

Initial Statement of Reasons for the
Proposed Adoption of California Code of Regulations, Title 18, Division 4.1,
Office of Tax Appeals – Rules for Tax Appeals;
and Proposed Repeal of California Code of Regulations,
Title 18, Division 2.1, Chapter 4, *Appeals from Actions of the Franchise Tax Board;* and
Proposed Amendments to California Code of Regulations, Title 18, Division 2.1,
Section 5510, *General Application of Chapter 5,* and
Section 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Chapter.*

**SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,
AND ANTICIPATED BENEFITS**

The Office of Tax Appeals (OTA) proposes to adopt California Code of Regulations, title 18, division 4.1, the *Office of Tax Appeals – Rules for Tax Appeals* (hereinafter “OTA’s Rules for Tax Appeals”); and to repeal division 2.1, Chapter 4, “Appeals from Actions of the Franchise Tax Board” (Cal. Code Regs, tit. 18, §§ 5410 - 5465); and to amend Section 5510 and Section 5600 of Division 2.1 of Title 18 of the California Code of Regulations (hereinafter referred to collectively as the “proposed regulatory action”).

If adopted, the proposed regulatory action would establish OTA’s Rules for Tax Appeals in Division 4.1 of Title 18 of the California Code of Regulations, to replace the Emergency Rules for Tax Appeals (Division 4 of Title 18 of the California Code of Regulations) which are expected to expire on December 31, 2018.¹ OTA’s proposed Rules for Tax Appeals create a new and comprehensive set of procedural regulations applicable to hearings and appeals before OTA, clarify that the Board of Equalization’s (board’s) Rules for Tax Appeals (Division 2.1 of Title 18 of the California Code of Regulations) do not apply to a hearing before OTA, and clearly separate and bifurcate the board’s Rules for Tax Appeals under Division 2.1 from OTA’s proposed Rules for Tax Appeals under proposed Division 4.1, by placing each set of procedural regulations under its own respective division in the California Code of Regulations. Furthermore, the proposed regulatory action clarifies that the board’s Rules for Tax Appeals applies to the board, and OTA’s Rules for Tax Appeals applies to OTA.

The Taxpayer Transparency and Fairness Act of 2017, Assembly Bill 102 (Stats. 2017, Ch. 16), as amended by Assembly Bill 131 (Stats. 2017, Ch. 252) (both bills are collectively referred to hereinafter as the Act), created and established OTA in state government, and transferred to OTA

¹ OTA intends to make the proposed Rules for Tax Appeals in Division 4.1 effective January 1, 2019, so that there will be a seamless transition away from OTA’s Emergency Rules for Tax Appeals in Division 4, which OTA intends to let expire on December 31, 2018.

the duty to conduct appeals hearings for the various taxes and fees formerly administered by the board except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as described in Government Code section 15600, subdivision (a). The Act also transferred to OTA the administrative appeals of California personal income taxes and corporation franchise and income taxes, which are administered by the Franchise Tax Board.

The Act established Part 9.5 of division 3 of title 2 of the Government Code, which establishes OTA and tax appeals panels within OTA, consisting of three administrative law judges, and requires those tax appeals panels to hear and conduct appeals for those various taxes and fees over which the board no longer has jurisdiction on and after January 1, 2018 (i.e., over all non-constitutional functions of the board), and prohibits the board from hearing appeals involving non-constitutional functions on and after January 1, 2018. The Act further provides that on and after January 1, 2018, the board has no legal authority to, and shall not, conduct an appeals hearing, make a determination, issue or publish a decision, or take any other action with respect to an appeal heard at a meeting of the board before January 1, 2018, if the board's hearing, determination, decision, or any other action is, for any reason, not final before January 1, 2018. The Act further provides that the tax appeals panels and the appeals hearings conducted by the tax appeals panels are not to be construed to be, or to be conducted by, a tax court, and, if a person disagrees with the decision of the tax appeals panel, the person may bring an action in superior court in accordance with the law imposing the tax or fee for a trial de novo.

The Act requires all appeals hearings and proceedings conducted by tax appeals panels within OTA to be conducted pursuant to the Administrative Procedure Act, to the extent it sets forth the rules for appeals before the Office of Administrative Hearings. (See Gov. Code, §§ 11380 to 11529.) To the extent applicable and not in conflict with the Act, the Act further requires regulations adopted under the jurisdiction of the board (i.e., the board's Rules for Tax Appeals) to continue in force and apply to OTA appeals hearings and proceedings. Furthermore, the Act requires OTA to amend, repeal or add to the board's Rules for Tax Appeals under Division 2.1 as necessary or proper. The Act also requires OTA to adopt regulations regarding the presentation of evidence and preparation for hearings and proceedings before a tax appeals panel that do not require application of specialized knowledge, as provided. The Act also requires OTA to adopt regulations as necessary or appropriate to carry out the purposes of the Act. The Act also requires OTA to establish a process under which a person filing an appeal is authorized to request a closed hearing and would require OTA to establish objective criteria for determining whether to grant a request, as provided.

Specific Issues, Purpose and Necessity for the Proposed Regulatory Action

OTA's proposed Rules for Tax Appeals, which, if adopted, are expected to become effective on January 1, 2019, are intended to establish a comprehensive set of procedural regulations which cover all of OTA's administrative review functions with regard to conducting an appeal. This includes OTA's appellate duties regarding appeals from actions of the Franchise Tax Board (FTB) and appeals from adverse decisions of the California Department of Tax and Fee Administration (CDTFA). OTA's proposed Rules for Tax Appeals under Division 4.1 would replace OTA's current Emergency Rules for Tax Appeals under Division 4 of Title 18 of the

California Code of Regulations, which are expected to expire no later than December 31, 2017, and prior to the anticipated January 1, 2019, effective date of the proposed Regulatory Action.

OTA's proposed Rules for Tax Appeals are further intended to be easier to understand and provide a greater degree of clarity than OTA's expiring Emergency Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 30100- 30832). The proposed Rules for Tax Appeals are also easier to understand and provide a greater degree of clarity than the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs, tit. 18), which are specific to the board's duties, but which, to the extent not inconsistent with the intent of the Act, nevertheless apply to OTA. (Gov. Code, § 15679.5.) However, there is a problem because OTA is a newly created agency, and as such none of the board's Rules for Tax Appeals specifically refer to OTA, and instead those rules erroneously specify that appeals over which the board no longer has any jurisdiction shall be appealed to the board.

OTA was established and created by the Act on July 1, 2017. As such there are no existing statutes which specifically provide for the rules and procedures governing an appeal before OTA. Therefore, OTA's proposed regulatory action is necessary to set forth the extent to which all of the various procedures (described above) that OTA, consistent with the intent of the Act, has determined to be applicable to OTA's appeals process in one place, and to establish and apply the same rules and standards to all tax and fee programs to the extent allowable under the law, and to establish and provide the same uniform procedures for all taxpayers and parties to the extent allowable under the law.

There are additional issues (or "problems" within the meaning of Government Code section 11346.2, subdivision (b)(1),) if OTA does not promulgate and adopt the proposed regulatory action because the current framework established by the Act includes aspects of the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs, tit. 18), to the extent relevant and applicable and not inconsistent with the Act, the administrative process set forth in the Administrative Procedure Act for appeals to the Office of Administrative Hearing (Gov. Code, §§ 11380 to 11529) to the extent relevant and not inconsistent with the Act, the California Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution, with respect to ex parte communications and the conduct of an Administrative Law Judge, provisions in the Act requiring OTA to establish appeals procedures, and OTA's expiring Emergency Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 30100- 30832). In summary, OTA is left, under the Act, with the responsibility of reviewing existing rules and procedures applicable to many other agencies, and determining which rules and procedures are consistent with the Act and should apply to an appeal before OTA. In absence of the proposed regulatory action, it would be virtually impossible for the regulated public to know which provisions of the various laws, none of which specifically by their terms apply to OTA, may potentially be applicable over the provisions of the Act specifying that follow these other provisions to the extent relevant and not inconsistent with the Act. Therefore, the proposed regulatory action is reasonably necessary to specifically set for rules and procedures which apply in an appeal before OTA.

There are additional issues with the expiring Emergency Rules for Tax Appeals, which were drafted by the Office of Administrative Hearings and CDTFA, on behalf of OTA, because the

emergency regulations were hastily drafted to meet a January 1, 2018, deadline and do not meet the needs of OTA to carry out the duties, powers, and responsibilities imposed by the Act. Specifically, there are issues because both the board's Rules for Tax Appeals, and OTA's Emergency Rules for Tax Appeals, bifurcate, separate, and apply different rules of practice depending on the type of tax or fee being appealed (e.g., Franchise and Income Tax, Property Tax, or Business Taxes). This disparate system is based on the legal framework in place prior to the creation of OTA, because under prior law the board heard appeals from the Franchise Tax Board, and also determined appeals of taxes and fees administered by the board (which did not result in an appeal to a third-party agency).

The proposed regulatory action is therefore necessary to distinguish and separate the applicable rules of practice for the board and OTA, respectively, by making the board's Rules for Tax appeals only apply to appeals before the board, and making OTA's Rules for Tax Appeals only apply to appeals to OTA. Specifically, the proposed regulatory action applies OTA's proposed Rules for Tax Appeals to Franchise and Income Tax Appeals and Business Tax Appeals, and clarifies that the board's Rules for Tax Appeals only apply to those constitutional functions remaining with the board (mainly, appeals of Property Taxes and Alcoholic Beverage Taxes, and excluding any tax or fee program subject to appeal to OTA).

The proposed regulatory action is also necessary because the existing framework, pulling pertinent provisions from the board's rules for tax appeals, the rules applicable to the Office of Administrative Hearings, and the upcoming expiration of OTA's Emergency Rules for Tax Appeals, do not apply a clear and consistent framework for the public to understand the applicable rules of practice. This is because, one, the existing organizational structures of the applicable regulations and statutes are too inconsistent and vary too widely and, two, due to the creation of OTA, OTA's procedural rules should be placed in a new, more suitable division of title 18 of the California Code of Regulations. In addition, it is necessary to clarify practices and to make those changes and establish those processes, including a process for a closed hearing, and rules for admission of evidence and witnesses, as required under the Act.

Accordingly, OTA finds that it is necessary to repeal the board's Rules for Tax Appeals under Division 2.1, to the extent inconsistent with the Act, to amend the board's Rules for Tax Appeals under Division 2.1 to specify that they do not apply to appeals to OTA, and to adopt OTA's proposed Rules for Tax Appeals under proposed Division 4.1. OTA also intends to let the Emergency Rules for Tax Appeals under Division 4 expire on December 31, 2018. The proposed regulatory action is necessary to establish an improved regulatory framework that consistently, clearly, and fully describes OTA's appeals processes in a structurally integrated and logical framework. In this way, the OTA intends to improve its relationship with tax and fee payers.

As indicated the proposed Rules for Tax Appeals are necessary to reorganize and consolidate into a more useful framework all of OTA's procedures for conducting an appeal, and the procedures for hearing appeals from CDTFA and FTB. The purpose of the proposed Rules for Tax Appeals is to provide taxpayers, public agencies with appeals before OTA, and tax professionals with a single, well-organized, and clear source for all of the procedural information they need to know, from the initiation of the appeals process to the final written opinion from

OTA. OTA intends that the proposed Rules for Tax Appeals will set forth all OTA's procedural regulations in a logically organized structure that provides consistent and clear requirements and guidelines. To accomplish this goal, the proposed Rules for Tax Appeals under Division 4.1 of Title 18 of the California Code of Regulations are organized into eight chapters, which contain provisions of general application, as follows:

- Chapter 1, *Title of Division*
- Chapter 2, *Jurisdiction, Definitions, and General Applicability*
- Chapter 3, *Appeal Requirements and Procedures*
- Chapter 4, *Briefing Schedules and Procedures*
- Chapter 5, *General Oral Hearing Procedures*
- Chapter 6, *Decision by Written Opinion*
- Chapter 7, *Petitions for Rehearing*
- Chapter 8, *Taxpayer Bill of Rights Reimbursement Claims*

The proposed Rules for Tax Appeals combine procedures from various constitutional provisions, statutes, regulations, and existing practices and policies, and arrange those procedures in chronological order based upon their place in the appeals process. The combined and reorganized procedures address specific areas of public concern, including public transparency and awareness of appeals policies and procedures, procedures for a closed hearing, the publication of written OTA opinions, and restrictions on ex parte communication.

In summary, OTA has determined that the adoption of the proposed regulatory action (including each "provision" thereof within the meaning of California Code of Regulations, title 1, section 10(b)(2),) is reasonably necessary for the for the specific purposes of addressing the issues (or problems) described to above, by implementing, interpreting, and making specific the Act's statutes regarding the statutory requirement that OTA establish rules and procedures governing tax appeals before OTA, because there are no existing statutory rules and procedures specifically governing appeals before OTA, and by incorporating and applying pertinent provisions of the governing rules and procedures applicable to other agencies (described above) to the extent those rules are relevant to OTA and consistent with the intent of the Act. It is also reasonably necessary for OTA to repeal, modify, or amend, the board's rules for tax appeals to the extent those rules were superseded by, and as such now directly conflict with and are inconsistent with the Act and the Government Code. Therefore, OTA has further determined that the adoption of the proposed regulatory action is reasonably necessary for the specific purposes of providing guidance to taxpayers, local agencies, state agencies, and the general public regarding the rules governing tax appeals that apply in a case before OTA.

Summary of Existing Law

The Taxpayer Transparency and Fairness Act of 2017 (Stats. 2017, Ch. 16), as amended by Assembly Bill 131 (Stats. 2017, Ch. 252), collectively referred to hereinafter as "the Act," created OTA on July 1, 2017. The Act further transferred to OTA the various duties, powers, and responsibilities of the State Board of Equalization (hereinafter "board" or "BOE") necessary or appropriate to conduct appeals hearings, except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution. Therefore, under the Act,

BOE's constitutional duties, powers, and responsibilities are now limited to the following five items:

- (1) The review, equalization, or adjustment of a property tax assessment pursuant to Section 11 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that review, equalization, or adjustment.
- (2) The measurement of county assessment levels and adjustment of secured local assessment rolls pursuant to Section 18 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that measurement and adjustment.
- (3) The assessment of pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity pursuant to Section 19 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (4) The assessment of taxes on insurers pursuant to Section 28 of Article XIII of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (5) The assessment and collection of excises taxes on the manufacture, importation, and sale of alcoholic beverages in this state pursuant to Section 22 of Article XX of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment and collection.

(Gov. Code, §15600, subd. (a).) Effective July 1, 2017, the newly created agency "The California Department of Tax and Fee Administration" (CDTFA) is the successor to, and is vested with, all of the duties, powers, and responsibilities of BOE with respect to the administration of taxes and fees, except those five areas of constitutional duties, powers, and responsibilities described above. (Gov. Code, §15570.22.)

Furthermore, as of January 1, 2018, OTA is the successor to, and is vested with all the duties, powers, and responsibilities of the BOE necessary or appropriate to conduct appeals hearings with respect to tax and fee programs that were previously the duties, powers, or responsibilities of BOE. (Gov. Code, § 15672.) This includes hearing appeals of tax and fee programs administered by the FTB and CDTFA. For purposes of the Act, OTA has jurisdiction to hear the following appeals:

- (1) A petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, or petition for rehearing.
- (2) Administrative protest with respect to a tax or fee administered by the California Department of Tax and Fee Administration.
- (3) Claim, including a claim for refund with respect to a tax or fee administered by the California Department of Tax and Fee Administration.

(4) Appeal from an action of the Franchise Tax Board filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code or Chapter 1 (commencing with Section 20501) and Chapter 4 (commencing with Section 20641) of Part 10.5 of Division 2 of the Revenue and Taxation Code.

(5) Application, including, but not limited to, an application for administrative hearing.

(6) Any other item that may be scheduled for a hearing, including, but not limited to, requests for relief of taxes, fees, interest, or penalties.

(Gov. Code, §15671.) The Act does not specifically list the tax and fee programs subject to appeal before OTA, but it would include all those programs administered by CDTFA.

Beginning January 1, 2018, tax appeals panels consisting of three administrative law judges (ALJs) shall conduct all appeals hearings for those duties, powers, and responsibilities transferred to OTA. (Gov. Code, §15674.) Pursuant to the Act, a person may be represented on an appeal by any authorized person or persons over the age of 18. (Gov. Code, §15676.) OTA must establish a process under which a person filing an appeal may request a closed hearing, which includes objective criteria for determining whether to grant such a request. (Gov. Code, §15676.5.) To the extent not inconsistent with the Act, OTA must conduct all appeals hearings and proceedings pursuant to the Administrative Procedure Act, which is a reference specifically to Title 2, Division 3, Part 1, Chapter 4.5, *Administrative Adjudication: General Provisions*, and/or Chapter 5, *Administrative Adjudication: Formal Hearings*, of the Government Code, which are more commonly referred to as the Administrative Procedure Act (the Administrative Procedure Act itself encompasses Chapters 3.5, 4, 4.5 and 5 of this Part of the Government Code).

Chapters 4.5 and 5 of the Administrative Procedure Act govern the procedure for administrative appeals, but are specifically written for those administrative appeals which are conducted before the Office of Administrative Hearings, and thus are not specifically applicable to OTA. (Gov. Code, §15679.5, subd. (a).)

Therefore, the Act directs OTA to adopt “regulations as necessary or appropriate to carry out the purposes” of the Act, and further specifies that OTA is responsible to amend, repeal, or add to the regulations contained in Division 2.1 of Title 18 of the California Code of Regulations, as necessary or appropriate for OTA to govern hearings and proceedings. (Gov. Code, §§ 15679, subd. (a); 15679.5, subd. (b).) Division 2.1 is the Rules for Tax Appeals of the State Board of Equalization, the predecessor to OTA.

As relevant, Chapter 4 of BOE’s Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 5410 -5465) governs Appeals from Actions of the Franchise Tax Board. These rules specifically apply to appeals before BOE, thus, for example, Regulation 5410 provides for methods of delivery of written documents and correspondence, and specifies that these be delivered to BOE at a physical address and email address belonging to BOE. Throughout, the regulations reference procedures applicable to units within BOE, such as the Board Proceedings Division, the Chief of

Board Proceedings Division, the role of the Chief Counsel, the Appeals Division, the Board Chair, and the board, which are specific to that agency. Nevertheless, effective January 1, 2018, the Act prohibits BOE from hearing or deciding any appeals from actions of FTB and provides that “on or after January 1, 2018, the [BOE] shall not conduct appeals or take any other action with respect to an appeal,” except with respect to those five constitutional duties described above. (Gov. Code, §§ 15674(b).) Considering that BOE no longer has jurisdiction and authority to hear appeals from FTB, this entire chapter needs to be deleted to avoid confusion among the regulated public considering to which agency to submit a tax appeal.

Chapter 5 of BOE’s rules for tax appeals, governs the general procedures for board action, and discusses those procedures such as the conduct of a board meeting, voting, quorums, presentation of evidence, communication with board members, etc. (Cal. Code Regs, tit. 18, §§ 5510 -5576.) Regulation 5510 specifies those tax and fee programs to which the chapter applies, and specifically includes tax and fee programs which were transferred away from the BOE and over which BOE no longer has authority and jurisdiction to hear appeals pursuant to Government Code section 15674.

Chapter 6 of BOE’s Rules for Tax Appeals governs taxpayer bill of rights reimbursement claims for actions before the board. Regulation 5600 specifically provides that the claims procedure applies to those tax and fee programs which were transferred away from the BOE and over which BOE no longer has authority and jurisdiction to hear appeals pursuant to Government Code section 15674.

Furthermore, BOE’s Rules for Tax Appeals are specifically written to apply to a five-member voting board which is exempt from complying with Chapters 4.5 and 5 of the Administrative Procedure Act (governing administrative appeals), but which is subject to the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132), which requires BOE to hold public meetings. Thus, the board’s Rules for Tax Appeals do not establish a procedure for a closed hearing. On the other hand, OTA is not subject to Bagley-Keene Open Meeting Act, but is required to follow Chapters 4.5 and 5 of the Administrative Procedure Act. Furthermore, OTA is statutorily required under the act to promulgate a process to allow for hearings which are closed to the public, which is prohibited under the Bagley-Keene Open Meeting Act. (Gov. Code, § 15676.5).

Additionally, appeals of taxes and fees previously administered by BOE resulted in an internal review to the board. Under the Act, appeals of those same taxes and fees are now administered by CDTFA, which results in an appeal to a third-party agency (OTA). Therefore, there are problems with applying the board’s Rules for Tax Appeals to appeals before OTA. Specifically, the procedures followed by BOE, which do not take into account a third-party review structure, are incompatible with requirements of the Act. As one example, under the board’s Rules for Tax Appeals, the Franchise Tax Board may file a petition for rehearing with the Chief of Board Proceedings with respect to a tax or fee administered by FTB. (Cal. Code Regs, tit. 18, § 5461.) Under the Act, the board’s duties with respect to the administration of taxes and fees previously administered by the board (except for the five areas described above) are now transferred to the

jurisdiction of CDTFA, which is a separate entity from OTA. The board's Rules for Tax Appeals do not establish a procedure for CDTFA to file a petition for rehearing with OTA with respect to a tax or fee now administered by CDTFA, even though the board has no jurisdiction over these programs. (See Cal. Code Regs, tit. 18, § 5561.) This is inconsistent with the Act, which requires that OTA conduct appeals including petitions for rehearing from tax and fee programs administered by the CDTFA (non-constitutional functions of the board, including the administration of all tax and fee programs currently administered by CDTFA, were transferred from the board to CDTFA on July 1, 2017). (Rev. and Tax Code, § 15671.)

The Act further provides that Chapter 3.5 of Part 1 of the Government Code, *Administrative Regulations and Rulemakings* (more generally referred to as the Administrative Procedure Act) "shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the office [(OTA)]." (Gov. Code, §15679, subd. (b).)

At the time the Act was passed on July 1, 2017, there were no rules or regulations which were specifically written to apply to an appeal before OTA. Therefore, on or around January 1, 2018, OTA promulgated emergency regulations, the *Office of Tax Appeals Rules for Tax Appeals*. (Cal. Code Regs, tit. 18, §§ 30100 - 30832.) OTA's Emergency Rules for Tax Appeals are expected to expire on or around December 31, 2018.

Explanation of the Initial Statement of Reasons

The specific purpose and necessity for OTA to adopt each proposed section under proposed division 4.1, and to amend or repeal the regulations under division 2.1, is identified in further detail below. The specific purpose and necessity for OTA to adopt the Rules for Tax Appeals, including all the regulations and provisions contained is also described in greater detail, above.

SUMMARY OF PROPOSED REGULATIONS

OTA proposes this regulatory action to implement, interpret, and make specific the Act's statutes requiring OTA to adopt regulations as necessary or appropriate to carry out the purposes of the Act, including the governing rules and procedure for appeals conducted before OTA. Specifically, the proposed regulatory action proposes to adopt the OTA Rules for Tax Appeals, which does the following:

Chapter 1: Title of Division

30000. Statement of Intent; Title of Division

The Taxpayer Transparency and Fairness Act of 2017 took effect on July 1, 2017, authorizing the establishment of OTA and granting it sole jurisdiction over tax appeals arising from actions taken by FTB and CDTFA, beginning January 1, 2018. OTA issued emergency regulations pursuant to Government Code section 15679. OTA is able to carry out its duties, powers, and responsibilities under the emergency regulations until January 1, 2019.

Proposed Regulation 30000 states OTA's intent in promulgating nonemergency regulations to continue to fulfill its statutory duties, and names the proposed regulations the Rules for Tax Appeals to provide a commonly understood reference to the new regulatory provisions.

Chapter 1 is necessary because it provides a clear statement of OTA's intent for their implementation, which is to provide a comprehensive set of procedural regulations that will govern the administrative review processes for all appeals subject to the jurisdiction of OTA.

The purposes of this section are to name the new division 4.1 in a way that distinguishes the new Rules for Tax Appeals from the expiring emergency Rules for Tax Appeals under division 4, and provide a clear statement of OTA's intent for the new Rules for Tax Appeals, which is necessary to provide commonly understood references to the new regulatory provisions. The statement of intent was included to ensure that OTA's intent for the new Rules for Tax Appeals was well publicized and applied by staff when interpreting the meaning of individual sections. OTA chose to call these procedures OTA's Rules for Tax Appeals, to distinguish them from the board's Rules for Tax Appeals.

Chapter 2: Jurisdiction, Definitions, and General Applicability

Article 1: Application of Division 4, Definitions, and Jurisdiction

30101. Application of Division 4.1

The purpose of proposed Regulation 30101 is to provide specific guidance to taxpayers as to the tax and fee programs and appeals or petitions for rehearing to which the proposed Rules for Tax Appeals will apply. Listing the tax and fee programs is necessary to eliminate the need for the regulated public to consult all of the various statutes to determine whether appeals for a particular program may be appealed to OTA. Placing this section at the beginning of chapter 2 is appropriate because it contains provisions of general applicability to all of the proposed text of the Rules for Tax Appeals. Subdivision (a) provides that OTA has jurisdiction over Franchise and Income Tax Appeals (part 10.2 of division 2 of the Revenue and Taxation Code). Subdivision (b) provides that OTA has jurisdiction over appeals submitted pursuant to part 9.5 of division 3 of title 2 of the Government Code. Subdivision (c) provides that OTA has jurisdiction over appeals from a tax or fee program administered by CDTFA. Subdivisions (c)(1) through (18) list tax and fee programs administered by CDTFA.

Proposed Regulation 30101 is necessary to provide in one place a list of the types of actions and appeals that may be considered by OTA. It eliminates the need for an appellant or agency to review each statute authorizing an appeal to OTA. It aids in ensuring fairness, consistency, and transparency of the tax administration and appeals processes as required by the Act. This section is necessary to provide specific guidance to taxpayers as to the tax and fee programs and types of petitions, protests, applications, claims, and requests for relief to which chapter 2 applies. Listing the tax and fee programs is also necessary to eliminate the need to consult all of the various statutes to see whether the procedures for a particular program are covered. Listing the types of review that are covered improves public understanding of all of OTA's administrative review processes. This is not intended to expand or restrict the jurisdiction of OTA as provided under the

Act. Instead, OTA determined this section is reasonably necessary to interpret the Act's provisions specifying the OTA has jurisdiction over appeals that were previously subject to review by the board, excluding those involving constitutional functions of the board as described above. Tax and fee programs which are clearly subject to review by OTA are included in this list in subdivision (c). Subdivision (c) also includes the language that a tax for fee program administered by CDTFA "includes, but is not limited to" the tax and fee programs listed in paragraphs (1) through (17) of that subdivision, because it is not intended to be an all-inclusive list. Specifically, there are certain programs which are not constitutional functions of the board, but which are set forth in statute, but which may arguably be related to a constitutional function. OTA is aware of issues such as these arising in the context of property tax and timber yield taxes. Furthermore, some of these programs CDTFA initially retained, but, via contract, currently allows BOE to administer. By excluding programs such as these in paragraphs (c)(1) to (c)(17), OTA does not intend to mean that OTA has found it lacks jurisdiction to hear an appeal over these types of appeals. OTA believes that it may have jurisdiction over these programs. Therefore, OTA intends to leave the issue open to later review under the "including, but not limited to" language of subdivision (c) of this section, because OTA does not want to make such a finding at this time in this section of the regulation.

This section is necessary to provide specific guidance to taxpayers as to the tax and fee programs and types of petitions, protests, applications, claims, and requests for relief to which chapter 2 applies. Listing the tax and fee programs is also necessary to eliminate the need to consult all of the various statutes to see whether the procedures for a particular program are covered. Listing the types of review that are covered improves public understanding of all of OTA's administrative review processes.

30102. Definitions

The purpose of Proposed Regulation 30102 is to provide clear, uniform definitions for the meaning of the terms used in the new Rules. OTA was established and created by the Act on July 1, 2017. As such there are no existing statutes which specifically provide for the rules and procedures governing an appeal before OTA. This section is necessary to ensure that everyone interested in OTA's appeals procedures understands the meaning of terms used in the proposed Rules for Tax Appeals without the necessity of repeating definitions in multiple sections. Specifically, proposed Regulation 30102, subdivisions (a) through (w) defines the terms: Agency, ALJ, Appeals Bureau, Appeals Bureau decision, Brief, CDTFA, Discovery, Evidence, Ex-parte communication, FTB, Lead ALJ, Local entity, Local or district tax, Mail, Motion, Oral hearing record, OTA, Panel, Relevant evidence, Representative, Submission date, Subpoena, and Written record, within the context of the proposed Rules for Tax Appeals. These terms are not statutory terms, but are necessary for purposes of establishing procedures for appeals before OTA and in order to simplify and define in OTA's appeals procedures.

Proposed Regulation 30102 is also necessary to list and summarize the generally applicable definitions in a single location, and increase the public's understanding of terminology used by OTA and applicable to an appeal before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30103. Jurisdiction

The purpose of Proposed Regulation 30103, subdivision (a) is to provide clear guidance to the regulated public regarding the types of appeals from an action of the FTB that can be brought before OTA. Subdivision (b) further provides clear guidance to the regulated public regarding the types of appeals from a decision of the CDTFA that can be brought before OTA.

Subdivision (c) further provides notice to the regulated public that other laws may expand or limit OTA's jurisdiction before OTA has time to amend this section.

Proposed Regulation 30103 is necessary to eliminate the need to consult all of the various statutes to see whether OTA has jurisdiction over an appeal. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

OTA was established and created by the Act on July 1, 2017. The Act transferred to OTA the duty to conduct appeals hearings for the various taxes and fees formerly administered by the board except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as described in Government Code section 15600, subdivision (a). The Act also transferred to OTA the administrative appeals of California personal income taxes and corporation franchise and income taxes, which are administered by the Franchise Tax Board. There are no existing statutes or regulations which specifically define the types of appeals over which OTA has jurisdiction, and OTA does not have unlimited appellate jurisdiction over every action taken by FTB or CDTFA. Therefore, it is necessary to identify the types of appeals over which OTA has jurisdiction. Regulation 30103, subdivision (a) is necessary because it defines the types of appeals from an action of the FTB that can be brought before OTA. Subdivision (b) is necessary because it defines the types of appeals from a decision of the CDTFA that can be brought before OTA. Subdivision (c) is necessary because it notifies the regulated public that other laws may expand or limit OTA's jurisdiction before OTA has time to amend this section.

There is no statute which specifies the document which gives rise to the statutory right to file an appeal with OTA concerning a tax or fee administered by CDTFA, as provided under the Act. OTA has determined it is reasonably necessary to clarify, interpret, and apply the provisions of the Act by providing that the issuance of a final CDTFA decision issued by the Appeals Bureau triggers a right to file an appeal with OTA. OTA found it reasonably necessary to apply this standard, because under the law in effect when appeals were heard by the board, the board heard appeals of those decisions. There are other types of actions of the CDTFA (formerly, board staff) may arguably give rise to a right to file an appeal to OTA within the meaning of the Act, which provides in Government Code section 15672 that OTA is vested with all the duties, powers, and responsibilities of the board necessary to conduct appeals hearings. That is because not all actions by CDTFA are reviewed by the Appeals Bureau and based on such review, result in the issuance of a "decision." For example, historically, not all determinations on an innocent spouse claim resulted in the issuance of such a decision by the Appeals Bureau (previously, the Appeals Division). OTA does not intend to expand or restrict any right, including the right to file an appeal with OTA, by specifying the jurisdiction of OTA in section 30103. Therefore, OTA included language that has "in general, OTA has jurisdiction" in subdivision (a), and OTA

also added language in subdivision (c) that this section contains general rules and may be expanded or limited by changes in the law. The intent of this language, which OTA found reasonably necessary to include, is set forth appeals which OTA has determined it clearly has jurisdiction to hear, while at the same time allowing other types of appeals not specifically listed to be potentially considered and addressed by OTA at a later time.

30104. Limitations on Jurisdiction

The purpose of proposed Regulation 30104 is to provide clear guidance to the regulated public regarding the types of issues that OTA does not have jurisdiction to consider. Specifically, subdivisions (a) and (b) provide that OTA does not have jurisdiction to consider whether a statute or a provision of the California Constitution is invalid or unenforceable unless a federal or California appellate court has already made such a determination. In subdivisions (c) through (g), proposed Regulation 30104 provides that OTA does not have jurisdiction to consider (c) whether a state agency violated the Information Practices Act, the Public Records Act, or any other similar provision of the law; (d) whether a taxpayer is entitled to a remedy for an agency's actual or alleged violation of any substantive or procedural right, unless the violation affects the adequacy of a notice, or the validity of an action, from which a timely appeal was made, or the amount at issue in the appeal; (e) an appeal from a proposed assessment or proposed overassessment; (f) an appeal that is not subject to review by FTB or CDTFA; (g) an appeal that is subject to review by CDTFA where the Appeals Bureau has not yet issued a decision on the appeal.

Proposed Regulation 30104 is necessary to ensure to eliminate the need to consult all of the various statutes to see whether OTA has jurisdiction over an appeal, and to understand what types of appeals are not subject to the jurisdiction of OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

There are no existing statutes or regulations which specifically define the types of appeals over which OTA has jurisdiction, and OTA does not have unlimited appellate jurisdiction over every action taken by FTB or CDTFA. Therefore, it is necessary to identify the types of appeals over which OTA has no jurisdiction, as listed in subdivisions (a) through (g). This is not intended to be an all-inclusive list. There may be other areas over which OTA does not have jurisdiction. This section is reasonably necessary to list out those programs which, by statute, are clearly not subject to review by OTA. To the extent there is reasonable doubt over OTA's jurisdiction or lack thereof, such areas are not listed in this section. Subdivisions (a) through (d) are reasonably necessary because the appeals listed therein present legal questions that OTA has determined are clearly beyond the scope of OTA's jurisdiction as an administrative body. OTA is not a court of law. Subdivisions (e) through (g) are necessary because the appeals listed therein are incomplete, or otherwise not subject to review by FTB or the CDTFA Appeals Bureau.

30105. Questions of Jurisdiction and Timeliness

The purpose of Proposed Regulation 30105 is to describe the steps that OTA may take when issues are raised regarding whether or not an appeal was filed timely or whether or not OTA has

jurisdiction over the appeal. Subdivision (a) provides that OTA may request additional briefing on an issue related to jurisdiction or timeliness. Subdivision (b) provides that if OTA does not raise an issue related to jurisdiction or timeliness, either party may raise such an issue during briefing and if raised, will be determined by Panel. Subdivision (c) provides that OTA may take certain actions with respect to an appeal when there is an issue regarding timeliness or jurisdiction, including but not limited to; ruling on such issues prior to briefing; requesting additional briefing, or directing the parties to address such issues during the general briefing schedule.

Proposed Regulation 30105 is necessary to ensure that the public understands the process that OTA will follow when there is an issue as to whether OTA has jurisdiction to hear an appeal, or whether the appeal is timely, and additional information is required to make this determination. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA. This section is further intended to allow for the filing of such appeals which may not be specifically be a program or action or decision that OTA specifically listed and included in sections 30101 and 30103, because there is doubt over whether OTA may hear such an appeal (see the discussion above, under those two sections for further decision). This section is reasonably necessary to make clear that OTA may consider such issues and appeals, and may request additional information and briefing on such issues.

Occasionally, the issues of whether OTA has jurisdiction to hear an appeal, or whether an appeal is timely filed, are disputed factual issues that may be raised by either party, or by the Panel of ALJ's assigned to the appeal. The resolution of these jurisdictional disputes requires analysis and a ruling by the Panel. Proposed Regulation 30105, subdivisions (a) through (c), are necessary to prescribe a method by which the parties or the Panel may address and resolve any disputed issues regarding jurisdiction and timing. Allowing the parties or the Panel to address and resolve these disputed issues will help ensure the procedural due-process rights of the parties to have all valid and timely appeals heard by OTA. This proposed regulation is further necessary because defining the process by which the parties or a Panel may address disputed issues of timing and jurisdiction will improve the public's understanding of the administrative review process, and help ensure transparency and fairness in the conduct of appeals before OTA.

30106. Jurisdiction over Transitioning Appeals

The purpose of Proposed Regulation 30106 is to provide clear guidance to the regulated public regarding the transfer of non-final appeals from the BOE to OTA effective January 1, 2018. Specifically, subdivision (a) provides that as of January 1, 2018, OTA has jurisdiction over appeals where BOE failed to issue a decision, or issued a decision that was not final before January 1, 2018. Subdivision (b) provides that OTA has jurisdiction over a petition for rehearing filed with BOE or OTA on a decision that was not final as of January 1, 2018. Subdivision (c) provides that a briefing schedule established by BOE prior to January 1, 2018, will remain applicable to the appeal unless otherwise directed by OTA. Subdivision (d) provides that all other appeals for which the CDTFA Appeals Bureau has issued a decision, and a party has made

at timely request for an oral hearing prior to January 1, 2018, are subject to the jurisdiction of OTA.

Proposed Regulation 30106 is necessary to specify and make clear the rules and statutes that apply to appeals during the transition of the review process from the board to OTA. OTA found it reasonably necessary to specify the rules during the transition because a different set of rules and statutes may apply depending on the date the appeal goes final; before or after January 1, 2018, when the authority over the appeal was transferred from the board to OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

The Act created and established OTA in state government, and transferred to OTA the duty to conduct appeals hearings for the various taxes and fees formerly administered by the board except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as described in Government Code section 15600, subdivision (a). Further, on and after January 1, 2018, the Act prohibited the board from hearing any appeal that was transferred to OTA, and as a result there are many appeals that were heard by, or filed with, the board, but the board either failed to issue a decision before January 1, 2018, or issued a decision that was not final before January 1, 2018. Proposed Regulation 30106, subdivisions (a) through (d), are necessary to establish clear guidance regarding the transfer of non-final appeals from the BOE to OTA effective January 1, 2018. This section is intended to interpret, implement, and apply the Act's provisions setting forth the transfer of responsibilities over appeals from the board to OTA, depending on the specific stage in the appeals process an appeal was in as of January 1, 2018, the date responsibility for handling appeals was transferred to OTA. In drafting this section, OTA intends to clarify when and to what extent the board's Rules for Tax Appeals would apply to such an appeal, and when and to what extent OTA's Rules for Tax Appeals would apply to such an appeal. Specifically, OTA does not intend for appeals filed with the board and which have been fully briefed, to have to restart the appeals process at OTA; instead OTA intends such appeals to carry on where they left off. OTA found this section reasonably necessary to prescribe such processes during the transition process, and clarify the Act's provisions providing for the transfer of such responsibility on January 1, 2018.

Chapter 3: Appeal Requirements and Procedures

Article 1: Filing an Appeal

30201. Appeal Filing Requirements

The purposes of proposed Regulation 30201 are to establish procedures for taxpayers to file appeals and describe the information required in a written appeal from an action of the FTB or the CDTFA Appeals Bureau filed with OTA. Specifically, subdivisions (a) and (b) provide that the information necessary to identify and contact appealing parties and their representatives in the appeal should be included in the written appeal. Subdivisions (c), (d), and (e) require appellants to provide relevant information regarding the grounds for the appeal, the supporting facts and law, and the amount being appealed. Subdivision (f) requires appellants or their representative(s) to sign the appeal. Subdivisions (g) and (h) require appellants to provide

identifying information to ensure that OTA and the tax agencies can adequately identify the records associated with the appellant(s).

This section is necessary to establish comprehensive procedures to file an appeal to ensure all persons know what information is required to file an appeal before OTA and all eligible persons are aware of their rights. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding filing requirements and OTA as determined that this continues to be the most efficient procedure for the parties and OTA. The Act requires that briefs can contain ordinary and informal language as reflected in this proposed Regulation. Furthermore, these specific requirements (name, address, social security number, tax years, CDTFA account number) are necessary to identify and contact the appealing parties and their representatives. OTA determined this was the minimum contact information reasonably necessary to sufficiently identify an appealing party for purposes of a tax appeal. OTA made this determination based on reviewing the information that was required to be provided to the board in order to file an appeal for the same tax program prior to the transfer of responsibility to OTA. Therefore, this proposed Regulation needs to address the information for both types of appeals. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30202. Methods for Delivery of Written Documents and Correspondence

The purpose of proposed Regulation 30202 is to establish procedures for how documents related to an appeal may be delivered to OTA. Subdivision (a) provides the means for delivery of documents related to an appeal, which include paper and electronic delivery options. Subdivision (b) notifies the public that notifications and acknowledgments from OTA will be sent by mail, unless there is an agreement that notifications and acknowledgments will be sent by another method. Subdivision (c) notifies the public that unless there is an objection, OTA may deliver correspondence using electronic means.

Proposed Regulation 30202 is necessary to ensure that all of the parties to an appeal understand the procedures on how to file their appeals, briefs, and related documents in the manner required by OTA. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding methods of delivery and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30203. Time for Submitting an Appeal

The purpose of proposed Regulation 30203 is to establish procedures for filing tax appeals. Subdivision (a) lists the deadlines for filing when an appellant is appealing adverse actions taken by the Franchise Tax Board. Subdivision (b) lists the deadlines for filing when an appellant is appealing adverse decisions of the CDTFA.

Proposed Regulation 30203 is necessary to provide uniform procedures for both FTB and CDTFA for determining whether appeals, briefs, and other documents are timely filed with OTA. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding deadlines for submitting tax appeals and OTA has determined that this

continues to be the most efficient procedure for the parties and OTA, and found this section reasonably necessary to continue this procedure. Furthermore, the timeframes set forth in subdivision (a) are set by statute whereas the timeframe set forth in subdivision (b) is not set by statute. OTA found it reasonably necessary, for purposes of establishing a uniform timeframe, to adopt the same filing deadlines for all appeals. OTA determined the 30 day timeframe under subdivision (b) based on the provisions of the board's Rules for Tax Appeals governing taxpayer requests for an oral hearing of an Appeals Divisions Decision and Recommendation (now, an Appeals Bureau decision), which is the equivalent under current law to the filing of an appeal with OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30204. Extensions

The purpose of proposed Regulation 30204 is to establish procedures for extensions of filing deadlines when documents are mailed to OTA. Subdivisions (a), (b), and (c) extend the filing deadlines for mailed appeals depending on the location where the appeal is deposited in the mail. Extensions vary depending on whether an appeal is mailed from California, from another state, or from outside of the United States.

Proposed Regulation 30204 is necessary to provide clear guidance to taxpayers, the regulated public including tax agencies, and OTA staff regarding the requirements for appeals and briefs, and the requirements for requesting and granting extensions of time to file briefs. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding extensions, and as proscribed in the Government Code, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30205. Date of Mailing

The purpose of proposed Regulation 30205 is to notify the public of the date OTA considers a document to be mailed. Since appeals and related documents have deadlines for submission to OTA, this regulation explains how the date of mailing will be determined by OTA, depending on whether the document is mailed or delivered in another manner. It provides for an extension of a date of mailing if a document is submitted on a Saturday, Sunday or state holiday.

Proposed Regulation 30205 is necessary to comprehensively establish the procedures which are applicable to determine the date of mailing, and to clearly specify when such appeals are timely filed, and when appeals must be filed, taking into consideration weekends and holidays. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding the definition of date of mailing, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30206. Appeals Filed With Other Agencies

The purpose of proposed Regulation 30206 is to provide that OTA may accept an appeal that has been incorrectly filed with another agency. Although, by law, appeals from adverse actions by

FTB and CDTFA must be filed directly with OTA, this proposed regulation acknowledges that there may be circumstances where an appellant, in good faith, incorrectly files their appeal with another tax agency or the State Board of Equalization (the former body for deciding tax appeals). OTA will deem the petition or appeal timely under those circumstances. The propose of this section is to address public confusion that may arise due to the transition and transfer of authority over appeals from the board to OTA, therefore, the provisions of this section are set to expire.

Proposed Regulation 30206 is necessary to provide OTA with the authority to accept appeals that are timely filed with the board or CDTFA, and to establish clear procedures and a clear timeframe during which such appeals will continue to be accepted by OTA. OTA determined it reasonably necessary to restrict the scope of this section to appeals filed with the board of CDTFA, and to exclude other agencies such as FTB. The reason is this extended deadline provision is not provided for by statute, but OTA determined this to be reasonably consistent with the Act during the transitioning of appeals to OTA, because notices may have been sent out prior to January 1, 2018, informing taxpayer's of the right to appeal, and provided the address of the board (or CDTFA, because CDTFA took over the facilities and many responsibilities of the board). Nevertheless, OTA further found it reasonably necessary to set an expiration for this provision, of January 1, 2019, which coincides with the expiration over the period of which the promulgating of regulations by OTA is deemed an emergency. OTA found the expiration period reasonably necessary because there is no statute providing for such an extended deadline and, OTA determined that issue involving confusion over where to file an appeal would be fully resolved by this date. This section is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30207. Acknowledging an Appeal

The purpose of proposed Regulation 30207 is to delineate OTA's procedures for acknowledging that an appeal has been filed. Subdivision (a) instructs the public that OTA will mail an acknowledgment of receipt of an accepted appeal to each party. Subdivision (b) provides that acknowledgement of a Petition for Redistribution will be mailed to parties and also to the taxpayer whose allocations are the subject of the petition.

Proposed Regulation 30207 is necessary to establish procedures and processes for acknowledging appeals submitted to OTA, and inform taxpayers and the regulated public, including tax agencies with appeals before OTA, provide notice as to whether such an appeal was received, and, if applicable, notify the parties whether the appeal was timely or needs to be perfected. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding the acknowledgment of an appeal, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30208. Perfecting an Appeal

The purpose of proposed Regulation 30208 is to explain that OTA will accept an appeal if it meets threshold requirements, and describes the steps OTA will take if the information OTA received is insufficient for a valid appeal. Specifically, subdivision (a) states that if OTA can identify the appeal and if substantially all of the information required in regulation 30201 is

present, along with contact information for the party or the party's representative and required parties' signatures, OTA will accept that appeal as valid. Subdivision (b) explains the process through which OTA will give a party the opportunity to bring an appeal into compliance with threshold requirements, the timeline for which a party must do so, and how OTA will respond to timely and untimely attempts to meet those requirements.

Proposed Regulation 30208 is necessary to establish OTA's policy and procedures under which OTA will give parties additional time to cure defects in timely, but incomplete appeals, and to ensure that all parties are aware of their right to perfect an appeal, and ensure that OTA staff does not prematurely dismiss an otherwise timely appeal. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding perfecting an appeal, and OTA has determined that this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30209. Submission for Decision Without Oral Hearing

The purpose of proposed Regulation 30209 is to establish the circumstances under which an appellant will be considered to have waived the right to an oral hearing. Subdivision (a) further establishes that such cases will be submitted for decision based on the written record.

Subdivision (b) establishes that in an innocent spouse appeal, if neither the appealing spouse nor the non-appealing spouse request an oral hearing, or neither responds to a notice of oral hearing, the appeal will be submitted for decision based on the written record.

proposed Regulation 30209 is necessary to ensure that OTA receives timely notice of the parties' intent to appear at their oral hearing or waive their oral hearing, so that OTA can make the most efficient use of its time. This section is further necessary to ensure the parties understand the circumstances under which an important right, the right to an oral hearing, will be deemed waived. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA. This section is necessary to and intends to adopt and follow the process established by the prior board's Rules for Tax Appeals.

Article 2: Appeal Procedures

30210. Conferences

The purpose of proposed Regulation 30210 is to provide guidance on appeal conferences. This section establishes the conditions under which conferences may occur, and the rules governing the conduct of conferences. Subdivision (a) states that the provisions of Article 2 apply to all proceedings before OTA, including nonappearance matters and oral hearing matters.

Subdivision (b) provides who may request a conference and when, and explains that OTA will determine when a conference is necessary. Further, conferences can be conducted by the Lead ALJ or an OTA attorney, and will generally be informal and not recorded. Subdivision (c) explains who may request a conference and how. Subdivision (d) sets out where conferences will be physically held, and that conferences can be held by electronic means if all parties are able to participate and can understand the proceeding. Subdivision (e) sets out that OTA will set prehearing conferences and provide parties with notice of the time and location of the conferences. OTA will consult with the parties in scheduling other conferences and provide

written notice of the time and location of conferences. Subdivision (f) gives examples of matters that may be discussed at a conference. Subdivision (g) explains that, unless otherwise directed by OTA, any new evidence that a party wishes to discuss at a conference should be provided to OTA and the other party no later than three business days prior to the conference.

Proposed Regulation 30210 is necessary to provide taxpayers and the regulated public, including tax agencies, with information on how to request a conference and the rules governing the conduct of conferences. This is also necessary to set forth a reasonably expeditious conference and hearing process for the parties, and comprehensively describe such administrative hearing process, including the conference, to ensure that all parties understand their rights before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA. The proposed Regulation is necessary and intends to conform the prior practice of the board in conducting conferences, pursuant to the board's Rules for Tax Appeals, to the OTA.

30211. Representation

The purpose of Proposed regulation 30211 is to provide guidance on representation of a taxpayer before the OTA. Subdivision (a) states that a taxpayer may be represented in an appeal by anyone at least 18 years of age of their choosing. Subdivision (b) sets out that OTA will recognize all authorized representatives and the role of such representatives. Subdivision (c) sets out how to substitute or withdraw representation. Subdivision (d) explains that someone disbarred or suspended from practice before the FTB shall promptly notify OTA of such and may not represent a party in an appeal before OTA.

OTA was established and created by the Act on July 1, 2017. The Act specifies that a taxpayer may be represented by any authorized person of the taxpayer's choosing who is at least 18 years of age. However, because OTA was just created, there are no existing statutes which specifically provide for the rules and procedures governing an appeal before OTA. Therefore, it is necessary for OTA to establish rules regarding a taxpayer's representation before the OTA. Subdivisions (a) through (d) are necessary for OTA to comply with the statutory mandate in the Act. Additionally, prohibition against suspended or disbarred representatives in subdivision (d) is necessary to comply with Revenue and Taxation Code section 19523.5. This proposed regulation and its subdivisions are also consistent with and conform to the rules regarding representation before the board, as codified in the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5000, et seq.).

Proposed regulation 30211 is necessary to inform the parties to an appeal before OTA about their right to be represented by any person over 18 years of age of their choosing, provide procedures for OTA staff to recognize such representatives and keep informed regarding the substitution or withdrawal of such representatives, and establish OTA's policy of prohibiting certain representatives who are disbarred from practicing before the IRS and FTB from representing taxpayers in a tax appeal before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30211.5 Privileges

The purpose of Proposed regulation 30211.5 is to set out that the rules pertaining to privileges shall apply to the extent required by law, and that, in addition, communications between a taxpayer and a federally authorized tax practitioner shall be protected as confidential as provided in Revenue and Taxation Code sections 7099.1 and 21028.

OTA was established and created by the Act on July 1, 2017. As such, there are no existing statutes which specifically provide for the rules and procedures governing an appeal before OTA, including the protection of privileged communications between a party and its representative as provided by California Evidence Code, sections 912 *et seq.* Therefore, proposed regulation 30211.5 is necessary to establish privileges for confidential communications in accordance with the California Evidence Code, and to extend those protections to communications between a taxpayer and a federally authorized tax practitioner as provided in Revenue and Taxation Code sections 7099.1 and 21028. In establishing this privilege, and consistent with the board's Rules for Tax Appeals, OTA intends merely to recognize existing rights under the law, and does not intend to expand or limit the scope of existing law for purposes of an appeal before OTA. Therefore, to the extent additional privileges may apply beyond those specified in Revenue and Taxation Code sections 7099.1 and 21028, OTA included language specifying that the rules pertaining to privileges shall apply to the extent they are required by law to be recognized. This section is intended to recognize that there may be additional privileges which may apply to a tax appeal, and it would be the burden of the party claiming such a privilege to assert it on appeal.

Proposed Regulation 30211.5 is necessary to provide notice to taxpayers and the public that the attorney-client privilege, and other privileges recognized by law, may be asserted with regard to communications and documents pertaining to an appeal before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30212. Consolidation and Deconsolidation

The purpose of Proposed regulation 30212 is to explain how appeals may be consolidated or deconsolidated. Subdivision (a) provides that OTA may consolidate appeals on a motion of a party or upon OTA's own initiative, if the facts and issues are similar and no substantial right of any party will be prejudiced. OTA will promptly notify the parties if an appeal is consolidated. Subdivision (b) sets out the standard under which OTA may decide to deconsolidate appeals. Subdivision (c) sets out how any party may submit an objection to a consolidation or deconsolidation, when to object, and the basis upon which an objection should be made.

OTA was established and created by the Act on July 1, 2017. The Act transferred to OTA the duty to conduct appeals hearings for the various taxes and fees formerly administered by the board except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as described in Government Code section 15600, subdivision (a). The Act also transferred to OTA the administrative appeals of California personal income taxes and corporation franchise and income taxes, which are administered by the Franchise Tax Board. Occasionally a party may have several appeals that involve similar facts and issues, and it would be efficient and effective to consolidate such appeals when no substantial right of any party will be prejudiced. On other occasions, deconsolidation of appeals that have previously been consolidated may be warranted to protect the substantial right of a party or for other good cause.

There are no existing statutes or regulations which specifically define OTA's authority to consolidate or deconsolidate appeals. Therefore, it is necessary to establish the rules and procedures by which OTA may consolidate or deconsolidate appeals. Regulation 30212 and its subdivisions are necessary because they prescribe the rules and procedures by which OTA may consolidate or deconsolidate appeals. This proposed regulation and its subdivisions are also consistent with and conform to the rules regarding consolidation of appeals before the board, as codified in the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5000, et seq.)

Proposed Regulation 30212 is necessary to provide taxpayers and the public with notice of the consolidation and deconsolidation procedures applicable to appeals before OTA, and relieve OTA and the public from the having to address each consolidated appeal in a separate hearing, under the circumstances when consolidation is most efficient for all parties involved. This section is further necessary to ensure that all parties are aware of their right to request or object to consolidation or deconsolidation, and understand how OTA will decide such requests and objections. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30213. Authority of Administrative Law Judges

The purpose of Proposed Regulation 30213 is to list the actions that may be taken by a Panel in order to hold a fair hearing. The proposed regulation provides that the Lead ALJ or any member of the panel has full power, jurisdiction, and authority to (a) perform acts necessary for the purpose of ascertaining the facts on which a decision may be based; (b) determine the order that witnesses will testify at the hearing; (c) request that each party identify the issues to be heard, agreed-upon facts, and the evidence upon which the party wishes to rely; (d) ask relevant questions of any witness or party to clarify the record; (e) issue interlocutory and final orders, instructions, and decisions; (f) issue post-hearing orders and sections; (g) issue rulings on motions; (h) order the closure or reopening of the record; (i) issue and vacate submission orders; and (j) take any other action necessary for the orderly and fair adjudication of disputes.

OTA was established and created by the Act on July 1, 2017. The Act transferred to OTA the duty to conduct appeals hearings for the various taxes and fees formerly administered by the board except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as described in Government Code section 15600, subdivision (a). The Act also transferred to OTA the administrative appeals of California personal income taxes and corporation franchise and income taxes, which are administered by the Franchise Tax Board. Requiring these hearings to be decided by a Panel of ALJ's is unprecedented in the State of California, and there are no regulations specifying the actions that a Lead ALJ or member of a Panel may take to ensure a fair and efficient hearing in accordance with the Act and APA. Accordingly, proposed Regulation 30213 is necessary to identify the actions that may be taken by a Panel in order to hold a fair hearing.

Proposed Regulation 30213 is necessary to clearly set forth the authority of an administrative law judge, and actions that may be taken or expected to be taken during an appeal before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30213.5. Orders

The purpose of Proposed Regulation 30213.5 is to provide authority for OTA to issue orders to, and sanctions against, the parties to facilitate the fair and orderly resolution of appeals. Proposed regulation 30213.5 explains that orders may be enforced under the provisions of Government Code sections 11455.10 through 11455.30.

OTA was established and created by the Act on July 1, 2017. The Act transferred to OTA the duty to conduct appeals hearings for the various taxes and fees formerly administered by the board except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as described in Government Code section 15600, subdivision (a). The Act also transferred to OTA the administrative appeals of California personal income taxes and corporation franchise and income taxes, which are administered by the Franchise Tax Board. Requiring these hearings to be decided by a Panel of ALJ's is unprecedented in the State of California, and there are no regulations specifying the orders that OTA may issue to ensure the fair and orderly resolution of appeals, nor the authority by which such orders may be enforced.

Proposed regulation 30213.5 is necessary to ensure that the public and taxpayers understand that sanctions and orders may be issued to ensure the fair and orderly resolution of appeals, and the circumstances under which such an action may be taken. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30214. Evidence

The purpose of Proposed Regulation 30214 is to provide the rules relating to evidence and witnesses that apply to proceedings, including oral hearings, before OTA. Specifically, subdivision (a) explains that parties appearing before OTA should cooperatively engage in informal discovery prior to requesting OTA involvement in the discovery process. Subdivision (b) provides time limitations for a party to obtain the names of witnesses and to inspect and make copies of statements pertaining to the subject matter of the proceeding, statements of witnesses having personal knowledge of relevant acts, omissions, or events, any other relevant writing or thing, and investigative reports. Subdivision (c) defines "statements" to include written statements signed or authenticated by the person, recordings or transcripts of oral statements, and written reports or summaries of oral statements. Subdivision (d) provides that the inspection or copying of any privileged or confidential writing or thing is not authorized. Subdivision (e) provides that OTA may allow a subpoena upon a showing of good cause if the person requesting the subpoena bears the burden of proof or if the subpoena is to be issued to a nonparty to the appeal. Subdivision (f) provides that all relevant evidence is admissible unless it is subject to a privilege, and further provides that the Lead ALJ may exclude evidence if its admission will necessitate undue consumption of time. Additionally, subdivision (f) provides that the Panel may use the California rules of evidence when evaluating the weight to give evidence. Subdivision (g) provides that a request for discovery beyond what is outlined in this section will only be granted upon a showing of good cause.

Subdivision (a) establishes an informal process for discovery, OTA determined that this informal

means of discovery was necessary to meet the condition of the Act which states that a person need not have specialized legal knowledge to appear before OTA. If OTA were to use more formal means of discovery then it could be said that taxpayers would need to have specialized knowledge of legal discovery to practice before OTA.

Subdivision (b) establishes an informal process for obtaining witnesses and evidence, OTA determined that this informal means of discovery was necessary to meet the condition of the Act which states that, a person need not have specialized legal knowledge to appear before OTA. If OTA were to use more formal procedures to compel the production of witness lists or evidence then it could be said that taxpayers would need to have specialized knowledge of legal discovery to practice before OTA which would violate the Act.

Subdivision (c) establishes what information should be privileged and not subject to any discovery. This section is necessary to prevent the disclosure of information that would otherwise be deemed non-disclosable. OTA based the privileged information requirements on the BOE privileged information requirements to provide consistency for taxpayers and representatives.

Subdivision (d) establishes an informal process for obtaining subpoenas. Subpoenas are necessary to obtain the information required for OTA to make determination in the hearings before it. OTA used the least formal means possible to meet the condition of the Act which states that a person need not have specialized legal knowledge to appear before OTA. If OTA were to use more formal means for subpoenas then it could be said that taxpayers would need to have specialized knowledge of legal rules to practice before OTA.

Subdivision (e) establishes how the rules of evidence will and will not apply at OTA. Some rules relating to evidence are necessary to give structure to the proceedings at OTA and ensure that parties to a proceeding at OTA understand how evidence will be taken in and considered. OTA used the least formal evidence provisions possible to give structure while meeting the condition of the Act which states that a person need not have specialized legal knowledge to appear before OTA. If OTA were to use more formal evidence rules then it could be said that taxpayers would need to have specialized knowledge of legal rules to practice before OTA.

Subdivision (f) establishes an informal process for additional discovery, OTA determined that this informal means of additional discovery was necessary to meet the condition of the Act which states that a person need not have specialized legal knowledge to appear before OTA. If OTA were to use more formal means of additional discovery then it could be said that taxpayers would need to have specialized knowledge of legal discovery to practice before OTA.

Proposed Regulation 30214 is necessary to inform the parties to an appeal before OTA that they may submit any relevant evidence for consideration in an appeal before OTA, subject only to privilege or undue consumption of time. This section is also necessary to inform the parties about OTA's procedures for taking evidence and set forth the parties' rights when submitting or receiving such evidence, and the right to request discovery under certain circumstances. This is

further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30214.5. Noncompliance with Discovery Requests

The purpose of Proposed Regulation 30214.5 is to provide that OTA will strive to provide an informal and efficient administrative process for the parties to cooperatively exchange requested information that is relevant to an appeal. Specifically, subdivision (a) provides that if a party claims that the opposing party has not complied with a request for discovery, OTA may request a response from the opposing party, with a deadline for the response of at least 30 days. Subdivision (b) provides that OTA may issue an order to compel discovery. Subdivision (c) provides that OTA may deny a party's motion to compel discovery if it determines that the discovery request is overly burdensome, invasive, or otherwise not in the interest of adjudication of the hearing before it.

Subdivision (a) establishes a procedure for a party to request that OTA compel the production of evidence. This subdivision resolves issues brought to OTAs attention where taxpayers have been unable to obtain documents from the tax agencies or third parties. The subdivisions structure is intended to be as informal as possible to comply with the requirements of the Act stating that the appeals must be assessable to parties who do not have specialized knowledge or training.

Subdivision (b and (c) establish that OTA will review the discovery motion and determine whether to issue the motion. It is necessary for OTA to review and determine if discovery is needed so that taxpayers will not in effect be reaudited through the discovery process, and to ensure fair and equitable requests for documents where taxpayers may be unaware of their rights regarding privileges. The Act requires that a taxpayer need no specialized knowledge to make their case to OTA. If OTA reviews the motion and determine its validity the taxpayer need not have specialized knowledge because OTA will neutrally evaluate the soundness of the motion and deny any improper requests.

Further, proposed regulation 30214.5 is necessary to ensure that the public and taxpayers understand the rights when providing and exchanging information in connection with an appeal, and that sanctions and orders may be issued to ensure the fair and orderly resolution of appeals, and the circumstances under which such an action may be taken. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30215. Ex Parte Communications

The purpose of proposed Regulation 30215 is to establish that OTA will follow the rules restricting ex parte communications contained in the Code of Judicial Ethics adopted by the Supreme Court and the rules found in Government Code sections 11430.10 through 11430.80.

This proposed Regulation is necessary because the Act requires that ALJs have no ex parte communications. OTA must follow standards for judicial conduct, unlike an appeal heard before the board prior to July 1, 2017, to ensure public fairness and transparency in the appeal and hearing process and, as such, ex parte communications are generally not permitted in an appeal

before OTA. This is further necessary to improve the public's understanding of the change in the law and of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30216. Incorporation of the Administrative Procedure Act

The purpose of Proposed Regulation 30216 is to explain how provisions of the Administrative Procedure Act have been incorporated into the rules governing OTA's conduct of hearings and proceedings. Specifically, subdivision (a) provides that hearing procedures will be accessible to all representatives. Subdivision (b) provides that when an oral hearing is not requested or is waived, appeal proceedings will be conducted under Chapter 4.5 of the Administrative Procedure Act, except that OTA retains the discretion to utilize aspects of Chapter 5 and prohibit usage of portions of Chapter 4.5 of the Administrative Procedure Act. Subdivision (c) provides that when an oral hearing is requested, OTA will conduct the hearing process pursuant to Chapter 5 of the Administrative Procedure Act, except that OTA retains the discretion to utilize aspects of Chapter 4.5 and prohibit usage of portions of Chapter 5. Subdivision (d) lists provisions included in Chapters 4.5 and 5 of the Administrative Procedure Act that will not apply to proceedings before OTA. Subdivision (e) provides that OTA is exempted from provisions of the Administrative Procedure Act if required by the context or subject matter of the proceeding. Subdivision (f) defines "Presiding Officer," as used in the Administrative Procedure Act, to mean "Lead ALJ" or "Panel," or the Presiding ALJ if no Lead ALJ or Panel has been assigned to an appeal. Subdivision (g) provides that OTA always has discretion to use the informal hearing procedures found in Chapter 4.5 of the Administrative Procedure Act. Subdivision (h) provides that if any provision of the Administrative Procedure Act conflicts with these regulations, these regulations are controlling.

The Act requires OTA to comply with the APA, so this regulation is necessary to identify and explain the parameters of when and how OTA will apply the APA to appeals before OTA. Proposed Regulation 30216 is necessary to ensure the public understands that certain provisions of the Administrative Procedure Act applicable to an appeal before the Office of Administrative Hearings (a separate agency from OTA) will also apply to an appeal before OTA, which reflects a change in the law that was in effect regarding appeals before the board. This section is necessary to clarify and set forth the provisions of the Administrative Procedure Act that will, and will not, apply to an appeal before OTA, so that the public is aware of the governing procedure in an appeal before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30217. Determination that Appeal Is Frivolous

The purpose of Proposed Regulation 30217 is to explain that OTA may impose a frivolous appeal penalty and provides a list of the factors that OTA will consider in determining whether or not the penalty is warranted. Subdivision (a) explains that the frivolous appeal penalty may be imposed if a Panel determines that a franchise or income tax appeal is frivolous or is maintained for the purpose of delay. Subdivision (b) provides that the factors that may be relevant in determining whether a frivolous appeal penalty is warranted include (1) whether the appellant is making arguments that previously have been formally rejected; (2) whether the appellant is

making the same arguments that it made in prior appeals; (3) whether the appellant submitted the appeal for the purpose of delay; (4) whether the appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether the appellant has been notified that a frivolous appeal penalty may apply.

Proposed Regulation 30217 is necessary to ensure that appellants are aware of the frivolous appeal penalty and have some ability to determine whether it may be imposed with regard to their appeal, prior to filing an appeal. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

One of the purposes of this proposed Regulation is about providing a taxpayer with notice and due process, and this proposed Regulation is necessary because it enumerates the specific and limited situations in which a taxpayer may be subject to an additional penalty. This proposed Regulation is necessary because, based on OTA's determination and case law, it is a matter of taxpayer fairness and due process, informing taxpayers in advance of the specific situations in which their total liability may exceed the amount of the underlying tax balance, because of the imposition of this frivolous appeal penalty.

30218. Application of Ethics Codes

The purpose of Proposed Regulation 30218 is to clearly provide that each ALJ will abide by the Code of Judicial Ethics adopted by the California Supreme Court.

This section is necessary so that OTA staff, taxpayers, and the regulated public understand that, unlike an appeal heard before the board prior to July 1, 2017, OTA follows standards for judicial conduct to ensure public fairness and transparency in the appeal and hearing process and, as such, certain types of conduct that was previously allowable in an appeal before the board will generally not be permitted in an appeal before OTA. This is further necessary to improve the public's understanding of the change in the law and of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

This proposed Regulation is necessary because it provides OTA employees, specifically any current and prospective ALJs, with notice of the ethical standards to which they must abide. This proposed Regulation is necessary because it tracks the Act, specifically by identifying the ethical duties and responsibilities of the factfinders and decisionmakers who are to decide the public's tax appeals.

30219. Application of Burden of Proof

The purpose of Proposed Regulation 30219 is to explain how the burden of proof is applied. Specifically, subdivision (a) provides that the burden of proof is upon the appellant as to all issues of fact, except as otherwise provided by law. Subdivision (b) provides that the burden of proof as to an issue of fraud is upon the Agency by clear and convincing evidence. Subdivision (c) provides that proof by a preponderance of the evidence is required, except as otherwise provided by law.

This section is necessary to establish who bears the burden of proof as to factual issues, other than fraud, and have an opportunity to take necessary steps to satisfy their burden. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA. Specifically, subdivision (a) is necessary because it informs all parties of the burden of proof as to all issues of fact as established under the Revenue and Taxation Code and as established in case law. Subdivision (b) is necessary because it informs all parties of the burden of proof as to an issue of fraud as established under the Revenue and Taxation Code and as established in case law. Subdivision (c) is necessary because it informs all parties that proof by a preponderance of the evidence is required, except as otherwise provided by law as established under the Revenue and Taxation Code and as established in case law.

Article 3: Postponements, Deferrals, and Dismissals

Section 30220. Postponement and Deferral

The purpose of Proposed Regulation 30220 is to provide rules for OTA to allow the parties to defer proceedings in an appeal. The proposed regulation directs the parties on specific situations in which a party can postpone or defer their appeal. Subdivision (a) provides that OTA may postpone or defer proceedings for good cause. Subdivision (b) provides examples of good cause, including but not limited to (1) illness of that person or a member of that person's immediate family; (2) an unavoidable scheduling conflict; (3) a new representative who requires additional time to become familiar with the case; (4) all parties desire a postponement; (5) an appellant's involvement in a bankruptcy action that may impact the appeal proceedings or be relevant to the resolution of the issues on appeal; or (6) pending court litigation, or proceedings at the agency, that may impact the appeal proceedings or be relevant to the resolution of the issues on appeal, or the resolution of other pending appeals raising similar issues.

Proposed Regulation 30220 is necessary to ensure that all parties understand OTA's procedures for rescheduling, postponing, and/or deferring appeals when necessary. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA. Specifically, subdivision (a) is necessary to establish that a party may defer proceedings in an appeal for good cause. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding deferral of proceeding for good cause, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. Also, this is an established practice that taxpayers, local governments, and the state tax agencies are familiar with. Subdivision (b) is necessary because it provides specific instances of good cause. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding deferral of proceeding for good cause, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. Also, this is an established practice that taxpayers, local governments, and the state tax agencies are familiar with.

Section 30221. Settlement or Resolution

The purpose of Proposed Regulation 30221 is to provide that OTA may defer an appeal if the parties are seeking settlement. The proposed regulation further provides that upon notification

from a party that settlement negotiations have terminated without a settlement, OTA will reactivate the appeal and will advise the parties as to the next step in the appeal.

This section is necessary to ensure that taxpayers, the public, and parties to an appeal understand the process and procedures for deferring an appeal before OTA for purposes of settlement, and when, if ever, an appeal deferred for such a basis will be reactivated before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA. Specifically, section 30221 is necessary because it specifies that OTA may defer an appeal if the parties are seeking settlement and if a settlement is not reached, OTA will reactivate the appeal. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding deferral of a proceeding when a party seeks settlement, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. Also, this is an established practice that taxpayers, local governments, and the state tax agencies are familiar with.

Section 30222. Written Notice

The purpose of proposed Regulation 30222 is to provide that OTA will provide written notification to the parties if an appeal is postponed or deferred.

This proposed Regulation is necessary to establish OTA's process for acknowledging that an appeal has been postponed or deferred, and so that a appellant with an appeal before OTA will know to look for such an acknowledgement to verify deferral or postponement, if they are expecting their appeal to be deferred or postponed. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding written notice to the parties about postponement or deferral, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Section 30223. Dismissal

The purpose of Proposed Regulation 30223 is to provide rules for when an appeal will be dismissed at OTA. Specifically, the proposed regulation provides that the case will be dismissed if (a) the appellant or the representative of appellant submits a written, signed request for dismissal; (b) an Agency submits a written concession of the entire amount of the deficiency, refund or claim at issue; or (c) the parties submit a written stipulation, signed by all the parties, in which all parties agree to the dismissal.

This section is necessary to inform taxpayers, OTA staff, tax agencies, and the public about the substantive and procedural requirements for obtaining a dismissal. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Section 30224. Request for Reconsideration of CDTFA Appeals Bureau Decision

The purpose of Proposed Regulation 30224 is to provide rules for when a party submits a request for reconsideration of CDTFA's Appeals Bureau Decision. Subdivision (a) states that OTA will defer the appeal until CDTFA's Appeals Bureau either issues a revised or supplemental decision

or notifies the party in writing that the request has not been accepted. Subdivision (b) states that the time for submitting an appeal will restart after the parties have been notified.

This section is necessary to inform taxpayers, the public, tax agencies, and persons with an appeal before OTA of the right to file and timeframe to file an appeal before OTA when a party has filed a request for reconsideration with CDTFA, and that OTA will defer an appeal when such a request is made to CDTFA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Chapter 4: Briefing Schedules and Procedures

Article 1: General Briefing Schedule

Section 30301. Application of Chapter

The purpose of proposed Regulation 30301 is to provide that the general briefing schedule applies to all appeals from actions of FTB or CDTFA, unless the schedule is modified.

Subdivision (a) provides that the general briefing schedule may not apply if the appeal involves an innocent spouse determination, or in the case of a petition for redistribution of local or district tax. Subdivision (b) provides that if an appeal involves a jeopardy determination, OTA will compose a suitable briefing schedule.

This proposed Regulation is necessary to establish the scope of the general briefing schedule, to ensure that taxpayers, tax agencies, and the public correctly interpret the provisions of Chapter 4, and understand that these procedures apply to all appeals before OTA. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding the scope of the general briefing schedule, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Section 30302. General Requirements

The purpose of proposed Regulation 30302 is to provide the general requirements of the briefing schedules for appeals before OTA. Subdivision (a) provides that OTA will inform the parties of applicable deadlines and extensions by written notification, and will ensure that all parties receive copies of any correspondence. Subdivision (b) provides that OTA will provide written acknowledgement of receipt of any brief to all parties, and will ensure that the opposing party is provided with a copy of the brief and exhibits. Subdivision (c) provides information regarding requests for an extension of time for filing a brief. Subdivision (d) provides formatting requirements for briefs. Subdivision (e) provides that OTA may return a brief that does not conform to the form and page limits specified in subdivision (d), except that a party may request to file a nonconforming brief. Subdivision (f) provides that failure to submit a brief that conforms to the requirements stated in this proposed regulation constitutes a waiver of the right to submit that brief. Subdivision (g) provides that OTA may accept non-party (amicus) briefs at its discretion.

This proposed Regulation is necessary to establish practices and procedures applicable to the briefing schedules and to provide notice to ensure that taxpayers, tax agencies, and the public correctly interpret the provisions of Chapter 4, and understand that these procedures apply to all appeals before OTA. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding general briefing requirements, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30303. General Briefing Schedule

The purpose of Proposed Regulation 30303 is to provide the general briefing schedule for appeals. Subdivision (a) provides that the appellant's appeal letter will constitute the appellant's opening brief unless the appellant requests the opportunity to supplement it. If the appellant requests to supplement the opening brief, OTA will allow 60 days for the appellant to file a supplement to the opening brief. Subdivision (b) allows respondent 60 days to file its opening brief. Subdivision (c) allows 30 days for appellant to file a reply brief to respondent's opening brief and provides that the appellant's reply brief may only address new facts, issues, or arguments raised on respondent's opening brief. Subdivision (d) provides that the submission of the appellant's reply brief will generally end the briefing process, unless additional briefing is permitted.

The parties need to understand when briefs are allowed and due, what the parties should include in the briefs and they must have adequate time to prepare them, with minimal duplication of effort. It is also essential that OTA fulfill its obligation to control the appeals process by establishing reasonable limitations on the parties' submissions to avoid unnecessary delay and ensure timely resolution of appeals. The proposed Regulation 30303 meets these needs by treating appellant's appeal letter as an opening brief, while allowing appellant an opportunity to supplement it and by continuing the time, page and content limits established in the Rules for Tax Appeals, with minor changes deemed necessary by the tax and administrative procedure experts who drafted the regulations. This section is necessary to provide and set forth and to provide notice of OTA's practices and procedures with respect to the general briefing schedule, for clarification purposes, and to ensure that taxpayers, tax agencies, and the public correctly interpret the provisions of Chapter 4, and understand that this briefing schedule applies to all appeals before OTA, unless otherwise provided. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30304. Requests for Additional Briefing

The purpose of Proposed Regulation 30304 is to provide that OTA or parties to an appeal may request additional briefing. Subdivision (a) provides that OTA will address any request for additional briefing and coordinate the briefing process. Subdivision (b) provides that a party may request additional briefing and provides examples of potential grounds for a request for additional briefing. Subdivision (c) provides that additional briefs generally may use ordinary and informal language and may be hand-written or typed.

There are times when additional briefing is required, a fact that may be apparent to a party before it is apparent to OTA. The regulations need to allow for necessary additional briefing at the request of OTA or a party. This section is necessary to provide notice regarding OTA's authority to request additional briefing with regard to an appeal before OTA, and inform the public, taxpayers, and tax agencies of the right to request additional briefing, and the circumstances under which such a request may be made to or accepted by OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Article 2: General Briefing Schedule for Innocent Spouse Appeals

30310. Application

The purpose of Proposed Regulation 30310 is to explain that Article 2 provides the briefing schedule for appeals arising from requests for innocent spouse relief, which is different from the general briefing schedule that applies to most appeals before OTA.

This section is deemed necessary based on OTA's determination and the established briefing schedule at BOE which provided notice to the public regarding the special rules that apply in the case of an innocent spouse appeal and to provide notice of the rules and procedures for such appeals. The special rules and procedures that apply in the case of innocent spouse appeals are necessary because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

30311. Definitions

The purpose of Proposed Regulation 30311 is to provide definitions for the terms (a) "appealing spouse," (b) "requesting spouse," (c) non-requesting spouse," and "non-appealing spouse" used in Article 2.

Since specific terms, such as "appealing spouse" and "non-requesting spouse," are used to describe the parties in innocent spouse cases, and those parties may or may not be appellants as is the case in other appeals, our experts have concluded that this section is necessary to define these specific terms to ensure that all persons involved in an appeal with OTA understand the meaning of terms used in this article and apply the provisions correctly. Providing such definitions was an established practice in the BOE Rules for Tax Appeals. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

30312. Special Rules and Procedures

The purpose of proposed Regulation 30312 is to provide procedures that are specific to innocent spouse appeals. Subdivision (a) provides that, if both spouses submit timely appeals, then the appeals will be consolidated. Subdivision (b) provides that, if only one spouse submits a timely appeal, then the non-appealing spouse will receive a copy of the appeal and be notified of his or

her right to join the appeal. Subdivision (c) provides that OTA shall use the best available information to contact the non-appealing spouse. Subdivision (d) provides that OTA will retain jurisdiction over an innocent spouse appeal through the conclusion of the appeal, notwithstanding any withdrawal by an agency of a notice or decision. Subdivision (e) provides that either party in an innocent spouse case may request a separate hearing. Subdivision (f) explains provisions for a party in an innocent spouse case to request that an oral hearing be closed to the public, and provisions for a party in an innocent spouse case to request that items in the record be sealed.

This section is necessary to provide notice to the public regarding the special rules that apply in the case of an innocent spouse appeal, issues of jurisdiction, to provide notice of the rules and procedures for such appeals, and because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

Subdivision (a) consolidates appeals, which is necessary so that issues pertaining to the same tax joint balance will be efficiently and fairly adjudicated, rather than requiring the time and expense to the parties and the State of California of adjudicating two separate appeals, and is the established pattern set by the BOE's Rules of Tax Appeals. Subdivision (b) provides that, if only one spouse submits a timely appeal, then the non-appealing spouse will receive a copy of the appeal and be notified of his or her right to join the appeal. Our experts determined that this process, which was the established practice at the BOE, is necessary to ensure due process to the non-appealing spouse, who is jointly and severally liable for a joint tax balance. Subdivision (c) provides that OTA shall use the best available information to contact the non-appealing spouse. This was an established practice of the BOE. Subdivision (d) provides that OTA will retain jurisdiction over an innocent spouse appeal through the conclusion of the appeal, notwithstanding any withdrawal by an agency of a notice or decision. This is necessary based on the experience of our experts with innocent spouse appeals and was the established practice of the BOE. Subdivision (e) provides that either party in an innocent spouse case may request a separate hearing. Our experts found this necessary due to the fact that some innocent spouse cases involve domestic violence, restraining orders against one party by another, and/or threats which may make it difficult for a party to appear and/or testify before the other party. Subdivision (f) explains provisions for a party in an innocent spouse case to request that an oral hearing be closed to the public, and provisions for a party in an innocent spouse case to request that items in the record be sealed. Our experts determined that this is also necessary due to the safety concerns and scenarios that may arise in innocent spouse cases, as described above. Due to the sensitivity of the information and circumstances that arise in an innocent spouse case, it is the opinion of our experts who specialize in these cases that the nature of these cases and testimony of the parties against each other may elevate the need for privacy.

The purpose of Proposed Regulation 30313 is to provide that OTA will take reasonable steps to ensure that the personal identifying information of one spouse is not provided to the other spouse.

This section is necessary to provide notice to the public regarding the special rules that apply in the case of an innocent spouse appeal, to provide notice of the rules and procedures for such appeals, and because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse. This was the established practice of BOE, and our experts' opinion is that this is necessary for the safety of parties in cases in which there is a restraining order, domestic violence, and/or threats against one party by another. Due to the particularly contentious nature of these cases, our experts determined that this practice should be applied to all innocent spouse cases. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

30314. Opening Briefs

The purpose of Proposed Regulation 30314 is to provide a schedule for the filing of opening briefs in innocent spouse appeals. Subdivision (a) provides that the appealing spouse's perfected appeal letter constitutes the appealing spouse's opening brief, unless the appealing spouse requests to submit a separate opening brief. It further provides that, if the appealing spouse requests to submit a separate opening brief, the opening brief generally must be filed within 60 days. Subdivision (b) provides that the agency may submit its opening brief not later than 60 days from the date OTA acknowledges the appealing spouse's opening brief. Subdivision (c) provides that the non-appealing spouse may submit an opening brief not later than 60 days from the date of the notification of the non-appealing spouse's right to participate in the appeal.

Subdivision (a) is based on the BOE's established practice. Subdivision (b) includes a deadline of 60 days for the agency to submit its opening brief, and is based on the opinion of our experts familiar with the time required to prepare legal briefs. Subdivision (c) includes a deadline of 60 days for the non-appealing spouse to submit an opening brief, and is based on the opinion of our experts familiar with the time required to prepare legal briefs. This section is necessary to provide notice to the public regarding the special rules that apply in the case of an innocent spouse appeal, to provide notice of the rules and procedures for such appeals, and because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

30315. Reply Briefs.

The purpose of Proposed Regulation 30315 is to provide clear guidance regarding the submission of reply briefs and the conclusion of the briefing process in innocent spouse appeals. Subdivision (a) provides a 30 day deadline for the appealing spouse to file a reply brief. Subdivision (b) explains that the reply brief may only address points of disagreement with the Agency's opening brief and the non-appealing spouse's opening brief. Subdivision

(c) describes the requirements for a reply brief filed by the non-appealing spouse or the Agency. Subdivision (d) provides that the briefing schedule is concluded if no reply brief is submitted. Subdivision (e) provides that additional briefing may be requested.

This section includes a deadline of 30 days for the filing of a reply brief which is the practice established by BOE and an amount of time our experts determined is necessary for the preparation of a reply brief. This section is necessary to provide notice to the public regarding the special rules that apply in the case of an innocent spouse appeal, to provide notice of the rules and procedures for such appeals, and because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

30316. Conformity with Federal Action

The purpose of Proposed Regulation 30316 is to provide clear guidance on the procedures that are to be followed in an innocent spouse appeal filed with respect to franchise and income taxes when relief has been granted under Internal Revenue Code section 6015. Subdivision (a) provides that the party who receives notification that relief has been granted under Internal Revenue Code section 6015 must submit proof of such notification to OTA as soon as is practical. Subdivision (b) provides that OTA will notify FTB and the non-requesting spouse of the federal grant of innocent spouse relief, and also provides that FTB and the non-requesting spouse may provide information that indicates that relief should not be granted. Subdivision (c) provides circumstances in which additional briefs may be provided. Subdivision (d) provides that if a party receives notification that relief has been granted under Internal Revenue Code section 6015 before the briefing schedule has concluded, the briefing schedule will not be concluded until the requirements of this regulation are satisfied. Subdivision (d) further provides that if a party receives notification that relief has been granted under Internal Revenue Code section 6015 after the briefing schedule has concluded, then briefing will be reopened. Subdivision (e) provides that this regulation shall only apply to appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code sections 18533 or 19006.

This section follows the practices of the BOE pertaining to conformity with federal action in innocent spouse cases. It is the opinion of our experts that following these practices, including the 30 day deadline for the FTB and non-appealing spouse to argue that innocent spouse relief should not be granted and the 30 day deadline for additional briefs, is important so that taxpayers, tax practitioners and the agencies know what to expect in terms of OTA procedures when the Internal Revenue Service has granted relief to a party under Internal Revenue Code section 6015. This section is necessary to provide notice to the public regarding the special rules that apply in the case of an innocent spouse appeal, to provide notice of the rules and procedures for such appeals in the context of a federal action, and because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in

the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

Chapter 5: General Oral Hearing Procedures

Article 1: Scheduling an Oral Hearing

30401. Process for Requesting an Oral Hearing

The purpose of Proposed regulation 30401 is to provide clear guidance to an appellant on how to request an oral hearing. Subdivision (a) provides that an appellant may request an oral hearing in writing at any time prior to the completion of briefing, and then lists the steps that OTA will take to confirm the request for an oral hearing, or to determine if the appellant has waived the right to an oral hearing. Subdivision (b) provides that, for innocent spouse appeals, both the appealing spouse and the non-appealing spouse, may request an oral hearing, and provides the circumstances under which a Panel will conduct separate oral hearings. Subdivision c) provides that if a Panel conducts separate oral hearings, the Panel will not decide the appeal until both hearings have concluded.

This section is necessary to ensure that all taxpayers are aware of their right to request an oral hearing and understand how and when they need to exercise their right, and establish a clear and consistent policy for timely requesting and granting requests for an oral hearing.

This regulation explains that under OTA, oral hearings are available in Sacramento, Los Angeles and Fresno counties, which is necessary information to provide since this is a departure from the past practice, as BOE offered oral hearings in the cities of Sacramento and Los Angeles. Subdivision (a) sets a deadline of 15 days for an appellant to request or confirm a request for an oral hearing in order for OTA to be able to move forward with preparation for an oral hearing, including putting together a panel of ALJs, holding pre-hearing conferences, provide all parties with notice of a hearing, and reserve hearing rooms. It is necessary for OTA to know when a party has waived the right to an oral hearing as soon as possible so that OTA can assign the case to a panel of ALJs to review the legal issues in the appeal. Our experts have determined that 15 days is an adequate amount of time to request or respond to a request for confirmation for an oral hearing. Our experts in innocent spouse cases have determined that subdivision (b) is necessary to provide notice to the public regarding the special rules that apply in the case of an innocent spouse appeal, and because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses. It is necessary to provide for separate oral hearings in innocent spouse cases because parties may have restraining orders against the other party in a case, or being in the same hearing room together may not be safe for one or both parties, and/or may not be conducive to fact-finding and the facilitation of a fair and balanced appeal if one party feels intimidated and/or threatened by the other.

30402. Notice of Oral Hearing

The purpose of Proposed regulation 30402 is to explain OTA's responsibility to notify the parties that an oral hearing has been scheduled. Subdivision (a) provides that if an oral hearing is granted, OTA will send the parties a notice of oral hearing. Subdivision (b) provides that a notice of oral hearing will be sent to the parties at least 45 days prior to the oral hearing date, unless all parties agree to a shorter notice period. Subdivision (c) provides that the notice of oral hearing will contain the name of the taxpayer; OTA's case identification number for the appeal; the date, time, and location of the oral hearing; the due date of the response to the notice of oral hearing; and the date the notice of oral hearing was mailed.

This proposed Regulation is necessary to establish OTA's processes for acknowledging requests for an oral hearing, providing notice that such a request has been received, and the date and time of the oral hearing. This is also necessary to inform the public that they must respond to such a notice, confirming their desire have an oral hearing. This proposed Regulation tracks the requirements set forth in the prior BOE's Rules for Tax Appeals regarding notice of oral hearing, and in OTA's determination, this continues to be the most efficient procedure for the parties and OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30403. Response to Notice of Oral Hearing

The purpose of proposed Regulation 30403 is to provide clear procedures for responding to a notice of oral hearing. This proposed regulation also informs parties to an appeal of their right to an interpreter and reasonable accommodation. Subdivision (a) provides that the response to oral hearing should include a statement indicating that the party or party's authorized representatives will appear at the hearing, or that the party requests a postponement, the party waives the opportunity to appear, or the party withdraws its appeal. Subdivision (b) provides that persons participating in oral hearings who require an interpreter are entitled to an interpreter at no charge, and that the response to the notice of oral hearing should set forth the party's request for an interpreter and state the primary language spoken by the person for whom an interpreter is requested. Subdivision (c) provides that if a person requires special accommodation for other reasons, the response should describe the person's disability and the accommodation sought. Subdivision (d) provides that the response to the notice should provide the name and address of all witnesses who will testify for the party. Subdivision (e) provides that if a witness will be testifying in an expert capacity, the response to the notice should include a summary of that person's credentials and a brief summary of the nature and purpose of the expert's testimony. Subdivision (f) provides that the response to the notice should also include any other information requested by OTA in order to facilitate a fair and orderly oral hearing.

This section is necessary to establish OTA's processes for acknowledging requests for an oral hearing, providing notice that such a request has been received, and the date and time of the oral hearing. This section is also necessary to inform the parties, the public, and taxpayers that they must respond to such a notice, confirming their desire to have an oral hearing, and the other information, as deemed essential by tax and administrative procedure

experts, that must be provided prior to the oral hearing. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30404. Waiver of Oral Hearing

The purpose of Proposed Regulation 30404 is to explain provisions for removing a matter from the oral hearing calendar. Specifically, subdivision (a) provides that a matter will be removed from the oral hearing calendar if the party or parties who requested an oral hearing fail to return the response to the notice of oral hearing by the deadline, or fail to appear at the oral hearing. Subdivision (b) provides that, OTA, in its discretion, may return the matter to the oral hearing calendar upon a showing of reasonable cause for failing to appear or return the hearing notice.

Proposed Regulation 30404(a) is necessary to inform appellants that the consequences of failing to confirm an oral hearing results in OTA issuing a decision based on the documents that were submitted in writing. It is also necessary to provide OTA with sufficient notice to schedule prehearing matters and to prepare to hold an oral hearing when it is confirmed. Proposed Regulation 30404(b) is needed to establish a procedure whereby an appellant that has failed to confirm an oral hearing can request that their appeal be placed back on the hearing calendar. In order for that to happen, the rule establishes that appellant must show that there was a good reason why they failed to respond to a hearing notice. In the case where a party has waived their right to an oral hearing, OTA does not intend that such a party be automatically entitled place their hearing back on calendar; instead, OTA intends that such decisions be evaluated on a case by case basis. Therefore, OTA found it reasonably necessary to include language requiring a showing of good cause for failing to appear at an oral hearing or to the hearing notice. The intent here is also reasonably necessary to limit intentional tactics designed to waste state time and resources and delaying the hearing of an appeal before OTA.

Proposed Regulation 30404 is necessary to ensure that the parties receive timely notice that a case has been waived for oral hearing, that OTA receives timely notice of the parties' intent to appear at their oral hearing or waive their oral hearing, so that OTA can make the most efficient use of its time. This is necessary to ensure the parties understand the circumstances under which an important right, the right to an oral hearing, will be deemed waived, and the circumstances under which an appeal may be placed back on the oral hearing calendar in the case of a deemed waiver. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30405. Posting of the Oral Hearing Schedule on OTA's Website

The purpose of Proposed Regulation 30305 is to provide that OTA will post hearing dates on its website at least 15 calendar days before the hearing date.

Proposed Regulation 30405 is necessary to give the public sufficient notice of the content of the upcoming hearing so that members of the public may attend or observe hearings on matters of public interest. The 15-day timeframe was established based past practice of allowing between 10 and 15 days advance notice, and expertise finding that timeframe to be sufficient. Proposed Regulation 30405 is necessary to ensure that the parties and the public receive timely notice that

a case has been scheduled for oral hearing and the date and time of the hearing. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Article 2: Conducting an Oral Hearing

30410. Oral Hearing Rights

The purpose of Proposed regulation 30410 is to explain that at an oral hearing, each party will have the right to call and question witnesses; to introduce exhibits; and to respond to the evidence against him or her. Proposed regulation 30410 also states that where a party offers oral testimony as evidence at an oral hearing, the oral evidence may be taken only on oath or affirmation.

Proposed Regulation 30410 is necessary so that appellants and agencies without expertise in hearing procedures understand their rights and responsibilities at a hearing: to use documents and testimony to prove their case on appeal, that testimony will only be accepted if it is made under oath, that they have the right to question witnesses other than their own, and that OTA will control the hearing proceeding while preserving the participants' due process rights.

Proposed Regulation 30410 is also necessary to ensure that the parties and the public receive timely notice of a party's rights in a case scheduled for oral hearing before OTA, and the types of information and evidence that may be introduced at an oral hearing, and the circumstances under which it may be admissible. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30411. Disqualification of Administrative Law Judge for Cause

The purpose of proposed regulation 30411 is to provide that any party may file a motion to disqualify for cause any of the administrative law judges assigned to a Panel, and that there is no right to peremptory challenges.

Proposed Regulation 30411 is necessary because appeals are heard by three-member ALJ panels, and the referenced code sections apply only to a "presiding" judge officer. An appellant or other party to an appeal is not limited to requesting disqualification of a lead judge, but can request that any ALJ on an oral hearing panel be disqualified. However, OTA will not allow disqualification of a panel judge unless there is a ground to do so, such as that the judge has previously participated in the case prior to the appeal. Due to the requirement in law that a three-ALJ panel decide all appeals, OTA has determined it reasonably necessary to disallow automatic (peremptory) challenge to judges to ensure that each appeal maintains a full ALJ panel.

Proposed Regulation 30411 is also necessary to ensure that the parties to an appeal before OTA and the public understand the right to request disqualification of an administrative law judge for cause, and that there is no right to preemptively disqualify a judge for reasons other than cause. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30412. Concluding an oral Hearing

The purpose of Proposed regulation 30412 is to provide that upon concluding an oral hearing proceeding, the Panel will determine the submission date when the official oral hearing record will be closed. Proposed regulation 30413 also provides that, for good cause, the Panel may defer its determination of the submission date or it may reopen the oral hearing record.

Proposed Regulation 30412 is necessary to finalize the time within which parties to an appeal may continue to submit documents or exhibits to OTA. After a hearing is concluded, an ALJ panel must deliberate and issue a written decision, so time will elapse between the close of the hearing and when parties receive the decision. Appellants and agencies need to know that new information cannot be submitted after a hearing and before a decision is issued. The qualifier that states that an ALJ panel may defer that final decision to a later date is based on OTA's determination that an opportunity to submit further evidence may be needed to ensure due process and that a complete record exists prior to issuance of a decision.

Proposed Regulation 30412 is necessary to ensure that the parties to an appeal before OTA and the public understand that the time for submitting new evidence generally closes upon conclusion of the oral hearing, unless an administrative law judge reopens the case or sets a later date for submission of additional information following the hearing. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Article 3: Motions and Presentation of Evidence at an Oral Hearing

30420. Presenting Information and Documents at Oral Hearing

The purpose of proposed Regulation 30420 is to provide guidance on how exhibits, witness lists, and witness declarations are to be presented to OTA. Subdivision (a) states that the party providing exhibits should provide a list of the exhibits with a brief description of each document; explains how exhibits should be labeled; and explains that the Agency should include in its exhibits any jurisdictional documents including the written decision or notice of action taken by the Agency that is the subject of the appeal. Subdivision (b) provides that each party must submit a list of all witnesses who will testify on its behalf, with a copy to the other party, at least 15 calendar days before the hearing or earlier if directed to do so by OTA, and also provides that any witness who will testify as an expert must be clearly identified with a brief description of the purpose of each expert witness's testimony. Subdivision (c) provides that parties may submit declarations of persons who will not be present at the hearing, and that such declarations should be signed under penalty of perjury and filed with the filing party's brief. This subdivision also explains provisions for the opposing party to question the witness providing the declaration, and for the witness to respond to questions.

Proposed Regulation 30420(a) is necessary to ensure that hearings are conducted efficiently without undue consumption of time. It is necessary to establish procedures that clearly show which party is presenting a particular exhibit and how to refer to it so that an OTA Panel and all parties may easily reference all exhibits. Based on the requirement in the Act that ALJs have no ex parte communications, this subsection is needed to make sure that exhibits are presented to all parties as well as to OTA. Proposed Regulation 30420(b) is necessary to provide advance notice

to OTA and to all parties of who will testify at a hearing. It is needed to ensure proper preparation for the ALJs hearing the appeal, and for parties, to be prepared to ask questions of witnesses whose testimony may affect the outcome of the appeal. Expert witnesses are able to give opinions on issues, as well as to testify to facts. The procedure in this subsection establishes a process that gives parties and OTA advance notice of the scope of an expert's testimony, which will ensure that testimony is relevant and will not unduly consume time at the hearing. Proposed Regulation 30420(c) is needed to establish procedures for using a written declaration instead of live testimony under oath at a hearing. In order to ensure that parties maintain their rights to ask questions of witnesses, this subsection lays out the means by which questions may be asked of a witness who will not attend and answer questions at a hearing. OTA determined it reasonably necessary to establish a written process that will not unduly burden a party to an appeal that does not have specialized knowledge of how to undertake more sophisticated legal steps to have questions asked and answered prior to a hearing. The subsection is also needed to establish the consequences of not following the procedures laid out in the proposed Regulation.

Proposed Regulation 30420 is necessary to ensure that the parties and the public have notice of a party's rights in a case scheduled for oral hearing before OTA, the circumstances and procedures for allowing a witness to testify, and the circumstances and procedures for allowing exhibits into the record. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30421. Motions

The purpose of proposed Regulation 30421 is to explain how prehearing motions are to be filed. Subdivision (a) provides that all motions made prior to the oral hearing shall be directed to the Lead ALJ or to a Presiding ALJ. Subdivision (b) provides that prehearing motions shall be made with written notice to all parties. Subdivision (c) provides that the Lead ALJ assigned to a Panel or a Presiding ALJ may decide prehearing motions, order additional briefing on the issue, or defer decision until the date of the hearing. Subdivision (d) provides that, generally, a prehearing motion shall be filed at least 15 days before the start of the oral hearing, and any response to the prehearing motion shall be filed by the due date specified by OTA.

Proposed Regulation 30421 is necessary to establish how and when to make motions prior to or during an oral hearing. Proposed Regulation 30421(a) is needed so that parties know to whom to direct a prehearing motion. Panels consist of three ALJs, so assigning one person to receive a motion is based on OTA's determination that such a procedure will be easier for parties and efficient for OTA. Proposed Regulation 30421(b) is needed because the Act requires that ALJs do not communicate with parties without notice to other parties. The provision that notice does not need to be given if a motion is made at a hearing is due to the fact that all parties will presumably be present at a hearing. Proposed Regulation 30421(c) is needed to establish that a Panel does not need to decide on prehearing motions, and that the same individual(s) may request additional information from the parties and determine the timing of motions and responses to them. Based on OTA's determination and prior practices in tax appeals, some motions, such as a request for oral hearing, may be presented to OTA before a Panel has been assigned. The establish process allows efficient responses to motions, and helps to fully develop an appeal prior to a Panel deliberating and deciding the appeal. Proposed Regulation 30421(d) is necessary to establish a deadline for submitting motions relating to an appeal, in order to avoid

delays or postponements that result in delayed decisions. Delays in an appeal may harm an appellant that is potentially incurring interest while waiting for their appeal to be resolved.

Proposed Regulation 30420 is necessary to ensure that the parties and the public receive have notice of a party's rights in a case scheduled for oral hearing before OTA with respect to filing a motion, the circumstances and procedures for filing a motion before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Article 4: Observation of Oral Hearings

30430. Public Transparency

The purpose of Proposed regulation 30430 is to explain that oral hearings are generally open to the public, and that submitting an appeal constitutes a waiver of the right to confidentiality with regard to all of the briefing and other information provided to OTA by either the party or an Agency, with certain specified exceptions. Subdivision (a) provides that oral hearings before a Panel are open to the public, unless ordered otherwise in accordance with this regulation, and that the submission of an appeal constitutes a waiver of the right to confidentiality. This subdivision also provides that OTA may disclose information pursuant to Revenue and Taxation Code section 19545, the California Public Records Act, and other applicable law. Subdivision (b) provides that the waiver of confidentiality does not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act. Subdivision (c) provides that nothing in this regulation prohibits any party to an OTA hearing, ALJ's, or OTA staff from referring to information described in this regulation in briefs, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a hearing. Subdivision (d) provides that there is no right to confidentiality as to relevant information that OTA includes in a written opinion that is required to be published pursuant to Government Code section 15675.

Proposed Regulation 30430 is necessary because the findings and provisions in the Act require OTA to restore the public's trust in the system through procedures that put fairness, consistency, and transparency of the tax administration and appeals processes in the forefront. Proposed Regulation 30430(a) is needed to describe the default position of OTA that a hearing will be open to the public, and that confidentiality is waived in that process and list some common provisions related to when information may be released to the public. Proposed Regulation 30430(b) is necessary to limit the disclosure of certain, personally identifying or sensitive information to the public. The release of the excepted information would not lend additional transparency to the tax administration and appeals processes. Proposed Regulation 30430(c) is necessary to enhance full development of an appeal matter, efficient processing of an appeal, and deliberation prior to issuing a decision. Proposed Regulation 30430(d) is needed to maintain transparency in the decision process by ensuring that OTA decisions may include relevant information that is not personally identifying.

Proposed Regulation 30430 is necessary to ensure that oral hearings are generally open to the

public, to establish the right of OTA to close hearings from public observation, and to ensure the public and the parties to an appeal understand that by appearing an oral hearing open to public observation they are waiving confidentiality in a written opinion and as to all information provided to OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality of personal and sensitive information.

30431. Requests to Close an Oral Hearing from Public Observation or Seal the Record

The purpose of Proposed regulation 30431 is to explain the provisions for having an oral hearing closed and having the oral hearing record sealed. Proposed regulation 30431 provides that a request to close an oral hearing or seal the oral hearing record should be made in writing, should be made prior to the due date of the appellant's response to the notice of oral hearing, and should state the grounds upon which it is based, with copies provided to all other parties, including the Agency.

Proposed Regulation 30431 is necessary to establish a process for requesting that a hearing or part of a hearing be closed to the public, or that the record or part of the record be closed to the public. OTA has determined it reasonably necessary to establish a process that gives sufficient time to make a decision on such a request after weighing the reasons for the request against the requirement in the Act that the tax appeals process be transparent to the public.

This section is necessary to ensure the public and parties to an appeal before OTA understand the important right to request an oral hearing be closed from public observation, the circumstances under which this right may be applicable, and the required contents of such a request. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality of personal and sensitive information.

30432. Closing Hearings, Sealing the Record, and Redacting Information

The purpose of proposed Regulation 30432 is to provide criteria for determining when a hearing will be closed to the public, when items contained in the oral hearing record or the written record will be sealed, and when information contained in the decision or other documents will be redacted. Specifically, subdivision (a) provides that OTA will consider: (1) whether the appeal involves trade secrets or other confidential research, development, or other information; (2) where a request for a closed hearing is made, to ensure the ability of the party to be represented by the person of their choice, in the circumstances of that particular case; and (3) other grounds as necessary to ensure a fair hearing and provision of due process. Subdivision (b) provides that any request to seal records will be applied to as narrow a set of records as required under the circumstances. Subdivision (c) provides that an appellant may request to redact information in decisions no later than 15 days after the mailing of the decision. Subdivision (d) provides that this section will be applied and interpreted in a manner that recognizes the public interest in transparency.

This section is necessary to ensure the public and parties to an appeal before OTA understand the important right to request that information be redacted, that the record be sealed, or that an oral

hearing be closed from public observation, the circumstances under which this right may be applicable, and standard and criteria that will be applied by OTA in determining whether to grant such a request. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality of personal and sensitive information.

This proposed Regulation is necessary because, based on OTA's determination, it is reasonably necessary to implement the provisions of the Act requiring OTA to establish a process and criteria for allowing for closed hearings. This section is reasonably necessary to ensure trade secrets and personal confidential information is protected, and to ensure that a taxpayer may be represented by any person, over the age of 18, of their choice. This proposed Regulation is necessary because, based on OTA's determination, it helps protect California taxpayers by ensuring that, as a result of their tax appeal and oral hearing, confidential information, such as trade secrets, is not disseminated to the public. This section is not intended to be automatically applied or to establish a right to a closed hearing. Instead, this is intended to allow OTA to determine, on a case-by-case basis, whether the interests of the individual in having a closed hearing, supersede the public interest in transparency in the appeals process. Therefore, OTA included language in subdivision (d) which provides that this section be applied and interested in a manner recognizing the public interest in transparency. This proposed Regulation is necessary because it helps to protect the income of certain trade groups and tax practitioners by allowing them to appear and practice before OTA.

30433. Ruling Upon a Request to Close an Oral Hearing, Seal Records, or Redact Information
The purpose of Proposed Regulation 30433 is to provide notification that OTA will issue a written order granting or denying any request provided in regulation 30432.

This section is necessary to ensure that the public and parties to an appeal before OTA understand that OTA will determine and decide any request to close an oral hearing, seal the record, or redact information. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality of personal and sensitive information, such as trade secrets.

This section addresses the concern that parties expressed regarding how OTA will issue responses to a party motion. OTA determined that a written response was the best approach by taking into consideration the fact that the Act continuously shows a preference for written communications, and the fact the written communications provide better transparency for all parties.

This section is necessary to ensure that the public and parties to an appeal before OTA understand that OTA will determine and decide any request to close an oral hearing, seal the record, or redact information. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality of personal and sensitive information

Chapter 6: Decision by Written Opinion

30501. Publication of a Written Decision

The purpose of Proposed Regulation 30501 is to explain the information to be included in written opinions issued by OTA, as well as the timeframe for publication of the opinions and the system for numbering decisions. Specifically, subdivision (a) provides that a written opinion will explain the reasons for granting or denying the appeal, in whole or in part. Subdivision (b) provides that a written opinion will include findings of fact, legal issues, applicable law, the holding of the Panel, and the names of the adopting or dissenting administrative law judges. Subdivision (c) explains that at least two out of three Panel members must concur in each holding, and that a concurring or dissenting member may provide a separate written opinion. Subdivision (d) provides that OTA will publish a written decision on its website within 100 days after the date upon which the decision becomes final. Subdivision (e) prescribes the format for the decision numbers assigned to posted OTA decisions. Subdivision (f) provides that an appellant may request that the record be sealed or that information be redacted in a decision.

This section is necessary to establish the procedures that OTA will follow when publishing its written opinions. The Act requires the publication of all OTA opinions, as such, it is necessary to establish procedures by which to publish the opinions. Specifically:

Subdivision (a) is proposed to ensure that OTA is in compliance with the Act's requirement to publish a written opinion in every case.

Subdivision (b) is proposed to align the OTA process with the Act's requirements that all opinions have; findings of fact, legal reasoning, and the names of the ALJs.

Subdivision (c) is proposed to ensure that an OTA opinion will have two out of the three ALJs concurring in the holding. This is necessary to establish what holding will be binding on a taxpayer in the event that there is a dissenting or concurring opinion of an OTA Panel. OTA determined that two out of three judges concurring in a holding is sufficient, as that is in line with practices of the BOE where a majority vote could determine a tax issue.

Subdivision (d) is proposed to establish a timeline in which OTA must publish its opinions. OTA deemed that 100 days was appropriate the Office of Administrative Hearings uses the same time frame for the publication of its opinions.

Subdivision (e) is proposed to establish a procedure for identifying and numbering published OTA opinions. OTA selected this numbering convention to make it as similar as possible to the previous BOE numbering convention while still identifying the opinion as an opinion of OTA.

Subdivision (f) is proposed to allow an appellant to seal a record. OTA believes this is necessary to give full weight to the Act's requirement to allow a taxpayer to request a closed hearing. If a hearing were closed but the record was public than the act of closing the hearing would be hollow and not proved for protection of the information disclosed in a closed hearing.

This section is further necessary to ensure that OTA staff, the public, and parties to an appeal before OTA understand the minimum required contents of a written opinion from OTA, the information that will be contained therein, that number of administrative law judges who must agree with the holding, and the timeframe for receiving a written decision from OTA, and that parties to an appeal understand their right to request that confidential information be redacted in a written decision. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality of personal and sensitive information.

30502. Citation of OTA Opinions and Precedential Effect

The purpose of Proposed Regulation 30502 is to provide specific guidance to the public regarding the procedures and timeline for requesting that an opinion be given precedential effect in accordance with Government Code section 11425.60, the factors that designated staff at OTA will consider in determining whether to designate an opinion as precedential, and the posting of precedential opinions. Specifically, subdivision (a) provides that a proposal to give an opinion precedential effect may be communicated by any person to an email address listed on OTA's website. Subdivision (b) explains that a written opinion published by OTA is not precedential in any other appeal before OTA unless OTA has designated that its opinion is precedential. Subdivision (c) lists the factors that OTA will consider in determining whether to designate an opinion as precedential, including whether the opinion (1) would establish a new interpretation of law or modify or repeal an existing interpretation of law; (2) would resolve an apparent conflict in the law; (3) would involve a legal issue of continuing public interest; (4) would make a significant contribution to the law; or (5) whether there is any other basis to justify precedential status. Subdivision (d) provides that the Chief Counsel of OTA, in consultation with the Presiding ALJ's, will determine if a written opinion should be precedential, and the Director of OTA will have the authority to accept or reject the determination that a decision should be precedential. Subdivision (e) explains that there will be a delay of 30 days from the time precedential decisions first are posted on OTA's website until they become precedential.

Subdivision (a) establishes a procedure for a person to request that a OTA make an opinion precedential. OTA decided that it was necessary to allow the parties and others to weigh in on the matter of precedential status so that important matters of tax policy would have well rounded input when creating precedential tax law.

Subdivision (b) establishes the authority of nonprecedential OTA opinions. OTA determined the authority level of nonprecedential cases based on how non nonprecedential were treated in proceedings before BOE.

Subdivisions (c) and (d) establish the internal process OTA will use to determine whether or not to make a opinion precedential. The Act was put into place in order for taxpayers to have an independent and transparent tax appeal process to make the process transparent OTA determined that it must make public its process for making cases precedential. OTA determined it was necessary that its Chief Counsel should recommend precedential status to the director so that there would be consistency in the precedential opinions. This is similar to how the group of BOE member would make precedential BOE determinations.

Subdivision (e) establishes the process for posting and numbering precedential decisions. OTA found that this process was necessary to differentiate precedential from nonprecedential decisions. OTA chose add a P before precedential cases as it was the simplest and easiest to understand of the options in considered.

This section is also necessary to ensure that OTA staff, the public, and parties to an appeal before OTA understand that any person has the right to request that any written OTA opinion be given precedential effect, and that such a request may be made at any time, regardless of when the OTA opinion as written or how long ago the OTA opinion was issued. This section is further necessary to provide notice to the public that non-precedential opinions cannot be cited as precedential authority in an appeal before OTA, how to recognize if an opinion is precedential or nonprecedential, the standards that OTA will apply in determining whether to given an opinion precedential status, and the internal review process that OTA will following in making such a determination. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30503. Withdrawal of Precedential OTA Opinions

The purpose of Proposed Regulation 30503 is to notify the public that OTA may withdraw, in whole or in part, the precedential status of an opinion that it previously designated as precedential, with an explanation, and when OTA does so, the decision will be published as an overturned decision on OTA's website.

The Act gives OTA the authority to make its determinations precedential. In order to have the ability to make a decision precedential it is also necessary that OTA have the authority to withdraw the precedential status of its opinion. If it could not remove the precedential status it would be barred by *stare decisis* from making an opinion precedential that contradicted a previous precedential opinion.

This section is also necessary so that the public understands he circumstances and standards under which a published precedential opinion may have its precedential status removed, and that a prior precedential decision may only be removed by a subsequent precedential decision. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30504. Precedential Decisions of the Board of Equalization

The purpose of proposed Regulation 30504 is to notify the public that, as part of a written opinion, OTA may withdraw, in whole or in part, the precedential status of an opinion of the State Board of Equalization (BOE) that was adopted prior to January 1, 2018, and that if OTA does so, it will publish a notation of the change in precedential status on its website. Additionally, it specifies that BOE decisions that remain precedential may be cited to OTA.

OTA established this section to address the concerns of several commentators stating that it was unclear what the precedential status of BOE decisions would be in front of OTA. OTA determined that the opinions should be precedential in order to give certainty and continuity in

the tax administration.

This section is further necessary so that the public understands the circumstances and standards under which a published precedential BOE opinion may have its precedential status removed by OTA, that a prior precedential decision may only be removed by a subsequent precedential OTA decision, and the procedures that OTA will follow in removing the precedential effect of a BOE decision. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30505. Finality of Written Opinions

The purpose of Proposed Regulation 30505 is to provide the information necessary to ensure that the parties to an appeal have a clear understanding of the date a decision becomes final. Specifically, subdivision (a) explains that a decision becomes final 30 days from the date the written opinion is mailed to the parties unless a party to the appeal files a petition for rehearing during that 30-day period. Subdivision (b) explains that OTA may correct typographical or non-substantial errors in a published decision without affecting the date the decision becomes final. Subdivision (c) provides that, while a Panel may sever any issue from an appeal for separate consideration, and issue an opinion on the severed issue prior to deciding the appeal, the Panel's decision on the severed issue only becomes final when the decision resolving the entire appeal becomes final.

This section is necessary so that the public understands the date upon which an OTA decision becomes final, which is important in reference to appeal rights, such as filing a petition for rehearing; that OTA may make technical corrections to a decision without changing the appeal rights, and providing notice to the public that OTA may hold multiple hearings for an appeal if the Panel decides to hear the issues separately. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Chapter 7: Petitions for Rehearing

30601. Definitions

The purpose of Proposed Regulation 30601 is to define "filing party" and "non-filing party" for purposes of discussing submissions of petitions for rehearing under Chapter 7 of Division 4.1 of OTA's Rules for Tax Appeals.

This section is necessary to ensure that all persons interested in filing an appeal of a written decision issued by OTA understand the meaning of terms used in this chapter and apply the provisions correctly. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Specifically, in addition to the reasons described above, the draft of proposed Regulation 30601, *definitions*, is necessary to define, as used in Chapter 7 of OTA's Rules for Tax Appeals, the term "filing party," to mean the person who files a petition for rehearing, and the term "non-

filing party” to mean the person who did not submit a petition for rehearing. These terms are not statutory terms, but are necessary for purposes of establishing procedures for appeals before OTA and in order to simplify and define in OTA’s appeals procedures, for purposes of statutory rights, including the right to file a petition for rehearing, which party initiated the appeal before OTA, and which party did not initiate the appeal. This is further necessary because OTA hears appeals for many different tax and fee programs, and the person filing a petition for rehearing with OTA may include many different persons, such as a taxpayer, FTB, CDTFA, an innocent spouse, a government entity, a local entity, and as such it is necessary to establish and define uniform and consistent terms which encompasses all those persons as either the person who filed a petition, or the person who did not submit a petition for rehearing. OTA found it reasonably necessary to select these terms, specifically, because these terms were also used in the board’s Rules for Tax Appeals with respect to petitions for rehearing, and for purposes of consistency, OTA’s continued use of these terms establishes consistency and uniformity in the appeals process, and during the transition and transfer of responsibility to hear such petitions from the board to OTA.

30602. Time for Filing a Petition for Rehearing

The purpose of Proposed Regulation 30602 is to provide information regarding timelines and procedures for filing petitions for rehearing. Specifically, the proposed regulation explains that a petition for rehearing must be filed during the 30-day period described in proposed Regulation 30505(a) to be timely. Additionally, proposed Regulation 30602 provides that if a petition for rehearing does not contain sufficient information, OTA’s notification of receipt will explain the deficiency, and the petitioning party will be allowed 30 days to cure the deficiency. If the petitioning party does not cure the deficiency within 30 days, OTA will reject the petition and notify the parties of the rejection in writing, unless OTA finds good cause to accept the petition for rehearing.

Proposed Regulation 30602 is necessary to provide uniform procedures for determining whether petitions filed other documents in connection with a petition for rehearing are timely filed with OTA. Proposed Regulation 30602 is also necessary to set forth OTA’s policy and procedures under which OTA will give parties addition time to cure defects in timely, but incomplete petitions, and to ensure that all parties are aware of their right to cure a defect, and ensure that OTA staff does not prematurely dismiss an otherwise timely petition. This is further necessary to improve the public’s understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Specifically, in addition to the reasons described above, the draft of proposed Regulation 30602, *Time for Filing a Petition for Rehearing* is necessary because it prescribes the circumstances under which a petition for rehearing is timely filed with OTA, by incorporating and applying the 30-day filing period specified in proposed regulation 30505, subdivision (a), and by applying uniform standards that are consistent with the statutory deadlines for purposes of franchise and income tax petitions, and by establishing, defining, and creating the filing timeframe for those other tax and fee appeals heard by OTA which do not, by statute, specify a timeframe to file a petition for rehearing. This is further necessary to establish and prescribe uniform and consistent appeal filing guidelines for all petitions for rehearing subject to review by OTA. OTA found it reasonably necessary to establish a 30-day filing because this timeframe is set by statute for

Franchise and Income Tax Appeals, and was also 30 days under the board's Rules for Tax Appeals for those other petitions previously submitted to the board and which are now transferred under the Act to OTA. For purposes of consistency with prior law, and with Franchise and Income Tax appeals, OTA found it reasonably necessary to establish a 30-day filing period.

The proposed regulation further provides that the filing party should obtain and retain proof of timely mailing, which is reasonably necessary to ensure that such a person is able to document to OTA the timely filing of a petition, in the event the appeal is not received by OTA.

The proposed regulation further prescribes that if a petition for rehearing does not contain all the required elements, OTA will describe in the written notification described above the deficiency, and will allow the filing party 30 days to cure the deficiency. This is reasonably necessary to ensure that an appeal will not be rejected for failing to be timely filed if it is initially received during the 30-day time period, but is not complete and cured until after the 30-day filing period. For purposes of determining what constitutes the required elements, it was reasonably necessary to cross reference and incorporate the provisions of proposed Regulation 30603's provisions specifying the required form and content (required elements) of a petition for rehearing.

The proposed regulation prescribes that OTA will reject a petition for rehearing if the filing party fails to cure a deficiency in a petition for rehearing, following notification from OTA and within the 30-day time period described above, and that OTA will provide notification to all parties if a petition has been rejected. This is reasonably necessary to ensure OTA has the authority to reject a petition which is timely but incompletely filed within the 30-day filing period, and not cured within a reasonable time period, which OTA has determined to be 30 additional days. The 30 days to cure a deficiency is consistent with the timeframe provided for under the board's Rules for Tax Appeals for petitions filed with the board.

OTA furthermore found it necessary to prescribe the circumstances under which OTA may accept as valid a petition for rehearing that does not meet the technical requirements of Regulation 30603, if the petition for rehearing substantially complies with the requirements of proposed Regulation 30603, or upon OTA's determination that good cause exists to accept the petition for rehearing. OTA found this necessary because there may be circumstances under which a petition does to technically contain all the required elements, but, due to good cause, it would be unfair or inequitable to reject the petition; for example, if a taxpayer does not own a telephone and as such, is unable to provide a phone number at which he or she may be contacted.

30603. Form and Content of the Petition for Rehearing

The purpose of Proposed Regulation 30603 is to specify that every petition for rehearing must be in writing, must meet certain formatting requirements, and must contain (a) the name or names of the submitting parties; (b) the address and telephone number of the submitting party and its representative, if applicable; (c) any portion of the amount at issue that has been conceded; (d) the signature of each submitting party or the signature of an authorized representative on behalf of each submitting party; and (e) the facts and arguments showing grounds for a rehearing.

This section is necessary to make the proposed Rules for Tax Appeals comprehensive, improve their clarity, and ensure that all persons know what information is required to file a petition before OTA, and ensure that all eligible persons are aware of their rights in connection with a petition for rehearing. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Specifically, in addition to the reasons described above, the draft of proposed Regulation 30603, *Form and Content of the Petition for Rehearing* is necessary because by prescribing and interpreting the required form and content of a petition for rehearing filed with OTA, it establishes the minimum required information that a person intending to file a petition for rehearing must provide to OTA before a filing can be accepted as a petition for rehearing. This is necessary because there are no statutory provisions which specifically prescribe and set forth the minimum required contents to constitute a petition for rehearing. The requirements proposed are consistent with the board's Rules for Tax Appeals.

The proposed regulation also prescribes and establishes uniform minimum required standards for a petition for rehearing that apply equally to all persons regardless of the type of filing party or the specific tax or fee program subject to the appeal, which is necessary because such a procedure is not otherwise provided for by statute or regulation. OTA found it reasonably necessary to make the procedures uniform and consistent, because the alternative would have been to promulgate a separate set of procedures and regulations for each of the approximately 18 tax and fee programs for which a petition for rehearing may be filed with OTA, which would be unduly burdensome and inefficient. OTA intends, to the extent allowable under the Act, to establish uniform procedures that apply equally to all tax and fee programs subject to OTA.

The proposed regulation also provides that every petition for rehearing must be in writing, and must comply with the formatting requirements of draft regulation 30302, subdivision (d), which is reasonably necessary to establish uniform formatting requirements for petitions that are the same as those requirements set forth for other types of appeals filed with OTA.

The proposed regulation also prescribes and establishes requirements that are consistent with the minimum requirements in the board's Rules for Tax Appeals, specifically, the proposed regulation:

- Cross references proposed Regulation 30302's provisions specifying the formatting requirements of a petition for rehearing.
- Prescribes, in subdivision (a), that every petition for rehearing must contain the name or names of the party or parties submitting the petition for rehearing to OTA.
- Prescribes, in subdivision (b), that every petition for rehearing must include the address and telephone number of the submitting party and, if applicable, the submitting party's authorized representative.
- Prescribes, in subdivision (c), that a petition for rehearing must identify any portion of the amount at issue conceded by the filing party, which is necessary to allow the parties and OTA to efficiently process appeals and to understand the disputed issues and the non-disputed issues.
- Prescribes, in subdivision (d), that a petition for rehearing must include the signature of

each filing party or the signature of an authorized representative made on behalf of each filing party.

- Prescribes, in subdivision (e), that a petition for rehearing must include the facts and argument explaining why the party believes there are grounds for rehearing.

OTA found it reasonably necessary to prescribe these minimum standards, because these standards are consistent with the rules set forth in the board's Rules for Tax Appeals which applies to these appeals when they were subject to review by the board.

30604. Grounds for Rehearing

The purpose of Proposed Regulation 30604 is to describe the grounds on which a rehearing may be granted. Specifically, subdivision (a) provides that a rehearing may be granted if an irregularity in the appeal proceedings prevented fair consideration of the appeal. Subdivision (b) provides that a rehearing may be granted if an accident or surprise occurred during appeal proceedings. Subdivision (c) provides that a rehearing may be granted if newly discovered, relevant evidence has become available. Subdivision (d) provides that rehearing may be granted if there is insufficient evidence to justify the written opinion or if the opinion is contrary to law. Subdivision (e) provides that a rehearing may be granted due to an error in law.

This section is reasonably necessary to clarify, interpret, and apply Code of Civil Procedure section 657, to an appeal before OTA. At the trial court level, the equivalent of a petition for rehearing is a motion for a new trial. Code of Civil Procedure section 657 specifically sets forth the grounds for granting a new trial. As explained in the board's precedential decision in the *Appeal of Wilson Development, Inc.* (94-SBE-007, Oct. 5, 1994), the board has historically looked to the Code of Civil Procedure in determining whether grounds for a rehearing exist. It is the intent in drafting regulation 30604, that in determining whether to grant a rehearing of an administrative appeal before OTA, that OTA continue to apply the grounds for a new trial as set forth in Code of Civil Procedure section 657, to the extent those grounds are relevant to an administrative hearing. Subdivisions (a) through (e) of proposed regulation 30604 are specifically intended to apply paragraphs 1, 3, 4, 6, and 7, respectively, in Code of Civil Procedure section 657. Code of Civil Procedure, Paragraph 6 (subdivision (d) of proposed regulation 30604) applies in the context that the decision is against the law, and Paragraph 7 (subdivision (e) of proposed regulation 30604) applies in the context that there is an error in law that occurred during the appeal proceedings that was excepted to by party filing the application or petition. It is the intent of OTA in setting forth the grounds for rehearing in proposed regulation 30604, to summarize the underlying law as set forth in the Code of Civil Procedure, and to continue the board's precedential decision in the *Appeal of Wilson Development, Inc.* (94-SBE-007, Oct. 5, 1994) in looking to the Code of Civil Procedure in determining whether to grant a new hearing. Proposed regulation 30604 is intended merely to summarize and apply the underlying substantive law as set forth in Code of Civil Procedure, section 657, as that law is relevant to an administrative hearing. Proposed Regulation 30604 is not intended to create any new appeal rights or expand or restrict those appeal rights beyond what is contained in Code of Civil Procedure, section 657.

This section is necessary to clearly set forth for the public the grounds upon which a petition for rehearing may be requested, consistent with the intent described above, and the grounds under

which such a request will be considered, and provide standards and guidelines to the public so they will understand the circumstances under which they may file a petition for rehearing of an OTA decision. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30605. Number of Petitions for Rehearing

The purpose of proposed Regulation 30605 is to make clear that only one petition for rehearing regarding the same appeal may be submitted, and that once a Panel has issued a decision on a petition for rehearing or issued a written opinion after a rehearing, neither party may submit a subsequent petition for rehearing.

This section is necessary to establish the rule, and notify the public and parties with an appeal before OTA of the rule, that parties only file a single petition for rehearing of an OTA written opinion and that a petition for rehearing may not be filed in response to a decision on a petition for rehearing. OTA determined it reasonably necessary that an appeal must ultimately be concluded, and determined it reasonably necessary to conclude the appeal after hearing a petition for rehearing. Therefore, OTA determine that it will not allow a petition for rehearing to be filed to challenge the decision on a prior petition for rehearing. OTA's determined that this section is necessary to ensure efficiency in the resolution of appeals before the OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30606. Decisions on Petitions for Rehearing

The purpose of proposed Regulation 30606 is to set forth the potential outcomes from a petition for rehearing, whether a rehearing is granted or denied. Specifically, the proposed regulation provides that if a rehearing is granted, the initial decision will be held in abeyance pending resolution of the rehearing, and if a rehearing is denied, the initial decision becomes final 30 days from the date of the denial. Additionally, OTA may modify a prior decision without a rehearing if the modification is typographical or non-substantive and does not alter the holding of the case.

This section is necessary to establish OTA's process in deciding a petition for rehearing, and providing notification to parties and the public of that process. This section establishes that a written decision will be issued on such a petition, and the timeframe for the decision going final following such a decision. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30607. Briefing on Rehearing

The purpose of Proposed Regulation 30607 is to prescribe the briefing schedules when a single petition for rehearing has been granted and when petitions for rehearing filed by more than one party have been granted. Specifically, subdivision (a) provides that the general requirements for briefs explained in Proposed Regulation 30302 apply to the administration of the briefing process and the documents submitted as briefs for a rehearing. Subdivision (b) provides the schedule for the filing party's opening brief, the non-filing party's reply brief, and the filing party's reply brief when a single petition for rehearing has been granted. Subdivision (c)

provides the schedule for opening briefs and reply briefs when there is more than one filing party and more than one petition for rehearing has been granted. Subdivision (d) provides that OTA may permit or require additional briefs. Subdivision (e) provides that OTA may order any briefing schedule that it deems appropriate. Subdivision (f) provides that the parties may request an extension of time for filing a brief under guidelines stated in Proposed Regulation 30302(c).

This section is necessary to provide notice to the public regarding the special rules that apply with respect to the briefing schedule, and timeframes related thereto, that apply in the case of a petition for rehearing, and to provide notice of the rules and procedures for such appeals. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA, while at the same time protecting the confidentiality rights of the spouses.

Proposed regulation 30607 cross references draft regulation 30302, to prescribe the formatting requirements for briefing on a petition for rehearing, which is reasonably necessary to establish and apply uniform formatting standards on all documents filed with OTA, and in lieu of separately prescribing here the same provisions as are contained in draft regulation 30302. Proposed regulation 30607 is reasonably necessary to establish and provide for the briefing schedule that applies when a petition for rehearing has been filed. OTA found it reasonably necessary to establish a 30-day timeframe for opening and reply briefing, because this timeframe is consistent with the timeframe contained in the board's Rules for Tax Appeals. OTA also found it reasonably necessary to establish procedures for extensions and extended deadlines, consistent with the board's Rules for Tax Appeals, because a 30 day timeframe may not be appropriate, taking into consideration the specific facts of a case, such as, for example, the complexity of the issues or volume of exhibits submitted.

This proposed Regulation is necessary because it outlines OTA's established procedures on this issue. Based on the change from the board to OTA, this proposed Regulation provides taxpayers with the notice and information needed to regarding the new rules for briefing on rehearing; a lot of things have changed from how the board handled matters, and this proposed Regulation puts taxpayers on notice regarding the new process at OTA. This proposed Regulation is necessary because, based on OTA's determination and the former board procedures, it is the best manner to ensure taxpayer fairness and accessibility. This proposed Regulation is necessary because, based on OTA's determination, it helps conserve limited state resources by reducing the time and expense necessary to respond to improper rehearing cases that are filed based on the formal briefing rules of the board.

Chapter 8: Taxpayer Bill of Rights Reimbursement Claims

30701. Jurisdiction

The purpose of Proposed Regulation 30701 is to provide specific guidance to taxpayers as to the tax and fee programs for which OTA may consider claims for reimbursement. Subdivision (a) provides that OTA has jurisdiction over reimbursement claims related to Personal Income and Bank and Corporation Income Tax. Subdivision (b) provides that OTA has jurisdiction over reimbursement claims related to Business Taxes and Fees. Subdivisions (b)(1) through (13) list the business tax and fee programs for which a reimbursement claim may be considered by OTA.

This section is necessary to eliminate the need to consult all of the various statutes to see whether OTA has jurisdiction over an appeal involving a reimbursement claim. This further improves the public's understanding of the administrative review process before OTA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

This proposed Regulation is necessary because, based on OTA's determination, the majority of California taxpayers are unaware of the plethora of tax and fee programs administered by the State of California, and this proposed Regulation outlines the limited types of tax appeals that may be filed with OTA. This proposed Regulation is necessary because, based on OTA's determination, it helps conserve limited state resources by reducing the time and expense necessary to respond to matters which never should have been filed with OTA in the first place.

30702. Appeals from FTB

The purpose of Proposed Regulation 30702 is to provide specific guidance to taxpayers who have filed appeals from actions of the FTB with OTA regarding the types of fees and expenses that may be reimbursable, and to make it clear that fees and expenses are reimbursable only if a Panel issues a finding in writing that the action taken by the FTB was unreasonable.

It is necessary to set out these guidelines, according to the opinion of our experts on reimbursement claims, to explain which claims are eligible for reimbursement and how OTA will determine when fees and expenses are reimbursable. These procedures follow closely the established procedures that the BOE used in such cases. This section is necessary to clearly set forth the rules applicable to a reimbursement claim filed with respect to an appeal from FTB, and to notify the public that the guidelines and procedures are different from an appeal from CDTFA. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30703. Appeals from CDTFA

The purpose of Proposed Regulation 30703 is to provide specific guidance to taxpayers regarding reimbursement claims involving a tax or fee program administered by the CDTFA. Specifically, subdivision (a) provides that only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination, or claim for refund are eligible for reimbursement. Subdivision (b) provides that fees and expenses "related to a hearing before OTA" may be reimbursable only if (1) the claimant had previously submitted an appeal to OTA; (2) a Panel granted, in whole or in part, the appeal; and (3) a Panel issues a finding in writing that the action taken by CDTFA was unreasonable.

These procedures follow closely the established procedures that the BOE used in such cases, and OTA has determined that these rules are necessary. This section is necessary to clearly set forth the rules applicable to a reimbursement claim filed with respect to an appeal from CDTFA, and to notify the public that the guidelines and procedures are different from an appeal from FTB. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30704. Determination of Reasonable Fees

The purpose of proposed Regulation 30704 is to set forth the applicable authority in the Revenue and Taxation Code that provides a limitation on the amount of fees for professional representation that may be regarded as reasonable. With respect to reimbursement claims from actions of the FTB, subdivision (a) refers to Revenue and Taxation Code section 19717(c)(1)(B)(iii). With respect to reimbursement claims in business tax and fee appeals from the CDTFA, subdivision (b) refers to Revenue and Taxation Code section 7156(c)(1)(B)(iii).

This section is necessary to set a standard for what constitutes reasonable fees, by reference to a single designated statute, and thereby eliminate the need to consult different statutes to determine what is a reasonable fee for purposes of a reimbursement claim, and to set forth clear and uniform procedures to follow in handling such a claim. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30705. Claim Procedure

The purpose of Proposed Regulation 30705 is to provide that a reimbursement claim must be submitted to OTA not later than one year after the date the Panel's decision becomes final, except that OTA may grant extensions of time for submitting the claim upon a showing of good cause. The proposed regulation also provides that, if a claim is incomplete, the claimant will be granted 30 days to complete the claim.

Proposed Regulation 30705 is necessary to provide uniform procedures for determining whether a claim is timely filed with OTA, and the procedures applicable to curing an incomplete, but timely, claim. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

This proposed Regulation is necessary because it outlines OTA's established procedures on this issue. Based on the change from the board to OTA, this proposed Regulation provides taxpayers with the notice and information needed to regarding the new rules for claim procedures; a lot of things have changed from how the board handled matters, and this proposed Regulation puts taxpayers on notice regarding the new process at OTA. This proposed Regulation is necessary because, based on OTA's determination and the former board procedures, it is the best manner to ensure taxpayer fairness and accessibility. This proposed Regulation is necessary because, based on OTA's determination, it helps conserve limited state resources by reducing the time and expense necessary to respond to improper claims that are filed based on the formal claim procedures of the board.

30706. Dismissal; Agency Statement; Responses; Oral Hearings

The purpose of Proposed Regulation 30706 is to provide guidance to the Agencies regarding the timeline for submitting a statement in response to a claim for reimbursement, guidance to taxpayers regarding the timeline for filing a response to an Agency's statement, and information regarding scheduling an oral hearing. Specifically, subdivision (a) provides that a claim must be dismissed if the appeal was not granted in whole or in part. Subdivision (b) provides that the

Agency may submit a response within 60 days of a completed claim, except that OTA may grant extensions upon a showing of good cause. Subdivision (c) provides that a claimant may respond to an Agency statement within 60 days of the mailing of the statement, and if the claimant does so, the Agency may be given an additional 30 days to respond to the new material. Subdivision (d) provides that an oral hearing will be scheduled after the submission of all documents, the parties will receive at least 45 days' notice of the hearing date and time, and the claimant may waive an oral hearing.

Proposed Regulation 30706 is necessary to establish OTA's procedures for dismissal of reimbursement claims, the right to submit briefing or statements in connection with such a claim, and the right to an oral hearing on a reimbursement claim. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA. Specifically, subdivision (a) is necessary to inform a taxpayer that a claim must be dismissed if the appeal was not granted in whole or in part. Subdivisions (b), (c), and (d) are necessary to provide rules and deadlines for providing responses to statements by parties and the deadline for receiving notice for a hearing date and time. This proposed section and subdivisions tracks the requirements set forth in the prior BOE's Rules for Tax Appeals and continues to be the most efficient procedure for the parties and OTA. Also, this is an established practice that taxpayers, local governments, and the state tax agencies are familiar with.

30707. Notice of Decision

The purpose of Proposed Regulation 30707 is to inform taxpayers and the Agencies that OTA will send them written notice of its decision on a claim for reimbursement, and that OTA's decision on a claim is final 30 days from the date it is mailed, with no provision for a petition for rehearing.

This section is necessary to describe OTA's process for sending notice of a written decision on a reimbursement claim, and to explain that OTA will not accept a petition for rehearing of the matter decided. The finality of an OTA decision after 30 days was set in order to provide a clear date upon which a matter has been settled and mirrors the 30 day timeline in which written opinions on other matters are finalized. Furthermore, this follows the established practice of the BOE, and we rely on the advice of experts to maintain consistency in this type of procedure. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

Amendments to the Board of Equalization Rules for Tax Appeals

Furthermore, the proposed regulatory action proposes to amend sections 5510 and 5600 of the Board of Equalization – Rules for Tax Appeals, which does the following:

5510. GENERAL APPLICATION OF CHAPTER 5

The purpose of the draft amendments to Regulation 5510 are to clarify the scope of the board and OTA's respective jurisdiction over tax appeals. First, the draft amendments add "Limitations on Authority of the Board" to the title of section 5510. In subdivision (a) (which specifies to which types of appeals the chapter applies), the draft amendments delete references

to those tax and fee programs over which the board does not have constitutional authority, as provided in Government Code section 15600, subdivision (b). Specifically, the draft amendment to subdivision (a) of section 5510 provides that Chapter 5 in the board's Rules for Tax Appeals will only apply to appeals submitted to the board for decision under the Alcoholic Beverage Tax law, the Private Railroad Car Tax, Publicly Owned Property, State-Assessed Property, Tax on Insurers Law, and the Welfare Exemption. Former subdivision (c), providing rules and procedures for appeals from actions of the Franchise Tax Board, and subdivision (d) dealing with fuel tax, were deleted because the board no longer hears appeals from the Franchise Tax Board or administers taxes on fuel. Instead, a new subdivision (c) is proposed, which specifies that on or after January 1, 2018, the board will not conduct appeals or tax any other action with respect to an appeal under any of the specified laws, because these listed programs (subdivision (c)(1) through (4), are those programs which are now subject to the jurisdiction of OTA. Specifically, pursuant to Government Code section 15600, 15672, and 15674, OTA now hears all appeals of these types of actions, and the board lacks jurisdiction to take any action with respect to such an appeal. Subdivision (d) goes on to provide that the board's Rules for Tax Appeals shall not apply to an appeal before OTA, and instead, OTA's Rules for Tax Appeals shall apply to such an appeal.

The amendments to Regulation 5510 are necessary to clarify that due to a change in law effective January 1, 2018, and contrary to the current language of Regulation 5510, Chapter 5 of Division 2.1 of Title 18 of the California Code of Regulations do not apply to an appeal before OTA, and to specify that the board does not have any jurisdiction over such an appeal, and to clarify that such appeals are instead subject to the appeals procedures set forth in OTA's Rules for Tax Appeals, and to clarify the tax and fee programs under which Chapter 5 of the board's Rules for Tax Appeals do apply. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

5600. DEFINITIONS, BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS CHAPTER.

The purpose of the draft amendments to Regulation 5600 are to clarify the scope of reimbursement claims over which the board and OTA, respectively, have jurisdiction. Subdivision (b) is amended to clarify that Chapter 6 of the board's Rules for Tax Appeals applies to reimbursement claims submitted under the Alcoholic Beverage Tax, and Private Railroad Car Tax, because these programs are retained by the board pursuant to Government Code section 15600, subdivision (b). The remaining tax and fee programs were deleted from subdivision (b) of Regulation 5600, because these programs are not constitutional functions of the board as provided in subdivision (b) of Government Code section 15600. Former subdivision (c), dealing with fuel tax, was deleted because the board no longer administers taxes on fuel. Instead, a new subdivision (c) is proposed, which specifies that on or after January 1, 2018, the board will not conduct appeals or tax any other action with respect to an appeal under any of the specified laws, because these listed programs (subdivision (c)(1) through (4), are those programs which are now subject to the jurisdiction of OTA. Specifically, pursuant to Government Code sections 15600, 15672, and 15674, OTA now hears all appeals of these types of actions, and the board lacks jurisdiction to take any action with respect to such an appeal. Subdivision (d) goes on to provide

that the board's Rules for Tax Appeals shall not apply to an appeal before OTA, and instead, OTA's Rules for Tax Appeals shall apply to such an appeal.

The amendments to Regulation 5600 are necessary to clarify that due to a change in law effective January 1, 2018, and contrary to the current language of Regulation 5600, Chapter 6 of Division 2.1 of Title 18 of the California Code of Regulations do not apply to an appeal before OTA, and to specify that the board does not have any jurisdiction over such an appeal, and to clarify that such appeals are instead subject to the appeals procedures set forth in OTA's Rules for Tax Appeals, and to clarify the tax and fee programs under which Chapter 6 of the board's Rules for Tax Appeals do apply. This is further necessary to improve the public's understanding of the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

California Code of Regulations, title 18, division 2.1, Chapter 4: Appeals from Actions of the Franchise Tax Board (Regulation sections 5410 through 5465).

The proposed regulatory action also repeals Chapter 4: Appeals from Actions of the Franchise Tax Board, in its entirety from the board's Rules for Tax Appeals because, pursuant to Government Code sections 15600, 15672, and 15674, OTA now hears all appeals from such actions, and the board lacks jurisdiction to take any action with respect to such an appeal.

The repeal of Chapter 4 of Title 18 of Division 2.1 of the California Code of Regulations is necessary because the Chapter, as written, erroneously applies the law. This is because, on and after January 1, 2018, the board no longer has jurisdiction over any of the programs specified in Chapter 4. Therefore, for purposes of clarity, and to implement the change in law, Chapter 4 needs to be deleted in its entirety.

DOCUMENTS RELIED UPON

In deciding to propose the adoption of the regulatory action described above, OTA primarily relied on Assembly Bill 102 (Stats. 2017, Ch. 16) and Assembly Bill 131 (Stats. 2017, Ch. 252), their legislative history, and public discussion during interested parties meetings held on April 16, 2018, and June 6, 2018, respectively, and written and oral public comments received during and after those interested parties meetings. OTA did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing to adopt the proposed regulatory action.

ALTERNATIVES CONSIDERED

OTA found it necessary to begin the formal rulemaking process to adopt the proposed regulatory action at this time because OTA determined that the proposed regulatory action is reasonably necessary for the reasons set forth above.

In making this determination, and in accordance with the requirements set forth in Government Code section 11346.2 that OTA consider alternatives to the proposed regulatory action, OTA conducted two interested parties meeting. The first interested parties meeting was held on April 16, 2018. Prior to the interested parties meeting, OTA distributed and made available on its website proposed language for the OTA Rules for Tax Appeals. Following the first interested parties meeting, OTA held a written public comment period through May 1, 2018, and comments

from the public were received during this timeframe. The second interested parties meeting was held on June 6, 2018. Prior to the interested parties meeting, OTA distributed and made available on its website proposed language for the OTA Rules for Tax Appeals, with changes from the prior version highlighted for public comment. Following the second interested parties meeting, OTA held a written public comment period through June 27, 2018, and comments from the public were received during this timeframe. Comments from the first and second interested parties meeting were considered and changes were made to the text of the proposed OTA Rules for Tax Appeals where staff determined appropriate.

No reasonable alternative has been identified that would lessen any adverse impact that the proposed regulatory action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed regulatory action.

Therefore, OTA determined that there were no alternatives considered which would be more effective in carrying out the purpose of the proposed Regulatory Action, or would be less burdensome with respect to affected private persons or small businesses than the proposed regulatory action.

NO MANDATE REGARDING USE OF SPECIFIC TECHNOLOGIES

The proposed regulatory action does not mandate the use of specific technologies or equipment.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2(b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3(b)(1)

OTA is proposing to adopt the proposed regulatory action to implement, interpret, and make specific the provisions of the Act, define and further define statutory terms, to comply with its statutory duty to promulgate regulations as necessary or appropriate to carry out the purposes of the Act; to adopt regulations regarding the presentation of evidence and preparation for hearings and proceedings before a tax appeals panel that do not require application of specialized knowledge, and to establish a process for a closed hearing.

OTA anticipates that the adoption of the proposed regulatory action will benefit OTA, the Franchise Tax Board, CDTFA, local entities, taxpayers, representatives, and the general public by:

- Creating a comprehensive set of procedural regulations which cover all of OTA's administrative review functions with regard to conducting an appeal.
- Establishing procedural regulations that are easier to understand and provide a greater degree of clarity than OTA's current Emergency Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 30100- 30832), and the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs, tit. 18).
- Retaining flexibility to respond to individual circumstances and new or changed responsibilities of OTA.

- Improving upon the current procedural framework, which includes the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs, tit. 18), to the extent relevant and applicable and not inconsistent with the Act, the administrative process set forth in the Administrative Procedure Act for appeals to the Office of Administrative Hearing (Gov. Code, §§ 11380 to 11529) to the extent not inconsistent with the Act, the California Code of Judicial Ethics, with respect to ex parte communications and the conduct of an Administrative Law Judge, and OTA's Emergency Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 30100- 30832).
- Setting forth all of the procedures applicable to OTA's appeals process in one place, applying the same rules and standards to all tax and fee programs to the extent applicable under the law, and providing the same procedures for all taxpayers and parties to the extent allowable under the law.
- Bifurcating and separating the applicable rules of practice by applying OTA's proposed Rules for Tax Appeals to Franchise and Income Tax Appeals and Business Tax Appeals, and specifying that the board's Rules for Tax Appeals to those constitutional functions remaining with the board (mainly, appeals of Property Taxes and Alcoholic Beverage Taxes, and excluding any tax or fee program subject to appeal to OTA).
- Clarifying practices and to make those changes and establishing those processes, including a process for a closed hearing, and rules for admission of evidence and witnesses, as required under the Act.
- Establishing an improved regulatory framework that consistently, clearly, and fully describe OTA's appeals processes in a structurally integrated and logical framework. In this way, the OTA intends to improve its relationship with tax and fee payers.
- Providing taxpayers, public agencies with appeals before OTA, and tax professionals with a single, well-organized, and clear source for all of the procedural information they need to know, from the initiation of the appeals process to the final written opinion from OTA.
- Setting forth all of OTA's procedural regulations in a logically organized structure that provides consistent and clear requirements and guidelines.
- Clearly setting forth and clarifying the jurisdiction of OTA.
- Defining terms applicable in an appeal before OTA.
- Specifying the rules and procedures generally applicable to an appeal before OTA.
- Setting for the appeal requirements, briefing schedules, and related procedures.
- Setting forth the oral hearing procedures, including the process for a closed hearing.
- Setting forth the procedures for publication of precedential and nonprecedential opinions of OTA, including the depublishing of opinions that have been superseded by a later precedential opinion.
- Setting forth the process for filing a petition for rehearing for appearance and nonappearance matters.
- Setting forth the rules applicable to a taxpayer bill of rights reimbursement claim.

All of the provisions in the proposed regulatory action are fully consistent with current law, including the provisions of the Act establishing OTA, and transferring the duties and responsibilities of the board with respect to appeals to OTA, and adding statutes to and amending statutes in the Government Code, and there is nothing in the proposed regulatory action that

would significantly change how individuals and businesses would generally behave in response to current state and federal law, including the provisions of the Act, in the absence of the proposed regulatory action. Therefore, OTA estimates that the proposed regulatory action will not have a measurable economic impact on individuals and business that is in addition to whatever economic impact the provisions of the Act will have on individuals and businesses. And, OTA has determined that the adoption of the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because OTA has estimated that the proposed regulatory action will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, OTA has determined that adoption of the proposed regulatory action does not impose any costs of any persons, including businesses, which are not already imposed by state and federal law, including the provisions of the Act, and OTA has determined that there is nothing in the proposed regulatory action that would impact revenue. Therefore, based on these facts and all the information in the rulemaking file, OTA has determined that the adoption of the proposed regulatory action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor affect the expansion of businesses currently doing business in the State of California.

Furthermore, adoption of the proposed regulatory action will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, OTA has determined that the adoption of the proposed regulatory action will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The foregoing information also provides the factual basis for OTA's initial determination that the adoption of the proposed regulatory action will not have a significant adverse impact on business.

The adoption of the proposed regulatory action might affect small business.