for which the claimed overpayment was made;

(2) Six months from the date the determination became final, if the claimed overpayment was made under the notice of determination; or

(3) Six months from the date of the claimed overpayment.

(c) Cigarette and Tobacco Products Tax Law.

(1) Stamps and Meter Register Settings. Instead of the period stated in subdivision (b)(1), a claim for refund of an overpayment made with regard to a purchase of stamps or meter register settings is timely if filed within three years from the due date for payment of the purchase for which the claimed overpayment was made.

(2) Other Claims for Refund. Instead of the period stated in subdivision (b)(1), a claim for refund filed under the Cigarette and Tobacco Products Tax Law other than a claim for refund of an overpayment made with regard to a purchase of stamps or meter register settings is timely if filed within three years from the 25th day after the close of the monthly period for which the claimed overpayment was made.

(3) Exported Tobacco Products. The periods stated in subdivisions (b) and (c)(1) and (2) do not apply to a claim for refund based upon the grounds that the tobacco products with respect to which the tax was paid were exported; a claim for refund based on such grounds is timely only if filed within three months after the close of the calendar month in which the export of the tobacco products is claimed to have occurred.

(d) Emergency Telephone Users Surcharge Law. Instead of the period stated in subdivision (b)(1), a claim for refund of an overpayment made under the Emergency Telephone Users Surcharge Law is timely if filed within three years after the last day of the second month following the close of the month for which the claimed overpayment was made.

(e) Hazardous Substances Tax Law, Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. Instead of the period stated in subdivision (b)(1), a claim for refund of an overpayment made under the Hazardous Substances Tax Law, Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law is timely if filed within three years after the due date of the payment for the period for which the overpayment was made.

(f) Diesel Fuel Tax Law. Instead of the period stated in subdivision (b)(1), a claim for refund filed under Revenue and Taxation Code section 60501 (diesel fuel lost, sold, or removed) or 60502 (ultimate vendor claims) is timely if filed within three years from the date of the purchase of the diesel fuel to which the claim relates, or, if the tax was not invoiced at the time of the purchase of the diesel fuel, six months after the receipt of an invoice for the tax, whichever period expires later.

(g) **Waivers.** In addition to the periods stated above, except for a claim under the Emergency Telephone Users Surcharge Law or a claim described in subdivision (h), a claim for refund is also timely if filed for a reporting period covered by a waiver executed by the taxpayer and accepted by BTFD which extends the time for issuance by BTFD of a notice of determination to the taxpayer, provided the claim for refund is filed before the expiration of the period agreed upon in the waiver.

(h) **Financially Disabled Individuals.**

(1) The periods described in subdivisions (b), (c)(2), (d), and (e) are suspended during any period of an individual's life that the individual is financially disabled.

(2) An individual is financially disabled if:

(A) The individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months; and

(B) Proof of the individual's impairment is provided.

(3) An individual is not financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(4) This subdivision does not apply to a claim for refund of an overpayment made with respect to purchases of stamps or meter register settings filed under the Cigarette and Tobacco Products Tax Law.

(i) **Levies and Liens.** A claim for refund for an overpayment of tax collected by means of levy, through the use of liens, or by other enforcement procedures is timely if filed within three years of the overpayment, provided the tax was collected pursuant to one of the following laws: Sales and Use Tax Law, Use Fuel Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

(j) A timely filed claim for refund for an overpayment made on a determination that is filed in the case in which the amount of tax determined has not been paid in full shall be deemed to be a timely filed claim for refund with respect to all subsequent payments applied to that determination provided that the determination was issued pursuant one of the following laws: Sales and Use Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6902, 6902.3, 6902.4, 6902.6, 8128, 8128.1, 9152, 9152.1, 9152.2, 9152.3, 30178, 30178.1, 30178.3, 30362, 30362.1, 30362.2, 38602, 38602.5, 40112, 40112.1, 40112.2, 40112.3, 41101, 41101.1, 41101.2, 41101.3, 43452, 43452.1, 43452.2, 43452.3, 45652, 45652.1, 45652.2, 45652.3, 46502, 46502.1, 46502.2, 46502.3, 50140, 50140.1, 50140.2, 50140.3, 55222, 55222.1, 55222.2, 55222.3, 60507, 60522, 60522.1, 60522.2 and 60522.3, Revenue and Taxation Code.

35035. Failure to File a Timely Claim for Refund.

A person's failure to file a claim for refund within the applicable time period, as provided in regulation 35034, is a waiver of any demand against the State on account of the overpayment.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6905, 8128, 9152, 30178, 30178.1, 30364, 38604, 40114, 41103, 43453, 45653, 46504, 50141, 55223, 60507 and 60522, Revenue and Taxation Code.

35036. General Contents of a Claim for Refund.

(a) All Claims. A claim for refund must be in writing, must be signed by the claimant or the claimant's authorized representative, and must include:

- (1) The specific grounds or reasons upon which the claim is founded;
- (2) The reporting period for which the claimed overpayment was made;
- (3) The amount of the refund being claimed, if known; and
- (4) Information necessary to contact the claimant or claimant's authorized representative.

(b) Supporting Documentation. A claim for refund should be accompanied by whatever supporting written arguments and documentary evidence is necessary to verify and approve the claim. Failure to include such information along with a claim may delay its processing.

(c) Forms. The filing of a completed form provided by CDTFA for use as a claim for refund will satisfy the requirements of this regulation, other than subdivision (b).

(d) Returns and Payments. In no event may the claimant deduct amounts included in a claim for refund from the amount required to be reported and paid for any reporting period.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6904, 8129, 9153, 30176, 30176.1, 30176.2, 30177, 30363, 38603, 40113, 41102, 43452, 45652, 46503, 50140, 55222, 60501, 60502, 60505.5 and 60523, Revenue and Taxation Code.

35037. Contents of a Claim for Refund Under Diesel Fuel Tax Law.

Notwithstanding regulation 35036, a claim for refund of a payment made with respect to the Diesel Fuel Tax Law must be prepared and filed in the following manner:

(a) Diesel Fuel that is lost, sold, or removed.

(1) A claim for refund must satisfy the requirements of subdivision (a)(2) if it is based upon the grounds that:

(A) Tax was imposed on the diesel fuel to which the claim relates; and

(B) The claimant bought or produced the diesel fuel to which the claim relates and the same diesel fuel was:

1. Used for purposes other than operating motor vehicles upon the public highways of California;
2. Exported for use outside of California;
3. Used in construction equipment that is exempt from registration under the Vehicle Code;
4. Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture;
5. Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency;
6. Sold by a supplier to any consulate office or consulate employee;
7. Lost in the ordinary course of handling, transportation, or storage;
8. Sold to the United States, its agencies, or instrumentalities;
9. Sold to a train operator for use in a diesel-powered train or other off-highway use;

10. Removed from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier; or

11. Removed from an approved terminal at the terminal rack as part of dyed blended biodiesel fuel, where tax is not imposed on that removal and tax had been previously imposed on the biodiesel fuel portion of the dyed blended biodiesel fuel, but only to the extent a supplier can show that the tax on that biodiesel fuel has been paid by the same supplier.

(2) A claim for refund based upon the grounds described in subdivision (a)(1) must:

(A) Be prepared and filed on a form prescribed by CDTFA;

(B) Be accompanied by the original invoice showing the purchase, or, if no original invoice was created, an electronic invoice and the original bill of lading or fuel manifest;

(C) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase;

(D) Include a statement by the claimant indicating that the diesel fuel covered by the claim did not contain visible evidence of dye;

(E) Include a statement by the person who sold the diesel fuel to the claimant indicating that the diesel fuel did not contain visible evidence of dye;

(F) Identify the total amount of diesel fuel covered by the claim;

(G) Describe the use made of the diesel fuel; and

(H) Be accompanied by proof that the diesel fuel was exported, if the claim is based upon the grounds that the diesel fuel was exported.

(3) A claim for refund based upon the grounds provided for in subdivision (a)(1) must be filed on a calendar year basis, except that a claim for refund of more than \$750 may be filed for a quarter of a calendar year.

(b) Ultimate Vendors of Diesel Fuel. A claim for refund based upon the grounds that the claimant was an ultimate vendor that sold tax-paid diesel fuel to an ultimate purchaser for use on a farm for farming purposes or for use in an exempt bus operation may not be filed for an amount of tax less than \$200 or for a period shorter than one week and must:

(1) Be prepared and filed on a form prescribed by CDTFA;

(2) Contain the claimant's permit number;

(3) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase;

(4) Include the name, address, telephone number, and federal taxpayer identification number of each farmer or the permit number of each exempt bus operator that bought the diesel fuel from the claimant and the number of gallons of diesel fuel the claimant sold to each;

(5) Include the claimant's statement that the diesel fuel covered by the claim did not contain evidence of visible dye;

(6) Identify the total amount of diesel fuel covered by the claim;

(7) Include the claimant's statement that it has an unexpired exemption certificate described in Revenue and Taxation Code section 60503 and has no reason to believe the certificate is false; and

(8) Include the claimant's statement that the amounts claimed have not been previously refunded to the claimant.

(c) Other Claims. A claim for refund under the Diesel Fuel Tax Law not described in subdivision (a) or (b) may be filed in the manner provided for in regulation 35036.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 60601, Revenue and Taxation Code. Reference: Sections 60501, 60502, 60505.5 and 60523, Revenue and Taxation Code.

35038. Additional Requirements for a Claim for Refund Filed Under the Cigarette and Tobacco Products Tax Law.

In addition to the requirements of regulation 35036, a claim for refund of amounts paid with regard to purchases of stamps or meter register settings must satisfy the requirements of and be prepared and filed on any form required by regulations 4061 through 4065.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 30451, Revenue and Taxation Code. Reference: Sections 30176, 30176.1, 30176.2, 30177 and 30363, Revenue and Taxation Code.

35039. Filing a Claim for Refund.

(a) A claim for refund and related documents filed under any tax law administered by CDTFA other than the Sales and Use Tax Law may be filed as specified in subdivision (c) of regulation 35015 for the filing of a petition for redetermination.

(b) Except as provided in subdivision (c), a claim for refund and related documents under the Sales and Use Tax Law may be filed as set forth in this subdivision, or as otherwise expressly provided on CDTFA's website at www.cdtfa.ca.gov.

(1) Hand delivery: Audit Determination and Refund Section, MIC 39, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(2) Mailing address: Audit Determination and Refund Section, MIC 39, California Department of Tax and Fee Administration P.O. Box 942879 Sacramento, CA 94279-0039.

(3) Email address: BTFD-ADRS@cdtfa.ca.gov.

(4) Facsimile number: (916) 445-2202.

(c) A claim for refund of tax paid to the Department of Motor Vehicles and related documents may be filed as set forth in this subdivision, or as otherwise expressly provided on CDTFA's website at www.cdtfa.ca.gov.

(1) Hand delivery: Consumer Use Tax Section, MIC 37, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(2) Mailing address: Consumer Use Tax Section, MIC 37, California Department of Tax and Fee Administration P.O. Box 942879 Sacramento, CA 94279-0037.

(3) Email address: BTFD-ADRS@cdtfa.ca.gov.

(4) Facsimile number: (916) 324-2491.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6902, 8128, 9152, 30178, 30178.1, 30362, 38602, 40112, 41101, 43452, 45652, 46502, 50140, 55222, 60501, 60502, 60507 and 60522, Revenue and Taxation Code.

35040. Assignment and Acknowledgment of a Claim for Refund.

After receipt of a claim for refund, the assigned section will promptly mail the claimant a letter acknowledging receipt of the claim for refund and the contact information for the applicable staff within the assigned section.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 8126, 8128, 9151, 9152, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1,

30361, 30362, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

35041. Request for Additional Documentary Evidence.

Where the assigned section believes additional documentary evidence is needed for it to be able to verify and approve a claim, it will contact the claimant and request such information. The failure to provide such information upon request may result in the assigned section's conclusion that the claim should be denied.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60506, 60507, 60521 and 60522, Revenue and Taxation Code.

35042. Action on a Claim for Refund.

(a) The assigned section must review the claim for refund and all other relevant information available to it in reaching findings on behalf of BTFD, subject to the oversight of the Deputy Director.

(b) If the assigned section finds that a claim should be granted in its entirety, subject to subdivision (d), it will:

- (1) Mail the taxpayer a notice of refund showing the amount to be refunded; and
- (2) Have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in regulation 35044.

(c) If the assigned section finds that a claim for refund should be denied, in whole or in part, it will mail the taxpayer a letter containing its findings and an explanation of those findings. The letter will also advise that the taxpayer's claim for refund will be resolved in accordance with the assigned section's findings unless, within 30 days of the date of the letter, the taxpayer submits to the assigned section a written request for an appeals conference.

- (1) If the taxpayer submits a written request for an appeals conference within 30 days of the date of the letter and the request is not denied under regulation 35043, the assigned section will prepare a summary analysis which sets forth the taxpayer's contentions and the reasons BTFD has found that the claim for refund should be denied, in whole or in part. The

assigned section will then mail a copy of the summary analysis to the taxpayer and will forward the appeal to the Appeals Bureau for the scheduling of an appeals conference in accordance with article 8 of this chapter.

(2) If the taxpayer does not submit a written request for an appeals conference within 30 days of the date of the letter or if such a request is submitted but denied under regulation 35043, the assigned section will mail the taxpayer a notice of denial of claim for refund denying the claim in whole or in part, as applicable. Where the findings of the assigned section are to grant the claim in part, subject to subdivision (d), it will:

(A) Mail the taxpayer a notice of refund showing the amount to be refunded; and

(B) Have a refund warrant prepared and sent to the taxpayer after determining if such amounts should be credited or offset against other liabilities as provided in regulation 35044.

(d) If the assigned section finds that a refund in excess of \$50,000 should be granted, the proposed finding must be available as a public record, if required by law, for at least 10 days prior to its effective date.

(e) Failure of the taxpayer to commence a court action within 90 days after the mailing of the notice of CDTFA's action on a claim for refund as provided in the tax law under which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6902, 6906, 6933, 8126, 8128, 8148, 9151, 9152, 9173, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 30403, 38601, 38602, 38605, 38613, 40111, 40112, 40115, 40127, 41100, 41101, 41104, 41110, 43451, 43452, 43454, 43473, 45651, 45652, 45654, 45703, 46501, 46502, 46505, 46523, 50139, 50140, 50142, 50145, 55221, 55222, 55224, 55243, 60501, 60502, 60507, 60521, 60522 and 60543, Revenue and Taxation Code.

35043. Discretion to Grant or Deny an Appeals Conference on a Claim for Refund.

A request for an appeals conference conducted under article 8 of this chapter may be denied on a claim for refund. Requests will be liberally granted, except that a taxpayer's request for an appeals conference will generally be denied where the taxpayer had already been provided with an appeals conference on the same issue, and has not submitted any additional arguments or evidence.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference:

Sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521 and 60522, Revenue and Taxation Code.

35044. Credits and Offsets May Reduce a Refund.

(a) The amount shown as a refund on a notice of refund is the amount due to the claimant. However, that amount will not be paid directly to the claimant if it is subject to being credited or offset against other amounts owed by the claimant, which are then due and payable to CDTFA or to any other state agency with whom CDTFA has a memorandum of understanding for such purpose.

(b) Any portion of a claimant's refund remaining after the refund has been credited or offset against other amounts that are then due and payable from the claimant will be refunded and paid to the claimant.

(c) Diesel Fuel Tax Law. Credits claimed on a return in lieu of claiming a refund under Revenue and Taxation Code sections 60501 and 60502 are not subject to subdivision (a).

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6483, 6512, 6901, 8126, 8778, 8802, 9151, 30176, 30176.1, 30176.2, 30177, 30203, 30222, 30361, 38413, 38422, 38601, 40073, 40082, 40111, 41072, 41081, 41100, 43201, 43451, 45201, 45651, 46201, 46252, 46501, 50113, 50139, 55061, 55221, 60508, 60508.3 and 60521, Revenue and Taxation Code.

35045. Combined Claim for Refund on Behalf of Class of Taxpayers.

(a) Where a person files a claim for refund of sales or use tax, including State-administered local sales, transactions, and use taxes, as a representative of a class of claimants, the representative must establish:

(1) It is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The number of persons in the class.

(C) The manner in which and the time when the class members will be notified of the pendency of the combined claim.

(3) The issues of law and fact that are or are not common to all class members, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority must authorize CDTFA to release to the representative any confidential information in CDTFA's files that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) The representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member must be described.

(6) The representative can fairly and adequately protect the interests of each member of the class and the representative's interests are not antagonistic to members of the class.

(7) When requested by CDTFA staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(b) Action to be taken by assigned section.

(1) If the assigned section finds that the claim is a proper combined claim it will, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If the assigned section finds that the claim is not a proper combined claim, it will act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund is limited to the amount of tax overpayment by that member under the tax law under which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member must be established and the representative or member must furnish or make available to CDTFA staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to CDTFA staff, the representative or member will be deemed to have failed to exhaust the administrative remedies.

(c) Effect of action on combined claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of CDTFA's action on a refund claim as provided in the tax law under which the claim was

filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply to persons who have not previously been notified of the claim, or who have notified CDTFA that they desire to be excluded from the combined claim. Nor does the waiver apply to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Sections 7051, 7202, 7203, 7261 and 7262, Revenue and Taxation Code. Reference: Sections 6904, and 6933, Revenue and Taxation Code.

Article 4A. Successor's Request for Relief of Penalty Under the Sales and Use Tax Law

35046. Successor's Request for Relief of Penalty.

A successor requesting relief from penalties as provided in regulation 1702, subdivision (d)(2), may include its request for relief in its petition for reconsideration or amend its previously filed petition to include such request. If the successor has not filed a petition for reconsideration and does not intend to do so, the successor may file a request for relief from penalties without filing a petition for reconsideration. Whether filed as part of a petition for reconsideration or filed by itself, a successor's request for relief from penalties must include a written statement signed under penalty of perjury stating the facts upon which the claim for relief is based. Such request for relief must be filed in accordance with the procedures in article 2A of this chapter for filing a petition for redetermination under the Sales and Use Tax Law.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 7051, Revenue and Taxation Code. Reference: Section 6814, Revenue and Taxation Code.

Article 4B. Other Requests for Relief of Penalties and Interest

35047. Procedures for Review of a Request for Relief.

(a) In general, a person filing a request for relief described in this article does not have a right to an appeals conference on such request. A request for an appeals conference on a request for relief may be granted or denied.

(b) If a request for relief described in this article is included in a timely filed petition for redetermination, petition for reconsideration, or claim for refund, the procedures applicable to assignment and review of such petition or claim apply to the assignment and review of the request for relief. Whether filed as part of a petition for redetermination, petition for

reconsideration, or claim for refund or filed by itself, a request for relief must satisfy the requirements of this article applicable to such request.

(c) Any request for relief filed under this article may be associated with any pending petition for redetermination, petition for reconsideration, or claim for refund filed by the same person and covering the same periods as the request for relief, and if so, the procedures applicable to the assignment and review of such petition or claim apply to the assignment and review of the request for relief.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 7726, 7727, 8877, 8878, 8878.5, 8879, 30282, 30283, 30283.5, 30284, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211 and 60212, Revenue and Taxation Code.

35048. Authority to Grant Relief of Penalty for Reasonable Cause and Contents of a Request for Such Relief.

(a) Authority to Grant Relief. If a taxpayer's failure to make a timely return, report, payment, or prepayment, or failure to comply with a written notice issued under Revenue and Taxation Code section 6074, subdivision (a) is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the taxpayer may be relieved of the penalties imposed under:

(1) Sales and Use Tax Law: Revenue and Taxation Code sections 6074, 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

(2) Motor Vehicle Fuel Tax Law: Revenue and Taxation Code sections 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, 7713, 7726, and 7727.

(3) Use Fuel Tax Law: Revenue and Taxation Code sections 8760, 8801, 8854, and 8876.

(4) Cigarette and Tobacco Products Tax Law: Revenue and Taxation Code sections 30171, 30190, 30221, 30264, and 30281.

(5) Timber Yield Tax Law: Revenue and Taxation Code sections 38421 and 38451.

(6) Energy Resources Surcharge Law: Revenue and Taxation Code sections 40067, 40081, 40096, and 40101.

(7) Emergency Telephone Users Surcharge Law: Revenue and Taxation Code sections 41060, 41080, 41090, and 41095.

(8) Hazardous Substances Tax Law: Revenue and Taxation Code sections 43155, 43170, and 43306.

(9) Integrated Waste Management Fee Law: Revenue and Taxation Code sections 45153, 45160, and 45306.

(10) Oil Spill Response, Prevention, and Administration Fees Law: Revenue and Taxation Code sections 46154, 46154.1, 46160, 46251, and 46356.

(11) Underground Storage Tank Maintenance Fee Law: Revenue and Taxation Code sections 50112, 50112.7, and 50119.

(12) Fee Collection Procedures Law: Revenue and Taxation Code sections 34013, 55042, 55050, and 55086.

(13) Diesel Fuel Tax Law: Revenue and Taxation Code sections 60207, 60250, 60301, 60338, 60355, 60361, and 60361.5.

(b) Contents of Request.

(1) A request for relief of penalty based upon reasonable cause and circumstances beyond the taxpayer's control must be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request is based, and be signed by the taxpayer requesting relief under penalty of perjury.

(2) A request for relief of penalty based upon reasonable cause and circumstances beyond the taxpayer's control may also be filed online through CDTFA's website at www.cdtfa.ca.gov.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6592, 7657, 7726, 7727, 8877, 30282, 38452, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, 60209, 60361 and 60361.5, Revenue and Taxation Code.

35049. Authority to Grant Relief of Interest Due to Unreasonable Error or Delay and Contents of a Request for Such Relief.

(a) A taxpayer may be relieved of interest imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law, if the taxpayer was charged interest due to an unreasonable error or delay:

(1) By CDTFA staff acting in his or her official capacity; and

(2) No significant aspect of the error or delay is attributable to an act or failure to act by the taxpayer.

(b) A taxpayer may be relieved of interest imposed under the Sales and Use Tax Law where the taxpayer's failure to pay the correct amount of use tax with respect to a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by an employee of the Department of Motor Vehicles in calculating the use tax due.

(c) A request for relief of interest must:

(1) Be in writing;

(2) Specifically identify the error or delay that caused the taxpayer requesting relief to be charged interest;

(3) Specifically identify the period for which interest relief is sought; and

(4) Be signed by the taxpayer requesting relief under penalty of perjury.

(d) A request for relief of interest may also be filed online through CDTFA's website at www.cdtfa.ca.gov.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6593.5, 7658.1, 8878.5, 30283.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046 and 60212, Revenue and Taxation Code.

35050. Authority to Grant Relief of Tax Due to Reasonable Reliance on Written Advice and Contents of a Request for Such Relief.

(a) A taxpayer may be relieved from liability for the payment of a tax imposed under the laws identified in subdivision (c), including any penalties and interest added thereto, where the liabilities resulted from the taxpayer's failure to make a timely report, return, or payment and such failure is found to be due to reasonable reliance on:

(1) Written advice given under the conditions set forth in regulation 1705, subdivision (b) or regulation 4902, subdivision (b);

(2) Written advice given in a prior audit of that taxpayer under the conditions set forth in regulation 1705, subdivision (c) or regulation 4902, subdivision (c);

(3) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in regulation 1705, subdivision (d) or regulation 4902, subdivision (d); or

(4) Written advice requested by a trade or industry association or franchisor, on the taxpayer's behalf, under the conditions set forth in regulation 1705, subdivision (e) or regulation 4902, subdivision (e).

(b) Written advice may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person.

(c) This regulation applies to taxes imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and the Diesel Fuel Tax Law.

(d) A request for relief due to reasonable reliance upon written advice must:

(1) Be in writing;

(2) Include the specific facts upon which the request for relief is based;

(3) Be signed by the taxpayer requesting relief under penalty of perjury; and

(4) Include a copy of the taxpayer's written request for written advice and a copy of the written advice relied upon.

Note: Authority cited:, Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6596, 7657.1, 8879, 30284, 38454, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210, Revenue and Taxation Code.

35051. Authority to Grant Relief Due to Disaster and Contents of a Request for Such Relief.

(a) If a taxpayer's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the taxpayer may be relieved of interest imposed under:

(1) Sales and Use Tax Law: Revenue and Taxation Code sections 6459, 6480.4, 6513, 6591, and 6592.5.

- (2) Motor Vehicle Fuel Tax Law: Revenue and Taxation Code sections 7655, 7656, 7659.9, 7661, and 7706.
 - (3) Use Fuel Tax Law: Revenue and Taxation Code sections 8754, 8760, 8803, and 8876.
 - (4) Cigarette and Tobacco Products Tax Law: Revenue and Taxation Code sections 30171, 30185, 30190, 30223, and 30281.
 - (5) Timber Yield Tax Law: Revenue and Taxation Code sections 38405, 38423, and 38451.
 - (6) Energy Resources Surcharge Law: Revenue and Taxation Code sections 40065, 40067, 40083, and 40101.
 - (7) Emergency Telephone Users Surcharge Law: Revenue and Taxation Code sections 41054, 41060, 41082, and 41095.
 - (8) Hazardous Substances Tax Law: Revenue and Taxation Code sections 43154, 43155, 43170, and 43201.
 - (9) Integrated Waste Management Fee Law: Revenue and Taxation Code sections 45152, 45153, 45160, and 45201.
 - (10) Oil Spill Response, Prevention, and Administration Fees Law: Revenue and Taxation Code sections 46153, 46154, 46160, and 46253.
 - (11) Underground Storage Tank Maintenance Fee Law: Revenue and Taxation Code sections 50111, 50112, and 50112.7.
 - (12) Fee Collection Procedures Law: Revenue and Taxation Code sections 55041, 55042, 55050, and 55061.
 - (13) Diesel Fuel Tax Law: Revenue and Taxation Code sections 60207, 60208, 60250, 60302, and 60339.
- (b) A request for relief of interest due to a disaster must:
- (1) Be in writing;
 - (2) Identify the disaster due to which relief is sought;
 - (3) Identify the period for which relief is sought; and
 - (4) Be signed by the taxpayer requesting such relief under penalty of perjury.
- (c) A request for relief of interest may also be filed online through CDTFA's website at www.cdtfa.ca.gov.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6593, 7658, 8878, 30283, 38453, 40103, 41097, 43158, 45156, 46157, 50112.3, 55046.5 and 60211, Revenue and Taxation Code.

35052. Filing a Request for Relief.

(a) A request for relief of an unpaid amount may be filed in the manner provided in regulation 35015 for the filing of a petition for redetermination concerning the same tax law at issue in the request for relief.

(b) A request for relief of a previously paid amount may be filed in the manner provided in regulation 35039 for the filing of a claim for refund concerning the same tax law at issue in the request for relief.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 7726, 7727, 8877, 8878, 8878.5, 8879, 30282, 30283, 30283.5, 30284, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212, 60361 and 60361.5, Revenue and Taxation Code.

35053. Assignment for Review of a Request for Relief.

(a) A request for relief included in or associated with a petition for redetermination, petition for reconsideration, or claim for refund will be assigned, acknowledged, and reviewed as part of that petition or claim in accordance with the procedures applicable to such petition or claim.

(b) A request for relief that is not included in or associated with a petition for redetermination, petition for reconsideration, or claim for refund will be assigned for review as follows:

(1) Sales and Use Tax.

(A) A request for relief of an amount included in a return will be assigned for review by the Return Analysis Section, whether the amount has been paid or not.

(B) A request for relief of an unpaid amount that was not included in a return will be assigned for review by the Petitions Section.

(C) A request for relief of an amount that was not included in a return that is paid at the time the request is filed will be treated as a claim for refund, and assigned for review by the Audit Determination and Refund Section under the procedures contained in article 3 of this chapter.

(2) Special Taxes. A request for relief filed under subdivision (a)(2) through subdivision (a)(13) of regulation 35048 or regulation 35051 will be assigned for review as follows:

(A) A request for relief of an amount included in a return will be assigned for review by the Return Processing Branch.

(B) A request for relief of an amount assessed in a determination will be assigned for review by the Appeals and Data Analysis Branch.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 7726, 7727, 8877, 8878, 8878.5, 8879, 30282, 30283, 30283.5, 30284, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212, 60361 and 60361.5, Revenue and Taxation Code.

35054. Acknowledgement and Review of a Request for Relief Separate from a Petition or Claim.

(a) A request for relief that has been assigned pursuant to regulation 35053, subdivision (b), will be reviewed as provided in this regulation.

(b) The assigned section will review the request for relief, and may request additional information from the taxpayer. When the assigned section completes its review and determines whether the request should be granted, denied, or granted in part and denied in part, the assigned section will mail its findings to the taxpayer. Where the assigned section denies the request, in whole or in part, the letter will explain that the taxpayer may request reconsideration by the Deputy Director if the taxpayer mails a request for reconsideration to the assigned section within 30 days of the date of the letter. If the taxpayer does not submit a timely written request for reconsideration, the assigned section's findings as stated in the letter become final.

(c) If the taxpayer mails a timely request for reconsideration, the Deputy Director will reconsider the findings of the assigned section, and will mail the taxpayer a letter containing his or her decision. If the Deputy Director's decision is to deny the requested relief, in whole or in part, the Deputy Director's letter will state that the taxpayer may appeal the Deputy Director's decision by mailing a request for appeals conference to the assigned section within 30 days of the date of the Deputy Director's letter. The letter will also explain that a request for an appeals conference

may be granted or may be denied. If the taxpayer does not submit a timely written request for appeals conference, the Deputy Director's decision becomes final.

(d) If the taxpayer requests an appeals conference, the assigned section will notify the taxpayer whether an appeals conference is granted or denied. If the request for an appeals conference is granted, the request for relief will be forwarded to the Appeals Bureau for the scheduling of an appeals conference. If the request for an appeals conference is denied, the Deputy Director's decision becomes final.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 7726, 7727, 8877, 8878, 8878.5, 8879, 30282, 30283, 30283.5, 30284, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212, 60361 and 60361.5, Revenue and Taxation Code.

Article 4C. Request for Innocent Spouse Relief

35055. Request for Innocent Spouse Relief.

(a) Notwithstanding any other provision in this chapter, the provisions of this regulation are applicable to a request for innocent spouse relief.

(b) Who May Request Relief. A divorced or separated spouse or registered domestic partner may request innocent spouse relief regarding taxes imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law.

(c) Request Requirements. An individual seeking relief under subdivision (b) must file a written request for innocent spouse relief that is signed and dated by the individual seeking relief and specifically requests innocent spouse relief. The request must identify the tax from which that relief is sought, include the applicable tax account number, and provide a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue. A completed form provided by CDTFA for use as a request for innocent spouse relief will satisfy these requirements.

(d) Filing Requests.

(1) A request for innocent spouse relief may be filed if, at the time relief is requested, the individual requesting relief is no longer married to or is legally separated from the non-requesting spouse or registered domestic partner, or the requesting individual is no longer a member of the same household as the non-requesting spouse or registered domestic partner.

(2) A request for innocent spouse relief and related documents may be filed as set forth in this subdivision, or as otherwise expressly provided on CDTFA's website at www.cdtfa.ca.gov.

(A) By hand delivery to: Offer in Compromise Section, MIC 52, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(B) By mail to: Offer in Compromise Section, MIC 52, California Department of Tax and Fee Administration, P.O. Box 942879, Sacramento, CA 94279-0052.

(C) By facsimile to: (916) 322-7940.

(e) Res Judicata. A liability is not eligible for relief under this regulation if that liability was incurred in a calendar month, quarter, or year that has been closed by res judicata.

(f) Limitation Period. A liability is not eligible for relief under this regulation unless a timely request for innocent spouse relief is filed with regard to that liability.

(1) A request for innocent spouse relief that is filed with CDTFA no later than one year after CDTFA's first contact with the individual making the request is timely as to all liabilities.

(2) A request for innocent spouse relief that is filed with CDTFA more than one year after CDTFA's first contact with the individual making the request is timely only as to liabilities:

(A) Reported on a return due no more than five years before the filing of the request for innocent spouse relief; and

(B) Assessed by a CDTFA-issued determination or similar billing document for collection of a tax which became final no more than five years before the filing of the request for innocent spouse relief.

(g) Acknowledgment. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

(1) Mail the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.

(2) Inform the non-requesting spouse or registered domestic partner that the request has been filed and the basis for the request, and permit the non-requesting spouse or registered domestic partner to submit information to support or counter the request.

(h) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request. The Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review.

(i) Bases for Relief. An individual requesting innocent spouse relief from liability for any tax, interest, penalties, or other amounts shall be relieved from such liability where all the following requirements are met:

(1) The liability is incurred under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, or Fee Collection Procedures Law;

(2) The liability is attributable to the non-requesting spouse or registered domestic partner;

(3) The individual requesting relief establishes that he or she did not know of the liability, and that a reasonably prudent person in the requesting individual's circumstances would not have had reason to know of the liability; and

(4) It would be inequitable to hold the requesting individual responsible for the liability, taking into account whether the requesting individual significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(j) Attribution.

(1) The determination of the spouse or registered domestic partner to whom items of liability are attributable shall be made without regard to community property laws.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse or registered domestic partner may be determined by whether a spouse or registered domestic partner rendered substantial services as a taxpayer engaged in an activity or transaction that is subject to a tax administered under the laws specified in subdivision (i)(1) and related to the liability. If neither spouse, or if neither registered domestic partner, rendered substantial services as a taxpayer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse or registered domestic partner who caused the deduction or credit to be entered on the return.

(k) Benefited.

(1) Whether a requesting individual has benefited directly or indirectly from the liability will be determined by a review of all of the available evidence. Normal support is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting individual will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability.

(2) Gifts received by the requesting individual, or lavish or luxury purchases made by either spouse or registered domestic partner may be evidence that the requesting individual benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting individual receives from the other spouse or registered domestic partner an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting individual will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting individual by the other spouse or registered domestic partner or that the spouses or registered domestic partners have become divorced or separated subsequent to the periods of liability.

(l) Other Equitable Relief. A requesting individual may also be relieved of liability for any unpaid tax or deficiency under the laws specified in subdivision (i)(1) for which relief is not available under subdivision (i) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting individual liable for such amount. An individual requesting relief shall only be considered for other equitable relief after the individual files a written request for innocent spouse relief.

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting individual is separated (whether legally or not) or divorced from the non-requesting spouse or registered domestic partner.

(B) The requesting individual would suffer economic hardship if relief is not granted.

(C) The requesting individual, under duress from the non-requesting spouse or registered domestic partner, did not pay the liability. To substantiate "duress," the requesting individual must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting individual did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse or registered domestic partner has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting individual knew or had reason to know, at the time the

divorce decree or agreement was entered into, that the non-requesting spouse or registered domestic partner would not pay the tax.)

(F) The tax for which the requesting individual is requesting relief is attributable to the non-requesting spouse or registered domestic partner.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting individual will not suffer economic hardship if relief is not granted.

(B) The requesting individual knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting individual signed the return.

(C) The requesting individual received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting individual has not made a good faith effort to comply with the laws specified in subdivision (i)(1) for the periods for which the individual is requesting relief or for subsequent periods of liability.

(E) The requesting individual has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting individual.

(m) **Written Findings.** Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and will explain in that letter why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter will include instructions about how to request review by the Appeals Bureau of that denial of relief.

(n) **Failure to Timely Request Appeals Conference.** If the individual requesting relief does not submit a timely request for appeals conference as provided in subdivision (o), the individual has waived the right to appeal the findings of the Offer in Compromise Section, and those findings become final.

(o) **Appeals Conference, Decision, and Finality.**

(1) Where the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the individual requesting relief may appeal that denial by submitting a written request for appeals conference to the Offer in Compromise Section. A request for appeals conference must state the specific grounds upon which the taxpayer contests the findings of the Offer in

Compromise Section, must be signed by the taxpayer and include his or her telephone number, and must be submitted in the same manner as provided in subdivision (d)(2) for the filing of the request for innocent spouse relief.

(2) The provisions of article 8 of this chapter are applicable to the appeals conference and issuance of the decision of the Appeals Bureau. For purposes of article 8, the individual requesting relief is the "taxpayer." If the Appeals Bureau decision denies the request for innocent spouse relief, in whole or in part, and the individual requesting relief does not file an appeal to the Office of Tax Appeals within 30 days of the mailing of the Appeals Bureau letter, the individual has waived the right to appeal the decision of the Appeals Bureau, and the decision of the Appeals Bureau becomes final.

(3) When the appeal of the requesting individual is final, whether after the Offer in Compromise Section issues its findings or, if a timely request for appeals conference is submitted, after the Appeals Bureau issues its decision, or if a timely appeal to the Office of Tax Appeals is submitted, after the Office of Tax Appeals issues its decision, the Offer in Compromise Section will mail a letter to the non-requesting spouse or domestic partner stating the results of the requesting individual's appeal.

(p) Refund. Where a request for relief of innocent spouse is granted as to amounts that have already been paid by the individual requesting relief, the amount can be refunded only as provided in the refund provisions of the applicable tax, as set forth in article 3 of this chapter.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 297, 297.5 and 308, Family Code; Section 15570.54, Government Code; Sections 6456, 7202, 7203, 7261, 7262, 7657.5, 8880, 30285, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1 and 60210.5, Revenue and Taxation Code.

Article 5. Petition for Redistribution of Local or District Tax

35056. Petition for Redistribution of Local or District Tax.

(a) General. Notwithstanding any other provision in this chapter, the provisions of this regulation are applicable to a petition for redistribution of local or district tax.

(b) Definitions. The following definitions supplement those in regulation 35002.

(1) "Allocation Group" means the Allocation Group of BTFD.

(2) "Consultant" is any person selected by a jurisdiction to act on its behalf before CDTFA in connection with a petition for redistribution of local or district tax.

(A) CDTFA will recognize as a jurisdiction's consultant any person who is at least 18 years of age for whom the jurisdiction provides its written authorization for that person to act as its consultant.

(B) A jurisdiction's authorized consultant is permitted to receive confidential taxpayer information related to the appeal, but only if the consultant meets the requirements of Revenue and Taxation Code section 7056, or receives a waiver from the taxpayer whose tax is in dispute in the appeal.

(3) "Date of knowledge" means the date the Allocation Group receives a valid petition, unless an earlier date is operationally documented by CDTFA staff, in which case that earlier date is the date of knowledge. Where a suspected incorrect distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, that incorrect distribution is covered by the petition and the date of knowledge is the date the Allocation Group received the petition.

(4) "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by CDTFA.

(5) "Jurisdiction" means any city, county, city and county, or special district or other jurisdiction which has adopted a local or district tax.

(6) "Local Revenue Branch" means the Local Revenue Branch of the Financial Management Bureau of CDTFA.

(7) "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by CDTFA.

(8) "Notified jurisdiction" is a jurisdiction that has been notified as being substantially affected by a decision on a petition.

(9) "Party" means the jurisdiction filing a petition for redistribution, any notified jurisdiction, and the assigned section.

(10) "Petition" means a request made by a jurisdiction for investigation of suspected incorrect distribution of local or district tax submitted in writing to the Allocation Group. The petition must contain sufficient factual data to support the probability that local or district tax have been incorrectly distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's seller's permit number or a notation stating "No Seller's Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that an incorrect distribution occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by regulation 1802. If the petition alleges that an incorrect distribution occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

(11) "Petition" also means a jurisdiction's written objection to a notification from the Local Revenue Branch that local or district tax previously distributed to the jurisdiction was incorrectly allocated and distributed and will be redistributed. The petition must be submitted to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described in this subdivision. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification or within a period of extension described in this subdivision, the notification of the Local Revenue Branch is final as to the jurisdiction so notified.

(A) A jurisdiction receiving a notification that local or district tax previously distributed to it will be redistributed may request that the Local Revenue Branch grant it a 30-day extension to submit a petition to dispute the notification. Such request must provide a reasonable explanation for the jurisdiction's inability to submit its petition within 30 days and must be received by the Local Revenue Branch within 30 days of the date of mailing of the notification. Within five days of its receipt of a jurisdiction's request for extension, the Local Revenue Branch will mail a letter to the jurisdiction notifying it whether the request is granted or denied.

(B) If a jurisdiction submits a request for extension that is received by the Local Revenue Branch within 30 days of its issuance of the notification to the jurisdiction and that request is denied, the time for the jurisdiction to submit a petition is extended to 10 days after the mailing of the letter notifying the jurisdiction that its extension request is denied. If the Local Revenue Branch grants the request for extension, the time for the jurisdiction to submit a petition is extended to the 60th day after the date of mailing of the notification of incorrect distribution.

(12) "Petitioner" means a jurisdiction that has filed a timely and valid petition. "Petitioner" also means, where appropriate, a jurisdiction's authorized consultant.

(13) "Substantially affected jurisdiction" means a jurisdiction that is substantially affected by a decision on a petition, which is when the decision would result in a decrease in the amount of that jurisdiction's total allocation of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and, for local tax, includes where the decrease is solely as the result of a reallocation from the statewide or applicable countywide pools.

(c) Review by the Allocation Group or the Local Revenue Branch.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (b)(10), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (b)(10), then the date of receipt of the original submission will be regarded as the date of knowledge. If a submission is not perfected within this 30-day period, it will not qualify as a valid petition.

(2) A petition will be reviewed by the assigned section, which will be either the Allocation Group or the Local Revenue Branch based on the following guidelines:

(A) Where a petition is filed as defined by subdivision (b)(10), the petition will be reviewed by the Allocation Group if there is no petition filed as defined by subdivision (b)(11) in connection with tax paid by the same taxpayer;

(B) Where a petition is filed as defined by subdivision (b)(11), the petition will be reviewed by the Local Revenue Branch if there is no petition filed as defined by subdivision (b)(10) in connection with tax paid by the same taxpayer; and

(C) Where petitions are filed as defined by subdivision (b)(10) and as defined by subdivision (b)(11) in connection with tax paid by the same taxpayer, all petitions will be reviewed by the Allocation Group, unless the petition or petitions filed under subdivision (b)(10) were filed after the Local Revenue Branch had commenced significant review of the petition filed under subdivision (b)(11), in which case the Local Revenue Branch will review all petitions.

(3) Based on its review of the petition and all available evidence, including evidence provided by petitioner and evidence provided by CDTFA staff as part of its investigation of the petition, the assigned section will issue a written decision that includes a clear explanation of the basis for the decision to grant the petition, deny the petition, or grant the petition in part and deny it in part, and states the date of knowledge. If the date of knowledge stated in the decision is different from the date the petition was received, the decision will also include the basis for the date of knowledge. The assigned section will grant the petition

only if, and only to the extent, that it finds a preponderance of the evidence shows that there was an incorrect allocation of local or district tax. If the assigned section finds that the preponderance of evidence does not show an incorrect allocation of local or district tax, the assigned section must deny the petition.

(4) If the assigned section does not issue a written decision within six months of the date it received a valid petition, the petitioner may request that the assigned section issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the assigned section will issue its decision based on the information in its possession.

(5) If the decision of the assigned section is that the petition should be denied, in whole or in part, the petitioner may submit a written objection to the decision under subdivision (c)(7).

(6) If the decision of the assigned section is that there was an incorrect allocation, including where the assigned section grants in whole or in part a petition as defined by subdivision (b)(11), it will also mail a copy of its decision to any jurisdiction that is substantially affected by its decision. Any such notified jurisdiction may submit a written objection to the decision under subdivision (c)(7).

(7) The petitioner or any notified jurisdiction may appeal the decision of the assigned section by submitting a written objection to the assigned section within 30 days of the date of mailing of the assigned section's decision, or within a period of extension authorized by subdivision (c)(11). An objection must state the basis for the objection and include all additional information in the objecting jurisdiction's possession that supports its position. If no such timely objection is submitted, the decision of the assigned section is final as to all jurisdictions.

(8) If the petitioner or a notified jurisdiction submits a timely written objection to the decision, the assigned section will reconsider its decision based on the objection and issue a written supplemental decision to grant the petition, deny the petition, or to grant the petition in part and deny it in part, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(9) If the assigned section does not issue a supplemental decision within three months of the date it receives a written timely objection to its decision, the petitioner or any notified jurisdiction may request that the assigned section issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the assigned section will issue its supplemental decision based on the information in its possession.

(10) The petitioner or any notified jurisdiction may appeal the supplemental decision of the assigned section by submitting a written request for review by the Appeals Bureau, as provided in subdivision (d)(1), within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (c)(11). If no such timely

request for review is submitted, the supplemental decision of the assigned section is final as to all jurisdictions.

(11) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (c)(7) or to submit a written request for review under subdivision (c)(10). Such request must provide a reasonable explanation for the jurisdiction's inability to submit its objection or request within 30 days, must be copied to all other jurisdictions to whom the assigned section mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be received by the assigned section within 30 days of the date of mailing of the assigned section's decision or supplemental decision. Within five days of receipt of a jurisdiction's request for extension, the assigned section will mail a letter to the petitioner and to all notified jurisdictions notifying them whether the request is granted or denied. If a request for an extension is submitted within 30 days of the date of mailing of the assigned section's decision or supplemental decision and that request is denied, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or written request for review of the supplemental decision of the assigned section is extended to 10 days after the date of the mailing of the letter notifying the petitioner and any notified jurisdictions that the request for extension is denied. If the request is granted, the time for the petitioner and any notified jurisdiction to submit a written objection to the decision or written request for review by the Appeals Bureau of the supplemental decision of the assigned section is extended to the 60th day after the date of mailing of the decision or supplemental decision.

(12) If a timely request for review by the Appeals Bureau is submitted, petitioner or any notified jurisdiction may continue to discuss the dispute with the assigned section. If, as a result of such discussions or otherwise, the assigned section decides its supplemental decision was incorrect or that further investigation should be pursued, it shall so notify the Appeals Bureau, the petitioner, and all notified jurisdictions.

(A) If, no later than 30 days prior to the date scheduled for the appeals conference, the assigned section mails notice to the Appeals Bureau that it will pursue further investigation of the appeal, the Appeals Bureau will suspend its review and the appeal will be returned to the assigned section. The assigned section will thereafter issue a second supplemental decision, or will return the appeal to the Appeals Bureau along with a report of the assigned section's further investigation, if appropriate, for the review and decision of the Appeals Bureau.

(B) If the assigned section mails notice to the Appeals Bureau that it will pursue further investigation of the appeal, but does so less than 30 days before the date scheduled for the appeals conference, the Appeals Bureau will decide whether the appeal should be returned to the assigned section or remain with the Appeals Bureau, and will notify the parties accordingly. If the appeal is returned to the assigned section, the assigned section will thereafter issue a second supplemental decision or will return the appeal to the Appeals Bureau along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Bureau.

(C) Where the assigned section issues a second supplemental decision, it will mail a copy of that decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written request for review by the Appeals Bureau as provided in subdivision (d)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (c)(11). If no such timely request for review is submitted, the second supplemental decision is final as to all jurisdictions.

(d) Review by the Appeals Bureau.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the assigned section by submitting to the assigned section, within 30 days of the date of mailing of the supplemental decision or within a period of extension authorized by subdivision (c)(11), a written request for review by the Appeals Bureau. A request for review by the Appeals Bureau must state the basis for the requesting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely request for review by the Appeals Bureau is submitted, the assigned section will, within 30 days of receipt of the request, forward the appeal to the Appeals Bureau for the scheduling of an appeals conference.

(3) Prior to scheduling the appeals conference, the Appeals Bureau will contact the parties and any other jurisdiction that would be substantially affected if the petition were granted to determine an acceptable date and time to hold the appeals conference. At least 45 days prior to the scheduled date for the appeals conference, the Appeals Bureau will mail a notice of appeals conference to each party.

(A) The notice of appeals conference will identify the appeal, state the time and date of the appeals conference, and include the address in Sacramento at which the conference will be held. A response to notice of appeals conference form will be included with the notice of appeals conference.

(B) Each party should complete and return the response form within 15 days of the date the notice of appeals conference was mailed.

(C) If any party would like to record the appeals conference, that party must check the appropriate box on the response to notice of appeals conference form and agree to provide, and provide, a copy of the recording or transcript to the Appeals Bureau and to the other parties to the appeal. The recording and the providing of copies is at the party's own expense. If the Appeals Bureau will record the appeals conference, it will notify the parties prior to the appeals conference, and will provide each party a copy of the recording or transcript.

(D) The appeals conference will be rescheduled or postponed only if the Appeals Bureau determines that there is reasonable cause, including unavailability of the scheduled conference holder due to illness or change in employment.

(4) No later than 15 days before the scheduled date of the appeals conference, each party should make its written submission to the Appeals Bureau including the arguments and evidence in support of that party's position, and provide a copy of that submission to each other party.

(5) The provisions of regulations 35064, 35065, and 35066 are applicable to the conduct of the appeals conference, content and issuance of the decision of the Appeals Bureau, and the appeal of that decision, except that:

(A) A copy of the decision or supplemental decision will be mailed to the petitioner, to the assigned section, to each notified jurisdiction, and to any other jurisdiction that will be substantially affected by the Appeals Bureau decision or supplemental decision.

(B) The petitioner, any notified jurisdiction, and the assigned section can submit a request for reconsideration of a decision or supplemental decision if the request is submitted within 60 days after the date the Appeals Bureau issues its decision or supplemental decision.

(C) The petitioner and any notified jurisdiction may request review of the decision or supplemental decision by the Office of Tax Appeals, if the request is submitted to the Office of Tax Appeals within 60 days after the date the Appeals Bureau issues its decision or supplemental decision.

(D) If, within 60 days of the date of mailing of the decision or supplemental decision, no request for reconsideration is submitted to the Appeals Bureau and no appeal is submitted to the Office of Tax Appeals, the Appeals Bureau decision or supplemental decision is final as to all jurisdictions.

(e) **Limitation Period for a Redistribution.** A redistribution shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Sections 7051, 7202, 7203, 7261 and 7262, Revenue and Taxation Code. Reference: Section 15570.54, Government Code; Sections 7209, 7223, 7269 and 7270, Revenue and Taxation Code.

Article 6. Cigarette and Tobacco Products Licensing Act Appeals and Petitions for Recovery of Seized Cigarette and Tobacco Products

35057. Cigarette and Tobacco Products Licensing Act Appeal.

(a) General. Notwithstanding any other provision in this chapter, the provisions of this regulation are applicable to an appeal of a denial of a license pursuant to regulation 4503 and to an appeal of a warning notice or a notice of violation issued pursuant to regulation 4600 for an alleged violation of the Cigarette and Tobacco Products Licensing Act and the regulations promulgated thereunder.

(b) Notice of denial of license. If BTFD denies an application for a new license pursuant to regulation 4503, it must mail notice of that denial to the applicant ("taxpayer"). A taxpayer may appeal the denial by filing a written request for conference within 30 days of the date the notice of denial was mailed or personally delivered to the taxpayer. If the taxpayer does not file a request for conference within 30 days of the date the notice of denial was mailed or personally delivered to the taxpayer, the taxpayer has waived any right to appeal the denial of the license and that denial is final.

(c) Appeal of a warning notice or notice of violation. A taxpayer may appeal a warning notice or notice of violation by filing a written request for conference within 30 days of the date the warning notice or notice of violation was mailed or personally delivered to the taxpayer. If the taxpayer does not file a request for conference within 30 days of the date the warning notice or notice of violation was mailed or personally delivered to the taxpayer, the taxpayer has waived any right to appeal the warning notice or notice of violation, and the violation or violations stated therein will be entered into the taxpayer's license record at CDTFA and the penalty or penalties stated in the warning notice or notice of violation become final.

(d) Filing an appeal. A taxpayer who files a request for conference has the burden of proof as to the grounds for issuing a license pursuant to regulation 4503 or as to the grounds for dismissal of any violation or for the reduction of penalties.

(1) The request for conference must state the specific grounds upon which the taxpayer contests the denial or contests the warning notice or notice of violation.

(2) The request for conference must be signed by the taxpayer or the taxpayer's authorized representative and include that person's telephone number.

(3) The request for conference must be accompanied by all documentation, which may include written statements made under penalty of perjury, and all written argument that the taxpayer wishes to be considered in support of the appeal.

(4) The request for conference must be filed as set forth in this subdivision, or as otherwise expressly provided on CDTFA's website at www.cdtfa.ca.gov:

(A) By hand delivery to: Registration and Licensing Section, MIC 88, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(B) By mail addressed to: Registration and Licensing Section, MIC 88, California Department of Tax and Fee Administration P.O. Box 942879, Sacramento, CA 94279-0088.

(C) By facsimile to: (916) 445-6122.

(e) Scheduling of Conference. Where a timely request for conference is filed, BTFD will schedule a conference to be conducted by telephone by its Compliance Branch, and will mail to the taxpayer a notice of conference stating the date and time of the scheduled conference.

(1) The notice of conference will be mailed at least 15 days prior to the date of the scheduled conference.

(2) BTFD may grant one request to reschedule the conference if it receives such request by the day prior to the date of the scheduled conference. If a timely request is granted, the conference will be rescheduled for a date no more than 45 days after the date the conference was originally scheduled to be held, unless the Deputy Director approves a later date.

(f) Conference. The conference is intended to be an informal, non-adversarial proceeding to discuss the relevant facts and applicable law and regulations. Upon request during the conference, BTFD may allow up to 15 days after the date of the conference for the submission of additional information. The conference will not be recorded by BTFD, but the taxpayer may record the conference provided the taxpayer agrees to provide BTFD a copy of the recording, and does so. The recording and the providing of copies is at the taxpayer's own expense.

(g) Decision. The Compliance Branch of BTFD will prepare a written decision setting forth its findings and conclusions. For an appeal of a denial of a license, the decision will state whether the license will be issued or why the denial of the license is upheld. For an appeal of a warning notice or notice of violation, the decision will state whether the asserted violation occurred, and if so, the applicable penalty or penalties. BTFD will mail its decision to the taxpayer within 90 days of the conference. BTFD will also include a notice of decision when mailing its decision, and if the decision is adverse to the taxpayer, in whole or in part, the notice will explain that the taxpayer may request review of the decision by the Appeals Bureau by filing a request for appeals conference within 30 days, and will also explain how the taxpayer may file that request.

(h) Request for Appeals Conference. A request for appeals conference must be in writing and must state the specific grounds upon which the taxpayer contests the findings and conclusions in the decision of the Compliance Branch of BTFD, must be signed by the taxpayer or by the taxpayer's authorized representative and include that person's telephone number, and must be filed in the same manner as provided in subdivision (b)(4) for the filing of the request for conference.

(i) Failure to File Timely Request for Appeals Conference. If the taxpayer does not file a timely request for appeals conference, the taxpayer has waived the right to appeal the decision of the Compliance Branch of BTFD: if the appeal is of a denial of a license, the denial becomes final; if the appeal is of a warning notice or notice of violation, the violation or violations upheld by the decision will be entered into the taxpayer's license record at CDTFA and the penalty or penalties as stated in the decision become final.

(j) **Scheduling the Appeals Conference.** When the taxpayer files a timely request for appeals conference, BTFD will forward the appeal to the Appeals Bureau for the scheduling of an appeals conference.

(1) The Appeals Bureau will schedule an appeals conference, to be conducted by telephone, and will mail notice of the conference in accordance with regulation 35061.

(2) Upon the taxpayer's request, the Appeals Bureau may reschedule the conference to be held within 30 days of the date specified in the notice of appeals conference. The conference may be scheduled for a later date only with the approval of the Assistant Chief Counsel of the Appeals Bureau, or his or her designee.

(k) **Appeals Conference, Decision, and Finality.** The provisions of regulation 35064 are applicable to the conduct of the appeals conference. The provisions of regulation 35065 are applicable to the contents, issuance, and finality of the decision of the Appeals Bureau, except that the letter described in subdivision (d) of regulation 35065 will explain, if applicable, that the taxpayer can appeal the decision by submitting an appeal to the Office of Tax Appeals within 30 days of the date of mailing of the Appeals Bureau letter. The provisions of regulation 35066 are not applicable to a Cigarette and Tobacco Products Licensing Act appeal. If the Appeals Bureau decision denies the appeal, in whole or in part, and the taxpayer does not file an appeal to the Office of Tax Appeals within 30 days of the mailing of the Appeals Bureau letter, the taxpayer has waived the right to appeal the decision of the Appeals Bureau: if the appeal is of a denial of a license, the denial becomes final; if the appeal is of a warning notice or notice of violation, the violation or violations upheld by the Appeals Bureau decision will be entered into the taxpayer's license record at CDTFA and the penalty or penalties as stated in the decision become final.

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code. Reference: Sections 22973.1, 22974.7, 22977.2, 22978.7, 22979 and 22979.7, Business and Professions Code; Section 15570.54, Government Code.

35058. Petition for Release or Recovery of Seized Cigarette or Tobacco Products.

(a) **General.** Notwithstanding any other provision in this chapter, the provisions of this regulation are applicable to a petition for recovery of seized cigarette or tobacco products.

(b) **Petition.** A person may seek recovery of cigarettes or tobacco products seized pursuant to the Cigarette and Tobacco Products Tax Law (pt. 13 of div. 2 of the Rev. & Tax. Code) or the Cigarette and Tobacco Products Licensing Act of 2003 (div. 8.6 of the Bus. & Prof. Code) by filing a verified petition for release or recovery of seized cigarette or tobacco products within 20 days of the personal service or service by certified mail on that person of the notice of seizure and forfeiture or, if the person filing the petition was not served personally or by certified mail, within 20 days of the date of publication of the notice of seizure and forfeiture. A person filing such a petition is known as "taxpayer" for purposes of this chapter.

(1) The petition must state the taxpayer's interest in the seized property, and request the release or recovery of the property on the ground that the property was erroneously or illegally seized. The taxpayer has the burden of proof by a preponderance of evidence to show that the property was erroneously or illegally seized.

(2) The taxpayer must sign the petition under penalty of perjury.

(3) The petition must be accompanied by all documentation, which may include written statements made under penalty of perjury, and all written argument that the taxpayer wishes to be considered in support of the petition.

(4) The petition must be filed as set forth in this subdivision, or as otherwise expressly provided on CDTFA's website at www.cdtfa.ca.gov:

(A) By hand delivery to: Investigations and Special Operations Bureau, MIC 100, California Department of Tax and Fee Administration, 450 N Street, Sacramento, CA 95814.

(B) By mail addressed to: Investigations and Special Operations Bureau, MIC 100, California Department of Tax and Fee Administration P.O. Box 942879, Sacramento, CA 94279-0100.

(C) By facsimile to: (916) 327-5027.

(c) Failure to File Timely Petition. Where a petition for release or recovery of seized cigarette or tobacco products is not filed within 20 days of personal service or service by certified mail on any person of the notice of seizure and forfeiture, or, if applicable, within 20 days of the date of publication of that notice, the forfeiture to CDTFA of the cigarette or tobacco products identified in the notice of seizure and forfeiture is final.

(d) Consideration of Petition. Where a timely petition for release or recovery of seized Cigarette or Tobacco Products is filed, the Investigations and Special Operations Bureau of CDTFA will consider the petition and any documentation and argument included with the petition to determine whether the petition should be granted.

(1) If the Investigations and Special Operations Bureau finds the petition should be granted, in whole or in part, it will promptly return the applicable property to the taxpayer.

(2) If the Investigations and Special Operations Bureau finds that the petition should be denied, in whole or in part, it will mail a letter to the taxpayer explaining the basis for that denial. The letter will also explain that the taxpayer may request review of the denial of the petition by filing a written request for appeals conference within 30 days, and also explain how the taxpayer may file that request.

(e) Request for Appeals Conference. A request for appeals conference must be in writing and state the specific grounds upon which the taxpayer contests the denial by the Investigations and

Special Operations Bureau, must be signed by the taxpayer or by the taxpayer's authorized representative and include that person's telephone number, and must be filed in the same manner as provided in subdivision (b)(4) for the filing of the petition for release or recovery.

(f) Failure to File Timely Appeal of Decision. If the taxpayer does not file a timely request for appeals conference, the taxpayer has waived the right to appeal the findings of the Investigations and Special Operations Bureau, and the forfeiture to CDTFA of the property found by the Investigations and Special Operations Bureau as having been properly seized is final.

(g) Scheduling the Appeals Conference. When the taxpayer files a timely request for appeals conference, the Investigations and Special Operations Bureau will forward the appeal to the Appeals Bureau for the scheduling of an appeals conference.

(1) The Appeals Bureau will schedule an appeals conference, to be conducted by telephone, and will mail notice of the conference in accordance with regulation 35061.

(2) Upon the taxpayer's request, the Appeals Bureau may reschedule the conference to be held within 30 days of the date specified in the notice of appeals conference. The conference may be scheduled for a later date only with the approval of the Assistant Chief Counsel of the Appeals Bureau, or his or her designee.

(h) Appeals Conference, Decision, and Finality. The provisions of regulation 35064 are applicable to the conduct of the appeals conference. The provisions of regulation 35065 are applicable to the contents, issuance, and finality of the decision of the Appeals Bureau, except that the letter described in subdivision (d) of regulation 35065 will explain, if applicable, that the taxpayer can appeal the decision by submitting an appeal to the Office of Tax Appeals within 30 days of the date of mailing of the Appeals Bureau letter. The provisions of regulation 35066 are not applicable to a Cigarette and Tobacco Products Licensing Act appeal. If the Appeals Bureau decision denies the petition, in whole or in part and the taxpayer does not file an appeal to the Office of Tax Appeals within 30 days of the mailing of the Appeals Bureau letter, the forfeiture to CDTFA of the property found by the Appeals Bureau as having been properly seized is final.

Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 30451, Revenue and Taxation Code. Reference: Sections 22974.3, 22978.2 and 22980.2, Business and Professions Code; Section 15570.54, Government Code; Sections 30436, 30437, 30438, 30439 and 30474.1, Revenue and Taxation Code.

Article 8. Appeals Conferences

35060. Referral to Appeals Bureau for an Appeals Conference; Preferred Location for an Appeals Conference.

Where an appeal is forwarded to the Appeals Bureau for the scheduling of an appeals conference, CDTFA staff will contact the taxpayer requesting the appeals conference to verify

and update the taxpayer's contact information and to inquire as to whether the taxpayer has a preference for a specific CDTFA office at which the appeals conference should be held.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 15570.50 and 15570.52, Government Code; Sections 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8880, 9024, 9151, 9152, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38564, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41033, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46454, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

35061. Notice of Appeals Conference; Response to Notice of Appeals Conference; Submission of Arguments and Evidence; Recording an Appeals Conference.

(a) At least 45 days prior to the scheduled appeals conference, the Appeals Bureau will mail to the parties a notice of appeals conference that includes the date, time, and location of the appeals conference. A response to notice of appeals conference form will be included with the notice of appeals conference.

(b) A taxpayer who receives a notice of appeals conference should complete and return the response to notice of appeals conference form within 15 days of the date the notice of appeals conference was mailed.

(c) Each party should submit, in writing, its arguments and evidence to the Appeals Bureau before the scheduled appeals conference.

(d) If a party would like to record the appeals conference, that party must check the appropriate box on the response to notice of appeals conference form and provide a copy of the recording or transcript to each of the other parties and to the Appeals Bureau. The recording and the providing of copies is at the party's own expense. If the Appeals Bureau chooses to record the appeals conference, it will notify the parties prior to the appeals conference, and will provide each party a copy of the recording or transcript.

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and

15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 22973.1, 22974.3, 22974.7, 22977.2, 22978.2, 22978.7, 22979, 22979.7 and 22980.2, Business and Professions Code; Sections 15570.50 and 15570.52, Government Code; Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8880, 9024, 9151, 9152, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 30438, 30439, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38564, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41033, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46454, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

35062. Request to Reschedule or Postpone an Appeals Conference.

(a) Prior to the scheduled appeals conference, a party may request that the appeals conference be rescheduled or postponed by submitting that request, in writing, to the Appeals Bureau in the manner specified on the response to notice of appeals conference form for its return.

(b) Rescheduling.

(1) An appeals conference is rescheduled for these purposes if the conference will be scheduled for a date no more than 30 days after the previously scheduled conference date. Where an appeals conference is rescheduled, the conference will be held at CDTFA's headquarters office in Sacramento or at an office in Southern California designated by the Appeals Bureau. The parties may appear at the appeals conference in person, via telephone, or via video by appearing at a CDTFA office equipped with video conferencing capabilities.

(2) A taxpayer's initial written request to reschedule an appeals conference will be granted. A taxpayer's subsequent written request to reschedule an appeals conference will only be granted if the Appeals Bureau determines that there is reasonable cause.

(c) Postponement.

(1) When a party requests a new date for a scheduled appeals conference and is not requesting that the conference be rescheduled as provided by subdivision (b), the request is for postponement of the conference. When an appeals conference is postponed, the appeal is placed back into the inventory of unassigned cases and reassigned to a conference holder at a

later date. When that appeal is thereafter scheduled for an appeals conference, the Appeals Bureau will notify the parties as specified in regulation 35061.

(2) If a party files a written request for postponement of an appeals conference within 15 days of the date the notice of appeals conference was mailed, the request will be granted if the Appeals Bureau determines that there is reasonable cause. If a party requests a postponement of the appeals conference more than 15 days after the date the notice of appeals conference was mailed, or submits a second or subsequent request for a postponement, the request will be granted only if the Appeals Bureau determines that there is reasonable cause and that the postponement will not unduly delay the appeal.

(d) The Appeals Bureau may also reschedule or postpone an appeals conference for reasonable cause, including unavailability of the scheduled conference holder due to illness or change in employment.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 15570.50 and 15570.52, Government Code; Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8880, 9024, 9151, 9152, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38564, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41033, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46454, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

35063. Expediting the Scheduling of an Appeals Conference.

(a) The taxpayer may request that the appeals conference for the taxpayer's appeal be expedited by submitting such a request, in writing, in which the taxpayer agrees to:

(1) Attend an appeals conference at CDTFA's headquarters office in Sacramento or at an office in Southern California designated by the Appeals Bureau;

(2) Attend a video conference at one of CDTFA's offices equipped with video conferencing capabilities; or

(3) Participate in the appeals conference via telephone.

(b) Where the taxpayer submits a request described in subdivision (a), the Appeals Bureau will schedule the appeals conference as soon as feasible, and will issue the notice of appeals conference no more than 60 days after receiving the request. That notice of appeals conference may be issued less than 45 days before the scheduled conference, but the Appeals Bureau will not issue the notice less than 21 days before the scheduled conference without the consent of the parties.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 15570.50 and 15570.52, Government Code; Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8800, 9024, 9151, 9152, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38564, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41033, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46454, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

35064. Conducting an Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Additional Submissions.

(a) The appeals conference will be held by an Appeals Bureau conference holder who has not had any prior involvement in the appeal being discussed at the appeals conference. It is the responsibility of the Appeals Bureau to consider the contentions presented by the parties, gather the applicable facts, conduct any investigation it deems warranted, and analyze and apply the law to the facts as determined by the conference holder in order to make an objective determination of the correct resolution of the appeal.

(b) Each party to the appeal may be present for and participate in the appeals conference.

(c) The appeals conference is an informal discussion of the relevant facts and applicable laws. It is important that all relevant information be presented to the Appeals Bureau. A party may submit written arguments and documentary evidence to the Appeals Bureau at any time before or during the appeals conference, but may do so after the conference only with the consent, or at the request, of the Appeals Bureau.

(1) If the conference holder grants a party's request to make a submission after the appeals conference, he or she will grant that party at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Bureau or his or her designee, to provide a submission. The conference holder will also grant the other parties to the appeal at least 15 days, but not more than 30 days without the consent of the Assistant Chief Counsel of the Appeals Bureau or his or her designee, to respond to the submission.

(2) The Appeals Bureau may request that a party submit additional written argument or documentation, and when it does so, will inform the party when the requested submission is due. The Appeals Bureau will determine whether a response should be submitted by another party, and if so, will advise that party when the response is due.

(d) If a party does not appear at the appeals conference, whether in person or otherwise, the Appeals Bureau will hold the conference as scheduled, with any parties in attendance. Following the appeals conference, the Appeals Bureau will mail a letter to any party who did not attend the conference stating that the appeals conference was held and providing the party an opportunity to make a written submission in support of the party's position in the appeal.

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 7202, 7203, 7261, 7262, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 22973.1, 22974.3, 22974.7, 22977.2, 22978.2, 22978.7, 22979, 22979.7 and 22980.2, Business and Professions Code; Sections 15570.50 and 15570.52, Government Code; Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7269, 7270, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8880, 9024, 9151, 9152, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 30438, 30439, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38564, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41033, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46454, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

35065. Contents and Issuance of an Appeals Bureau Decision; Finality.

(a) An Appeals Bureau decision is deemed issued on the date it is mailed to the parties.

(b) Except as provided in subdivision (c), the Appeals Bureau will issue its written decision no later than 90 days after the last submission as authorized by subdivision (c) of regulation 35064.

(c) The Appeals Bureau may submit a written request to the Chief Counsel of CDTF, or his or her designee, for additional time to issue its decision. If such a request is granted, the Appeals Bureau will mail the Chief Counsel's approval to each party to the appeal.

(d) The Appeals Bureau decision will include:

(1) A statement of each issue raised by the taxpayer;

(2) A statement of relevant facts;

(3) A statement of the relevant law applicable to each issue raised by the taxpayer, and the Appeals Bureau's analysis and application of that law to the relevant information available to the Appeals Bureau;

(4) The findings and conclusions of the Appeals Bureau; and

(5) A statement that the appeal is denied in full, granted in full, granted in part and denied in part, or remanded to BTDF or the applicable state agency to perform a reaudit in accordance with the decision.

(e) The Appeals Bureau will mail a copy of its decision to each party to the appeal and, except where the decision remands the appeal for reaudit, will include a letter that explains the available options for appealing the decision. Where the Appeals Bureau decision remands the appeal for reaudit, the Appeals Bureau, upon receipt of a completed reaudit that complies with the Appeals Bureau decision, will mail a letter to the parties explaining the results of the reaudit and the available options for appealing the decision. The options for appealing a decision are:

(1) Any party who disagrees with the Appeals Bureau decision, in whole or in part, may submit a request for reconsideration to the Appeals Bureau, in accordance with Regulation 35066, within 30 days after the date of mailing of the letter explaining the options of the parties.

(2) Where the Appeals Bureau decision is adverse to the taxpayer or is adverse to a state agency other than CDTF, the taxpayer or other state agency may submit an appeal to the Office of Tax Appeals, in accordance with that office's regulations, within 30 days after the date of mailing of the letter explaining the options of the parties.

(f) Any party that discovers a significant factual error in an Appeals Bureau decision should contact the Appeals Bureau within 30 days from the date the decision is issued. If the Appeals Bureau agrees or otherwise discovers any errors, it may issue a revised decision to correct the errors, provided that, prior to expiration of the period during which a party may submit an appeal to the Office of Tax Appeals, the Appeals Bureau either issues the revised decision or mails notice to the parties of the intent of the Appeals Bureau to issue a revised decision. Where the

Appeals Bureau issues a revised decision, it will include a letter explaining the applicable options for appeal of the Appeals Bureau decision as provided in subdivision (e).

(g) If, within 30 days of the date of mailing of the letter described in subdivision (e), no valid request for reconsideration is submitted to the Appeals Bureau and no valid appeal is submitted to the Office of Tax Appeals, the Appeals Bureau decision becomes final, and the appeal will be processed in accordance with that decision.

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 7202, 7203, 7261, 7262, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 22973.1, 22974.3, 22974.7, 22977.2, 22978.2, 22978.7, 22979, 22979.7 and 22980.2, Business and Professions Code; Sections 15570.50, 15570.52 and 15570.54, Government Code; Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7209, 7223, 7269, 7270, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8880, 9024, 9151, 9152, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 30438, 30439, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38564, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41033, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46454, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

35066. Request for Reconsideration; Supplemental Decision.

(a) A party may, within 30 days after the date of mailing of the letter described in regulation 35065, subdivision (e), submit to the Appeals Bureau a written request for reconsideration of an Appeals Bureau decision. The request must identify the specific issue or issues for which reconsideration is sought, and must explain the reasons the party disagrees with the decision, the results of the reaudit, or both.

(b) If a party submits a timely request for reconsideration of an Appeals Bureau decision as provided in subdivision (a), the Appeals Bureau will prepare a supplemental decision to respond to the request and to address any other matter the Appeals Bureau deems warranted.

(1) The Appeals Bureau will mail a letter to acknowledge receipt of the request, and will offer the other party or parties an opportunity to respond to the request for reconsideration. In that letter or thereafter, the Appeals Bureau may allow or request additional written

argument or documentation from any party, and if it does so, it will inform the party when that submission is due.

(2) The supplemental decision will state:

(A) The issues raised by the request for reconsideration and any other matters the Appeals Bureau deems warranted;

(B) The facts, law, and analysis necessary to resolve those issues;

(C) The findings and conclusions of the Appeals Bureau;

(D) Whether the Appeals Bureau is making any adjustment to its decision; and

(E) Whether the appeal is denied in full, granted in full, granted in part and denied in part, or remanded to BTFD or the applicable state agency to perform a reaudit in accordance with the supplemental decision.

(3) The provisions of regulation 35065, other than subdivision (d), are applicable to the issuance and finality of a supplemental decision. The letter described in subdivision (e) of regulation 35065 will also note that acceptance of any further request for reconsideration is within the discretion of the Appeals Bureau.

(c) Where a party submits a request for reconsideration of a supplemental decision within 30 days after the date of mailing of the letter described in regulation 35065, subdivision (e), the Appeals Bureau may, in its discretion, issue another supplemental decision. The Appeals Bureau will mail a letter to the parties to acknowledge receipt of the request and to inform the parties whether the request will be accepted or not. If the request is accepted, the provisions of subdivision (b) are applicable to the issuance of the supplemental decision. If the Appeals Bureau determines that another supplemental decision is not warranted, the acknowledgment letter will advise the parties that another supplemental decision will not be issued, and will explain whether any party has the option to submit an appeal to the Office of Tax Appeals. The letter will also explain that the most recent supplemental decision issued by the Appeals Bureau will become final if no such timely appeal is submitted to the Office of Tax Appeals, or if no such appeal is available.

(d) Where a party makes a submission to the Appeals Bureau within 30 days after the date of mailing of the letter described in regulation 35065, subdivision (e), which requests that the Appeals Bureau change its decision or supplemental decision but which the Appeals Bureau concludes does not constitute a complete request for reconsideration, the Appeals Bureau will so notify the party and will explain what additional information, argument, or evidence the party must submit to complete its request for reconsideration. The party will be allowed 30 days from the date of mailing of the notification to complete its request for reconsideration, without any extension.

(1) If, within the 30 days allowed, the party makes a submission that completes the party's request for reconsideration, the provisions of subdivision (b) apply if the request is for reconsideration of a decision and the provisions of subdivision (c) apply if the request is for reconsideration of a supplemental decision.

(2) If, within the 30 days allowed, the party makes no submission or otherwise fails to complete the party's request for reconsideration, the Appeals Bureau will notify the party that the time to complete its request for reconsideration has expired. If the party is the taxpayer or a state agency other than CDTFA, the notification will allow that party 30 days to submit an appeal of the decision or supplemental decision to the Office of Tax Appeals. If the party does not submit a valid appeal to the Office of Tax Appeals within 30 days from the date of mailing of the notification then, unless a valid appeal of the Appeals Bureau decision or supplemental decision had already been submitted to the Office of Tax Appeals, the Appeals Bureau decision or supplemental decision becomes final and the appeal will be processed in accordance with that decision or supplemental decision.

(e) The Appeals Bureau may, in its discretion, also issue a supplemental decision where no party has filed a timely request for reconsideration. Where the Appeals Bureau determines that a supplemental decision is warranted in the absence of a party's request for reconsideration, it must, within 30 days after the date of mailing of the letter described in regulation 35065, subdivision (e), either issue the supplemental decision or mail a letter to the parties notifying them that the Appeals Bureau will be issuing a supplemental decision.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 7202, 7203, 7261, 7262, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 15570.50 and 15570.52, Government Code; Sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7209, 7223, 7269, 7270, 7657, 7657.1, 7657.5, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.5, 8879, 8880, 9024, 9151, 9152, 9196, 30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30285, 30361, 30362, 30365, 30421, 38433, 38435, 38443, 38452, 38453, 38454, 38454.5, 38455, 38564, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40105, 40111, 40112, 40115, 40121, 41033, 41087, 41096, 41097, 41097.5, 41098, 41099, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43159.1, 43159.2, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45158, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46159, 46302, 46303, 46353, 46454, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50112.6, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55045.1, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60210.5, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522 and 60581, Revenue and Taxation Code.

35067. Public Record.

If the Appeals Bureau decision is that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding \$15,000 be canceled, or otherwise recommends that an amount exceeding \$50,000 be refunded, credited, or canceled, the fact that CDTFA will refund, credit, or cancel such amount must be available as a public record, if required by law, for at least 10 days prior to the effective date of the refund, credit, or cancellation.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 6901, 6981, 8126, 8191, 9151, 9196, 30361, 30421, 38601, 38631, 40111, 40121, 41100 41107, 43451, 43491, 45651, 45801, 46501, 46551, 50139, 50151, 55221, 55281 60521 and 60581, Revenue and Taxation Code.

Chapter 2. Annotations

35101. Annotations.

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Annotations" are summaries of the conclusions reached in selected legal rulings of counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law.

(2) "Legal ruling of counsel" means a legal opinion written and signed by CDTFA's Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific inquiry, including an inquiry from a taxpayer or taxpayer representative, a local government agency, or CDTFA staff.

(3) "Current Legal Digest" means a publication containing drafts of new annotations CDTFA proposes to publish and previously published annotations CDTFA proposes to amend or depublish.

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

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

(b) Elements of Annotated Legal Rulings of Counsel. In order to qualify for annotation, a legal ruling of counsel must include the following elements:

(1) A summary of pertinent facts;

(2) An analysis of the issue(s);

(3) References to any applicable statutes, regulations, or case law; and

(4) A conclusion supported by the analysis of the issue(s).

(c) Use of Annotations.

(1) Annotations provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance.

(2) Annotations are published as a research tool to locate selected legal rulings of counsel and thus provide guidance regarding the interpretation of statutes and CDTFA regulations as applied by CDTFA staff to specific factual situations in legal rulings of counsel.

(3) Except as provided in regulation 1705 or 4902, following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest, and penalty.

(d) Publication of Annotations.

(1) Before new annotations are published or previously published annotations are amended or depublished, CDTFA shall publish the proposed changes in a Current Legal Digest and shall provide interested persons not less than 30 days to comment on and, if necessary, challenge the proposed changes.

(2) Any person may request, and shall be entitled to receive, Current Legal Digests. Requests to be added to the mailing list to receive Current Legal Digests may be directed to CDTFA's Legal Division.

(e) Request for Depublication of an Annotation. Any person may request that a published annotation believed to be in error and/or appearing to conflict with another annotation be depublished using the following procedure:

(1) A request for depublication of an annotation shall be directed to the Chief Counsel.

(2) A request for depublication of an annotation shall be approved or denied by the Chief Counsel within sixty (60) days from the date the request is received.

(3) If a request for the depublication of an annotation is approved by the Chief Counsel, CDTFA shall publish the proposed depublication in a Current Legal Digest.

(f) Copies of Legal Rulings of Counsel. Any person may request, and shall be entitled to receive, a copy of a legal ruling of counsel, with confidential taxpayer information redacted, that has been summarized in a published annotation. Requests may be directed to CDTFA's Legal Division.

Note: Authority cited: Section 22971.2, Business and Professions Code; Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301

and 60601, Revenue and Taxation Code. Reference: Section 22970.2, Business and Professions Code; Sections 11340.9 and 15606, Government Code; Sections 25215.45, 105190 and 105310, Health and Safety Code; Sections 4629.5, 42464.2, 42882 and 71215, Public Resources Code; Section 893, Public Utilities Code; Sections 6596, 7051, 7084, 7657.1, 8251, 8262, 8879, 9251, 9262, 30284, 30451, 30458.2, 34013, 38454, 38701, 40104, 40171, 40202, 41098, 41128, 41162, 42020, 42103, 43159, 43501, 43513, 44003, 45157, 45851, 45858, 46158, 46601, 46613, 50112.5, 50152, 50156.2, 55045, 55301, 55323, 60210, 60601 and 60623, Revenue and Taxation Code; Section 1537, Water Code.