



Office of Tax Appeals



APPEALS PROCEDURES

What you need to know about your administrative appeals rights concerning the tax determination of the Franchise Tax Board (FTB) and the California Department of Tax and Fee Administration (CDTFA).

INTRODUCTION

Starting on January 1, 2018, taxpayers who disagree with the determination by the Franchise Tax Board (FTB) or the California Department of Tax and Fee Administration (CDTFA), formerly the Board of Equalization (BOE), may contest that decision to the Office of Tax Appeals (OTA) by filing an appeal or a claim for refund. OTA is an independent administrative agency comprised of Administrative Law Judges (ALJs) who hear all tax appeals from FTB and CDTFA assessments and determine the correct amount owed by or due to appellant for the year(s) at issue. When you file a timely appeal in writing, you are given an opportunity to provide additional supporting documentation, file a brief, and present oral arguments before the ALJs in support of your position. Each appeal will be considered by a panel of 3 ALJs. Following OTA's consideration of the law and facts in your appeal, it will issue a formal written decision. If you do not agree with OTA's decision and the tax liability remains unpaid, you can pay the tax liability and file a claim for refund in California Superior Court.

OFFICE OF TAX APPEALS PROCESS

You may file an appeal as the result of an FTB or CDTFA tax assessment. If the assessment of underpaid taxes, fees, penalties and/or interest and is affirmed by FTB's protest process or by CDTFA's Appeals Bureau, you will be sent a Notice of Action (NOA) by FTB or Decision (NOD) by CDTFA. If you do not agree with the amounts stated in the notice you may file an appeal with OTA. You may also appeal a denial of a claim for refund, or a claim for refund that has not been acted on for 6 months.

Filing Deadline

You must wait for the NOA or Decision to be issued before you can file an appeal with OTA. Once the NOA or Decision has been issued, you have 30 days from the date it was mailed to you to file a timely appeal. If FTB or CDTFA fails to act upon a claim for refund submitted by a taxpayer within six months, the taxpayer may file an appeal with OTA, with no time limit to such an appeal. If FTB or CDTFA denies your claim for refund, you have 90 days to file an appeal. If you do not appeal by filing an appeal in writing before the deadline, your liability will be final. An appeal filed after the deadline is not a valid appeal; however, in this case you may still appeal the liability by paying the tax or fee and filing a timely claim for refund with OTA.

Content of Your Appeal

An appeal from FTB's NOA must be in writing and contain the following:

- Your name;
- Your social security number or taxpayer identification number, whichever is applicable;

- Your address and telephone number and, if applicable, the address and telephone number of your authorized representative (if you have representation OTA requires a signed power of attorney authorizing the representative for the appeal); and
- The amount involved, or an estimate of the amount involved, if known;
- The year(s) involved;
- A copy of the NPA or NOD from which the appeal is made, of a claim for refund that was denied or not acted upon by FTB or CDTFA;
- The facts involved and specific reasons for your position, including any legal authorities you rely on;
- Any portion of the amount at issue conceded by you; and
- Your signature and, if applicable, the signature of your authorized representative submitting the appeal.

An appeal from CDTFA's Appeals Bureau Decision must include the following:

- Your name;
- Your CDTFA account number;
- The case identification number (case ID) assigned by CDTFA;
- Your address and telephone number and, if applicable, the address and telephone number of your authorized representative if you have representation OTA requires a signed power of attorney authorizing the representative for the appeal); and
- A copy of the appeal mailed to CDTFA at:

Assistant Chief Counsel, Tax and Fee Programs Bureau
California Department of Tax and Fee Administration
P.O. Box 942879
Sacramento, CA 94279-0082

Your appeal may be in the form of a letter and can use informal language. OTA will treat this communication as your opening brief.

Filing Your Appeal

Please file your appeal by either mailing or faxing it to:

State of California
Office of Tax Appeals
P.O. Box 989880
West Sacramento, CA 95798-9880
Fax: (916) 492-2089

Briefing Process

OTA Case Management will send you an acknowledgement letter confirming receipt of your appeal and notify you that FTB or CDTFA will have 60 days to submit its opening brief. If your appeal letter is incomplete and more information is needed for your appeal, Case Management will request that you provide additional information to complete your appeal within 60 days before requiring FTB or CDTFA to submit an opening brief. Failing to provide the additional information requested may cause your appeal to be dismissed. Once your appeal is complete and FTB or CDTFA submits its opening brief, Case Management will notify you and request that you submit your reply brief within 30 days.

Upon receipt of your reply brief, FTB or CDTFA may obtain permission from OTA to file its reply brief, addressing new facts or arguments you made in your reply brief. You will be given an opportunity to respond to new facts or arguments raised by FTB or CDTFA in its reply brief.

Briefs should clearly state the facts and law supporting your position. Unless otherwise directed, all briefs must be no longer than 30 double-spaced 8½” by 11” pages, or 15 single-spaced 8½” by 11” pages, excluding any table of contents, table of authorities, and exhibits. Briefs may be handwritten or typed and printed only on one side in a type-font size of at least 10 points or 12 characters per inch. OTA may grant an exception to these requirements for reasonable cause.

When reviewing your appeal before your hearing, OTA may send you an additional briefing request letter if it is determined that additional explanation or evidence is required to fully develop all of the issues in the appeal. If an additional briefing request letter is issued in your appeal, the letter will explain the kinds of explanation and evidence needed and may also ask specific questions or ask for specific documentation. The additional briefing request letter will provide you with a specific deadline by which you must reply.

Any request to extend the period for submitting a brief must be in writing and made prior to the scheduled due date for that brief. OTA will decide whether an extension request is granted and will notify all parties.

Options for Proceeding with your Appeal – Oral Hearing or Decision on the Writing

After the briefing process is complete, you will have two options for proceeding with your appeal. You may:

- Elect to have an oral hearing at which you or your representative will appear before OTA and present your case, or
- Have OTA decide your appeal” on the writing,” through review of the documents submitted by you and the taxing agency, without an oral hearing.

Regardless of the option that you choose, you will receive the same neutral, impartial consideration by a panel of 3 ALJs and a written decision which analyzes your case and explains why the ALJs made their decision. More information on each option is presented below.

Requesting and Scheduling an Oral Hearing

An oral hearing must be requested in writing. After the taxing agency files its opening brief, OTA will send you a form where you can elect to have an oral hearing. You may select an oral hearing location in Sacramento, Los Angeles, or Fresno.

If you do not request an oral hearing, your appeal will be submitted for decision based on the written record, without an oral hearing.

After requesting an oral hearing, OTA will send you a Notice of Oral Hearing and receive notice of your 3-member ALJ panel. The Notice will be sent at least 45 days prior to the hearing date. You must return the attached Response to Notice of Oral Hearing no later than 15 days from the date of the Notice of Oral Hearing was mailed. Your Response must indicate that:

- You or your authorized representative(s) will appear at the hearing as scheduled;
or
- You waive appearance at the hearing and opt that the appeal be decided on the written record without an oral hearing; or
- You withdraw your request for a hearing.

If applicable, your response to the hearing notice should include:

- Names and addresses of any witnesses who will testify, and a brief description of the purpose of their testimony.
- Request for an interpreter, if you speak a language other than English, or are deaf. An interpreter will be provided at no charge.
- Request for a reasonable accommodation due to a disability.

If you fail to return the Response to Notice of Oral Hearing, your appeal will be submitted for decision based on the written record, without an oral hearing.

Decision on the Writing, Without an Oral Hearing

When we make a “decision on the writing,” we decide your case by reviewing the documents that you and the taxing agency submit during the briefing. If you choose this option for proceeding with your appeal, you will not have an oral hearing. We make a “decision on the writing” when:

- You do not request an oral hearing.
- You tell us that you want your appeal submitted for decision on the written record.
- You fail to return the Response to the Notice of Hearing.
- You waive your right to appear at a scheduled hearing.

Before your Hearing

Prehearing Conference

Prehearing conferences may be requested by taxpayers, a tax agency, or OTA itself. Prehearing conferences typically are held by telephone, although sometimes a personal appearance may be requested. Prehearing conferences allow the parties to discuss the issues and documents that will be considered at the hearing. Other matters may be discussed to help streamline the hearing process. A prehearing conference is also an opportunity to see if the parties can agree on some of the accepted facts prior to the hearing. The prehearing conference will help to reduce the amount of time needed to conduct the hearing. No decisions will be made at a prehearing conference about the merits of your case.

Prehearing conferences may be conducted by an OTA attorney or administrative law judge. If the conference is conducted by an administrative law judge, the judge will document any agreements or other matters that occurred at the prehearing conference. If the parties need to complete tasks before a hearing, the judge may also issue instructions at the conference. Any minutes following a prehearing conference will be sent to both parties. Generally, if you elect to have an oral hearing, you will have at least one prehearing conference before your oral hearing.

What to Expect at Your Hearing

Hearings before the 3-member ALJ panels at OTA do not require any specialized knowledge and are designed to be informal. You do not need a representative to appear with you at your hearing. You can choose to represent yourself at the hearing or be represented by any person of your choice.

At your hearing, you will check in with OTA staff and be seated at a table in front of the ALJs. The tax agency will be seated at a table next to you. At the start of the hearing, the lead ALJ will explain how the hearing will progress and will give you an opportunity to ask any questions that you have. The lead ALJ will also help you through the process and answer any questions or address any concerns that you have throughout the hearing.

You and the taxing agency will each have an opportunity to present your case, and you (and your witnesses if you have any) may be asked questions by the taxing agency and the ALJs.

At the conclusion of your hearing, the case will be “submitted” for the judges to deliberate, review the evidence, and make a decision. No further evidence may be given to OTA after the case is “submitted.”

OTA has an Ombudsperson who is available during each hearing (and by telephone and email prior to the hearing) to answer any procedural questions you may have about your case. You can contact OTA’s Ombudsperson, Dana Holmes, at 916-206-4355 or by email at info@ota.ca.gov.

Non-recorded OTA hearings are transcribed by a hearing reporter and transcripts are available on OTA's website at www.ota.ca.gov. Additional information is available in the publication, "Guide to Your Oral Hearing."

OTA's Decision

A decision will be made in every appeal by a 3-member ALJ panel. After at least 2 of the 3 ALJs agree on the decision, a written decision, also known as an "opinion," will be sent to you and the taxing agency. The decision will describe the facts and law that apply to the case and explain the reason(s) that the ALJs arrived at their decision.

If you elected to have an oral hearing, the decision in your appeal will be sent to you within 100 days of your hearing. If you did not elect to have an oral hearing, you will typically receive the decision in your appeal within six months of briefing being completed.

Unless you or the taxing agency file a petition for rehearing, OTA's decision will become final 30 days after the decision is issued. After the decision becomes final, it will be posted on OTA's website at www.ota.ca.gov.

If you Disagree with OTA's Decision

Petition for Rehearing

If you or the taxing agency disagrees with OTA's decision in your appeal, you or the taxing agency may ask that OTA reconsider its decision by filing a petition for rehearing within 30 days of the date that OTA's decision was issued. You can file a petition for rehearing in your appeal regardless of whether you elected to have an oral hearing.

After you file your petition for rehearing, the tax agency will have 30 days to file its response to your petition. The same panel of 3 ALJs that initially decided your appeal will review your petition for rehearing and decide to grant or deny the petition and issue a written decision explaining the reason(s) for its decision.

If OTA grants your petition for rehearing, you and the tax agency will be given an opportunity to file additional briefing in support of your case and you may elect to have an oral hearing or to have the case decided on the writing. On rehearing, your case will be decided by a different 3-ALJ panel that initially decided your case. OTA's decision on your rehearing will be OTA's final decision on your case.

If OTA denies your petition for rehearing, the original decision in your appeal becomes final.

Filing an Action in Superior Court

If you do not agree with OTA's decision on a case involving a tax assessment, you can pay the tax liability and file a claim for refund with the taxing agency. If the taxing agency denies your claim, you can file an action against the taxing agency in California Superior Court within 90 days of the denial of your claim for refund.

If you do not agree with OTA's decision on a case involving a denial of a claim for refund, you can file an action against the taxing agency in California Superior Court within 90 days of OTA's decision becoming final.

All actions filed in Superior Court are reviewed "de novo" by the Court. This means that the Court will not review OTA's decision, but rather will review your case as if it were being reviewed for the first time.

Important Considerations

- You generally have the burden of proof in your appeal, which means that you must produce enough evidence to prove to the ALJs that your position is correct. This burden of proof applies regardless of whether you elect to have an oral hearing or a decision on the writing.
- At any time during the process, you may stop your appeal by agreeing to a settlement with CDTFA or FTB or submitting a written request for dismissal of your appeal for any reason.
- OTA is a separate and distinct agency from CDTFA and FTB. Therefore, evidence you previously submitted to CDTFA and FTB will not be considered in your appeal unless you or the tax agency submit it to OTA.
- All information you submit with your appeal must be in writing. Other than oral testimony given at your hearing before OTA, OTA cannot accept any information presented orally, such as during a telephone call.
- All documents you submit with your appeal become a matter of public record. Any member of the public may request a copy of any documents you submit, and the law requires that OTA comply with that request. If OTA provides a copy of your appeal documents to a member of the public, OTA will redact personal information (for example, your home address, telephone number, and social security number) to guard against identity theft.
- If your appeal involves an assessment of tax on a joint return, then both you and your spouse should sign the appeal. If you sign the appeal and your spouse does not, then only you will be considered a party to the appeal. However, the results of the appeal will still affect your spouse's liability for the assessment.
- While your appeal is pending, you may at anytime pay the full assessment of tax, penalty, and interest to stop the growth of interest due (interest compounds daily).
- Anyone can represent you in your appeal, or you can represent yourself. Your representative does not need to be an attorney or an accountant.