

This paper is intended only for purposes of facilitating discussion at the Interested Parties Meeting (IPM) scheduled for August 5, 2020.

The focus of this IPM for which this document is prepared, will be to discuss the following proposed draft regulation setting forth procedures and rules governing a Small Case Program for appeals filed with the Office of Tax Appeals (OTA).

Government Code section 15676.2(a) requires the OTA to establish a process under which a taxpayer filing an appeal may elect to appear before one administrative law judge rather than a panel of three judges if certain conditions are met. Generally, if an appeal arises from a tax, fee, or penalty arising from personal income tax, the taxpayer may elect to have its appeal heard within the Small Case Program if the amount in dispute is less than \$5,000. If an appeal arises from a tax, fee, or penalty administered by the California Department of Tax and Fee Administration (CDTFA), the taxpayer may elect to have its appeal heard within the Small Case Program if the taxpayer has gross receipts less than \$20,000,000 and the total amount in dispute is less than \$50,000. Government Code section 15676.2(b) prohibits decisions issued by one administrative law judge from having precedential effect.

The text of the proposed regulation is set forth immediately below in underline format, with explanations describing the reasoning following each subsection of text:

ARTICLE 1.5. SMALL CASE PROGRAM

30209.1 TOTAL AMOUNT IN DISPUTE; ELIGIBILITY; ELECTION TO PARTICIPATE

(a) In General. Pursuant to Government Code section 15676.2, any taxpayer appealing the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, may elect under subdivision (e) of this regulation to have an appeal determined by procedures of the Small Case Program if:

(1) In the case of an appeal by a taxpayer subject to the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code), the total amount in dispute (within the meaning of subdivision (b)) is less than five thousand dollars (\$5,000); or

(2) In the case of an appeal arising from a tax, fee, or penalty administered by the CDTFA, (i) the person filing the appeal has annual gross receipts of less than twenty million dollars (\$20,000,000) per calendar year for each year of the audit or claim period, and (ii) the total amount in dispute (within the meaning of subdivision (b)) is less than fifty thousand dollars (\$50,000) per calendar year (or fraction thereof) for each year of the audit or claim period.

Subdivision (a) is necessary to effect the purpose of Government Code section 15676.2. This statute requires OTA to establish a process for taxpayers to elect to have their appeal heard by one administrative law judge rather than a panel of three administrative law judges, but only if

the total amount in dispute on appeal does not exceed the limit imposed by the statute. For taxpayers appealing an action of the Franchise Tax Board (FTB), the total amount in dispute is less than \$5,000. For taxpayers appealing an action of CDTFA, the taxpayer must have annual gross receipts less than \$20,000,000 per calendar year for each year of the audit or claim period, and the total amount in dispute is less than \$50,000.

(b) Total Amount in Dispute. For purposes of this regulation, the “total amount in dispute” shall mean the total amount of taxes, fees, and penalties reflected on the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, reduced by:

- (1) The amount of any interest for which appellant elects to not request abatement or suspension,
- (2) The amount of any taxes, fees or penalties for which appellant elects to not separately dispute their liability for such amounts, or
- (3) Any amount reflected on the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, for which FTB or the CDTFA, as applicable, concedes in writing in such agency’s opening brief is no longer in dispute.

Subdivision (b) provides the definition of “total amount in dispute.” For appeals from actions of FTB or CDTFA, the total amount in dispute includes the tax (or taxes), as stated in the action of FTB or CDTFA, from which the taxpayer seeks relief. Fees and penalties arising from the tax (or taxes) from which the taxpayer seeks relief, as stated in the action of FTB or CDTFA, are also included in determining the total amount in dispute.

Subdivision (b)(1) provides for how interest is considered in determining the total amount in dispute. Interest is included in determining the total amount in dispute; however, a taxpayer may elect to not request abatement or suspension of interest, under which circumstance the total amount in dispute would be reduced by the amount of interest the taxpayer is not seeking abatement or suspension of. The amount of any interest that would be reduced because the amount of the proposed taxes or penalties are reduced during the appeal are not included in computing the “total amount in dispute”, other than the circumstances described in the preceding sentence.

Subdivision (b)(2) provides an option for the taxpayer to reduce the total amount in dispute by conceding liability for any amount of taxes, fees or penalties. Should a taxpayer elect to concede liability to a tax, fee, or penalty, in whole or in part, the total amount in dispute would be determined based on the amount of taxes, fees, or penalties the taxpayer continues seeking relief from.

Subdivision (b)(3) provides for the circumstance where FTB or CDTFA concede, in writing in their opening brief filed with OTA, to a reduced total amount in dispute, either by reduction or elimination of a tax, fee, or penalty. In this circumstance, the total amount of dispute would be

determined based on the reduced amount of tax, fee, or penalty reflected in the agency's opening brief.

(c) Eligibility Determined Based on Each Year. For purposes of determining whether an appeal qualifies under this regulation so that a taxpayer may elect to have the appeal determined by procedures of the Small Case Program, each year (or fraction thereof) reflected on the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFB (as defined in subdivision (b) of regulation 30103), as applicable, shall be treated separately in applying the total amount in dispute limitations specified under paragraphs (1) and (2) of subdivision (a), as applicable. For purposes of applying this regulation and regulation 30212, relating to consolidation and deconsolidation of appeals, the ability to elect to have an appeal for a tax year determined by the Small Case Program shall not be good cause to deconsolidate appeals that have been consolidated under regulation 30212.

Subdivision (c) provides the process for determining whether a taxpayer with multiple tax years on appeal may elect to have their appeal heard under the Small Case Program. Where an appeal involves multiple tax years, each tax year is treated separately when determining the total amount in dispute.

In addition, this subdivision clarifies that it is not good cause to deconsolidate appeals that have been consolidated by OTA in order to qualify for the Small Case Program.

(d) Special Eligibility Rules. No taxpayer may elect to have an appeal determined by procedures of the Small Case Program under this regulation if:

- (1) Any of the tax years or tax periods specified in the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFB (as defined in subdivision (b) of regulation 30103), as applicable, has a total amount in dispute (within the meaning of subdivision (b)) which exceeds the dollar limitations specified in paragraphs (1) or (2) of subdivision (a) of Government Code section 15676.2, as applicable, or
- (2) The action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFB (as defined in subdivision (b) of regulation 30103), as applicable, is a denial (or deemed denial) of a claim for refund for an amount identified as "\$1 or more," or other unspecified amount, or
- (3) The parties do not agree as to the total amount in dispute for any tax year or tax period after applying the rules of this regulation, and OTA is unable to determine whether the total amount in dispute is within the limitations imposed pursuant to this regulation, in which case the amount stated on the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFB (as defined in subdivision (b) of regulation 30103), as applicable, shall be treated as the total amount in dispute for purposes of this regulation, or

- (4) The appeal poses an issue of law with significant potential for precedential consideration, pursuant to those factors listed in subdivision (c) of regulation 30502, as determined by OTA, or
- (5) The appeal involves complex issues of fact or procedure, as determined by OTA, or
- (6) The appeal involves any issue or issues of law, facts, or procedures, which OTA has designated in a published notice as being incompatible with the goals or procedures of the Small Case Program due to legal, factual, or procedural complexity.

Subdivision (d) provides for situations when a taxpayer may not elect to have its appeal heard under the Small Case Program.

Subdivision (d)(1) excludes from the Small Case Program appeals involving multiple tax years in which the total amount in dispute of at least one tax year on appeal exceeds the monetary limit imposed by Government Code section 15676.2. The \$5,000 limit for personal income tax appeals, and the \$50,000 limit for appeals of actions from CDTFA, imposed by Government Code section 15676.2, are not flexible beyond the exceptions contained in subdivision (b) above.

Subdivision (d)(2) excludes from the Small Case Program appeals in which a taxpayer appeals a denial of a claim for refund of “\$1 or more” or for another unspecified amount. The \$5,000 limit for personal income tax appeals, and the \$50,000 limit for appeals of actions from CDTFA, imposed by Government Code section 15676.2, are not flexible beyond the exceptions contained in subdivision (b) above. Where the OTA is unable to determine whether a denial of a claim for refund of “\$1 or more,” or other unspecified amount, may exceed the monetary limit imposed by statute, such appeals are excluded from eligibility for the Small Case Program.

Subdivision (d)(3) excludes from the Small Case Program appeals in which the taxpayer and the respective agency do not agree on what the total amount in dispute is. The monetary limits imposed by Government Code section 15676.2 are not flexible beyond the exceptions contained in subdivision (b) above. Where the OTA is unable to determine whether an appeal may exceed the monetary limit imposed by statute, OTA will treat the amount stated in the action of the respective agency as the total amount in dispute.

Subdivision (d)(4) excludes from the Small Case Program appeals which pose an issue of law with significant potential for precedential consideration. Pursuant to Government Code section 15676.2(b), a decision issued for an appeal in the Small Case Program cannot be precedential. In order to further efforts to provide precedential guidance with respect to recurring issues of unsettled law, OTA has discretion under this subdivision to exclude an appeal from the Small Case Program if the appeal poses an issue of law with significant potential for precedential consideration.

Subdivision (d)(5) excludes from the Small Case Program appeals involving complex issues of fact or procedure. A principal purpose of the Small Case Program is to provide to taxpayers an

accelerated appeals process. The purpose of providing an accelerated process becomes impracticable in an appeal with complicated issues of fact or procedure.

Subdivision (d)(6) excludes from the Small Case Program appeals involving any issue of law, fact, or procedure, which OTA designates in a published notice as being incompatible with the goals or procedures of the Small Case Program.

(e) Irrevocable Election to Participate in Small Case Program. The election made pursuant to this subdivision with respect to an appeal shall be irrevocable once made and shall be made within twenty-one (21) calendar days of the date that OTA mails to appellant acknowledgement of OTA's receipt of the opening brief of the FTB or CDTFB, as applicable, and confirmation of eligibility of the appeal for the Small Case Program, which shall be in the form and manner as prescribed by the OTA. Such election shall include a specific waiver with respect to any amounts (except for any amount specified in paragraph (3) of subdivision (b)) that reduce the total amount in dispute pursuant to paragraphs (1) or (2) of subdivision (a), as applicable.

Subdivision (e) provides that once a taxpayer elects to participate in the Small Case Program, the taxpayer's election cannot be revoked. The election must be made within 21 calendar days of the date OTA mails to the taxpayer acknowledgement of OTA's receipt of the agency's opening brief.

(f) Examples. The following examples illustrate the determination of qualification of an appeal for determination by procedures of the Small Case Program under this regulation:

Subdivision (f) provides examples in which an appeal does or does not qualify for the Small Case Program.

(1) Example 1. Assume TP, a taxpayer subject to the Personal Income Tax Law (PITL), receives final Notices of Action from the FTB for tax year 2017 in the amount of \$2,500, for tax year 2018 in the amount of \$3,000, and for tax year 2019 in the amount of \$4,500, and files a timely appeal of each of the three actions of the FTB with the OTA. Would the amount in dispute of TP's appeals qualify TP to make an election to have one or more of those appeals determined under the Small Case Program?

Although the aggregate amount on the appeals exceeds \$5,000, since each tax year is treated separately for purposes of applying the total amount in dispute limitation under paragraph (1) of subdivision (a) of Government Code section 15676.2, and none of the individual tax years has a total amount in dispute that is \$5,000 or more, TP may make the election for one or more of those appeals to be determined under the Small Case Program. If those three appeals have been consolidated, TP may still make an election to have the appeals determined under the Small Case Program for all three consolidated appeals as if those appeals were a single appeal.

The purpose of Example 1 is to show that the total amount in dispute is calculated per tax year, when multiple tax years are on appeal, rather than aggregated. In this example, since none of the

tax years involved have a total amount in dispute exceeding \$5,000, the taxpayer may elect to participate in the Small Case Program.

(2) Example 2. Same facts as Example 1, except that the final Notice of Action for tax year 2019 is in the amount of \$5,500.

Assuming the total amount in dispute for tax year 2019 is not reduced under the reduction rules in paragraphs (1), (2), or (3) of subdivision (b), TP would not be eligible to make the election to have the appeal for tax year 2019 determined under the Small Case Program.

If the appeals for tax years 2017, 2018, and 2019 have been consolidated, the consolidated appeals for tax year 2017, 2018, and 2019 are not eligible to be determined under the Small Case Program. However, if TP can establish good cause, the appeals for tax year 2017 and tax year 2018 may be deconsolidated from the appeal for tax year 2019. Participation in the Small Case Program is not good cause for deconsolidation of appeals that have been consolidated. If deconsolidated for good cause, the appeals for tax year 2017 and tax year 2018 may be determined under the Small Case Program.

If the appeals for tax year 2017, 2018, and 2019 have not been consolidated, then TP may elect to have the appeal for tax year 2017 or the appeal for tax year 2018, or both, determined under the Small Case Program.

The purpose of Example 2, as with Example 1, is to show that the total amount in dispute is calculated per tax year, when multiple tax years are on appeal, rather than aggregated. However, unlike Example 1, in this example the taxpayer may not elect to participate in the Small Case Program because one tax year on appeal has a total amount in dispute that exceeds the statutory limit of \$5,000, unless the three appeal years have not been consolidated.

(3) Example 3. Assume TP receives a Notice of Determination from the CDTFA for the period July 1, 2017 through December 31, 2018, for a total deficiency of tax of \$75,000. The audit workpapers indicate that the tax for the third quarter 2017 is \$25,000, the tax for the fourth quarter 2017 is \$10,000, and the tax for each quarter of 2018 is \$10,000. Appellant files a timely appeal of such action of the CDTFA with the OTA. Further assume that TP has annual gross receipts during each of the calendar years relating to the tax periods at issue of \$10,000,000. Would TP qualify to make an election to have the appeal determined under the Small Case Program?

Although the aggregate amount on appeal exceeds \$50,000, since each calendar year (or fraction thereof) is treated separately for purposes of applying the total amount in dispute limitation under subparagraph (B) of paragraph (2) of subdivision (a) of Government Code section 15676.2, and none of the individual calendar years has a total amount in dispute that is \$50,000 or more, TP may make the election to have the appeal determined under the Small Case Program.

The purpose of Example 3, as with Examples 1 and 2, is to show that the total amount in dispute is calculated per tax year, when multiple tax years are on appeal, rather than aggregated.

However, unlike Examples 1 and 2, the present example involves an appeal from a Notice of Determination from the CDTFA. The total amount in dispute is calculated by adding any and all deficiencies for the four quarters of the relevant calendar year. Another purpose of Example 3 is to show that a taxpayer appealing an action of the CDTFA must also have annual gross receipts less than \$20,000,000 for each calendar year in which the proposed deficiencies arise. Here, since no single tax year's proposed deficiency exceeds \$50,000 and the taxpayer has annual gross receipts for each relevant tax year of less than \$20,000,000, the taxpayer may elect to participate in the Small Case Program.

(4) Example 4. Same facts as Example 3, except that the amount of tax for the first quarter 2018 is in the amount of \$25,000.

Assuming the total amount in dispute is not reduced under the reduction rules in paragraphs (1), (2), or (3) of subdivision (b), TP would not be eligible to make the election to have the appeal determined under the Small Case Program since the total amount in dispute for 2018 exceeds the limitation in clause (ii) of paragraph (2) of subdivision (a).

The purpose of Example 4, as with Examples 1, 2, and 3, is to show that the total amount in dispute is calculated per tax year, when multiple tax years are on appeal, rather than aggregated. Similar to Example 3, the taxpayer here is appealing an action of the CDTFA. However, unlike Example 3, the taxpayer here cannot elect to participate in the Small Case Program because the total amount in dispute for tax year 2018 exceeds \$50,000.

(5) Example 5. Assume TP receives a Notice of Determination from the CDTFA for the period January 1, 2017 through December 31, 2017, for a total deficiency of \$60,000. The audit workpapers indicate that the tax for each quarter of 2017 is \$15,000. Appellant files a timely appeal of such action of the CDTFA with the OTA. Further assume that TP has annual gross receipts for the calendar year 2017 in the amount of \$8,000,000. Would TP qualify to make an election to have the appeal determined under the Small Case Program?

Assuming the total amount in dispute is not reduced under the reduction rules in paragraphs (1), (2), or (3) of subdivision (b), TP would not be eligible to make the election to have the appeal determined under the Small Case Program because the total amount in dispute for the four (4) taxable periods in calendar year 2017 were \$60,000, which exceeds the limitation in clause (ii) of paragraph (2) of subdivision (a).

The purpose of Example 5, as with Example 4, is to show that the total amount in dispute is calculated per calendar year, and not per calendar quarter with respect to actions of CDTFA. In this case, the taxpayer may not elect to participate in the Small Case Program because the total amount in dispute for the calendar year 2017 exceeds \$50,000.

(6) Example 6. Assume TP receives a Notice of Determination from the CDTFA for the period July 1, 2017 through March 31, 2018, for a total tax deficiency of \$65,000. The audit workpapers indicate that the tax for the third quarter 2017 is \$20,000, the tax for the

fourth quarter 2017 is \$20,000, and the tax for the first quarter 2018 is \$25,000. Appellant files a timely appeal of such action of the CDTFA with the OTA. Further assume that TP has annual gross receipts for the calendar year 2017 in the amount of \$17,000,000 and annual gross receipts for the calendar year 2018 in the amount of \$21,000,000. Would TP qualify to make an election to have the appeal determined under the Small Case Program?

Since TP had annual gross receipts for the calendar year 2018 in the amount of \$21,000,000, TP is not eligible to make the election to have the appeal determined under the Small Case Program since those receipts exceed the limitation in clause (i) of paragraph (2) of subdivision (a).

The purpose of Example 6 is to show that a taxpayer appealing an action of the CDTFA must have annual gross receipts less than \$20,000,000 for each calendar year on appeal. Here there are two calendar years on appeal. Although the taxpayer has annual gross receipts of \$17,000,000 for one calendar year on appeal, the taxpayer may not elect to participate in the Small Case Program because the other calendar year on appeal had annual gross receipts of \$21,000,000, thus exceeding the statutory limit of \$20,000,000.

(7) Example 7. Assume TP, a PITL taxpayer, receives a final Notice of Action from the FTB for tax year 2016 in the amount of \$5,250, of which \$300 is interest, and files a timely appeal of that action of the FTB with the OTA. Further assume in the appeal that TP does not separately request abatement or suspension of interest. What is the total amount in dispute?

Assuming TP makes an election under paragraph (1) of subdivision (b) to not request abatement or suspension of interest, then the \$300 of interest is excluded from the total amount in dispute because TP did not separately request abatement or suspension of interest and the total amount in dispute would be \$4,950, which does not exceed the limitation in paragraph (1) of subdivision (a).

The purpose of Example 7 is to show how interest is treated when determining the total amount in dispute. Since the taxpayer in this example did not separately request abatement or suspension of interest, the total amount in dispute for the tax year at issue is reduced by that amount of interest.

(8) Example 8. Same facts as Example 7, except TP requests abatement or suspension of interest. What is the total amount in dispute?

Since TP has not agreed to waive their right to separately request abatement or suspension of interest under paragraph (1) of subdivision (b), the total amount in dispute remains \$5,250, which exceeds the limitation in paragraph (1) of subdivision (a).

The purpose of Example 8, as with Example 7, is to show how interest is treated when determining the total amount in dispute. However, unlike Example 7, here the taxpayer is specifically requesting abatement or suspension of interest. Consequently, the total amount of interest is included in determining the total amount in dispute. Here, since the total amount in

dispute, including interest, is \$5,250, the taxpayer may not elect to participate in the Small Case Program.

(9) Example 9. Assume TP, a PITL taxpayer, receives a final Notice of Action from the FTB for the tax year 2017 in the amount of \$7,000, of which \$4,900 is additional tax, \$1,500 is a late-filing penalty, and \$600 is interest, and files a timely appeal of such action of the FTB with the OTA. What is the total amount in dispute?

If TP does not separately dispute the late-filing penalty and does not separately request abatement or suspension of interest, the amount in dispute is the \$4,900 of additional tax and the appeal would be eligible for the Small Case Program.

Further assume in its appeal that TP agrees to concede the \$4,900 of additional tax and \$600 of interest, but wishes to continue to separately request abatement of the \$1,500 late-filing penalty. What is the total amount in dispute?

Because TP makes an election under paragraphs (1) and (2) of subdivision (b) to concede the tax and not separately request abatement or suspension of interest, the total amount in dispute is \$1,500, which does not exceed the limitation in paragraph (1) of subdivision (a).

The purpose of Example 9 is to show that the total amount in dispute may be reduced when a taxpayer does not separately dispute a penalty or interest. In this case, the taxpayer is disputing only the \$4,900 of additional tax. Supposing the taxpayer is granted relief from some, or all, of the \$4,900 of additional tax, the late-filing penalty and interest may be reduced or eliminated. Here, the taxpayer may elect to participate in the Small Case Program because the total amount in dispute is less than \$5,000, after accounting for the reduction of the late-filing penalty and the interest the taxpayer is not separately disputing.

Another purpose of Example 9 is to show that a taxpayer may choose to not separately dispute some, or all, of an alleged tax liability or penalty. Here, the taxpayer concedes the \$4,900 of additional tax and \$600 of interest, but continues to separately request abatement of the \$1,500 late-filing penalty. A common scenario is when a taxpayer argues it had reasonable cause for the late-filing of a tax return, but does not argue the additional tax and interest are improper. Thus, in this latter situation the taxpayer could elect to participate in the Small Case Program.

(10) Example 10. Same facts as Example 9, except TP wishes to concede \$1,500 of the \$4,900 in additional tax, and further continues to request waiver of the \$1,500 late-filing penalty and abatement or suspension of the interest of \$600. What is the total amount in dispute?

Although TP agrees to concede \$1,500 in additional tax, the total amount in dispute is \$5,500 since TP is still contesting the remaining \$3,400 of additional tax, as well as waiver of the \$1,500 late-filing penalty and abatement or suspension of the interest of \$600, which exceeds the limitation in paragraph (1) of subdivision (a).

The purpose of Example 10, as with Example 9, is to show that the total amount in dispute may be reduced when a taxpayer does not separately dispute a penalty or interest. However, unlike Example 9, here the taxpayer may not elect to participate in the Small Case Program because the taxpayer's concessions do not reduce the total amount in dispute below \$5,000.

(11) Example 11. Assume TP, a PITL taxpayer, received a final Notice of Action from the FTB for the tax year 2017 denying its claim for refund in the amount of \$5,750. In its opening brief, FTB concedes that TP is entitled to a refund of \$1,000 of the total claim amount of \$5,750. What is the total claim amount?

Although the final Notice of Action denying TP's claim for refund was in the amount of \$5,750, the total amount in dispute is \$4,750 because the FTB conceded \$1,000 of the total claim amount under paragraph (3) of subdivision (b) in its opening brief filed with the OTA, so that the remaining total amount in dispute (\$4,750) does not exceed the limitation in paragraph (1) of subdivision (a).

The purpose of Example 11 is to show that the total amount in dispute may be reduced by a concession made by the responding agency in its opening brief. Here, since FTB conceded \$1,000 of the \$5,750 amount in the taxpayer's claim for refund, the taxpayer may elect to participate in the Small Case Program because the total amount in dispute is \$4,750, which is less than statutory limit of \$5,000.

(12) Example 12. Assume TP, a PITL taxpayer, receives a final Notice of Action from the FTB for the tax year 2017 in the amount of \$6,000, of which \$4,500 is additional tax, \$1,000 is a late-payment penalty, and \$500 is interest, and files a timely appeal of such action of the FTB with the OTA. Further assume the FTB, in their opening brief filed with OTA, concedes \$1,000 of the proposed additional tax in the NOA (thereby reducing the contested tax from \$4,500 to \$3,500), which in turn reduces the late-payment penalty to \$650 and the interest to \$350. What is the total amount in dispute?

Although the original Notice of Action was in the amount of \$6,000, the total amount in dispute is \$4,500 because the FTB conceded \$1,000 in additional tax, as well as reducing the late payment penalty by \$350 and the interest by \$150, or \$1,500 total, in its opening brief filed with the OTA, which does not exceed the limitation in paragraph (1) of subdivision (a).

The purpose of Example 12, as with Example 11, is to show that the total amount in dispute may be reduced by a concession made by the responding agency in its opening brief. Here, since FTB conceded \$1,000 of the proposed additional tax, and reduced the late-payment penalty and interest in its opening brief, the taxpayer may elect to participate in the Small Case Program because the total amount in dispute is \$4,500, which is less than the statutory limit of \$5,000.

(13) Example 13. Assume TP, a PITL taxpayer, receives a final denial (or deemed denial) from the FTB of a protective claim for refund in which TP claimed a refund of "\$1 or more," and files a timely appeal of such action of the FTB with the OTA. Would

TP qualify to make the election to have the appeal determined under the Small Case Program?

Although an appeal with the OTA may result in a finding TP is owed a refund at or under the limits imposed under paragraph (1) of subdivision (a), TP may not elect to have the appeal determined under the Small Case Program because a claim for refund of “\$1 or more” is an appeal that is not eligible for the Small Case Program under paragraph (2) of subdivision (d).

The purpose of Example 13 is to show that a taxpayer who is denied a claim for refund of “\$1 or more,” or other unspecified amount, may not elect to participate in the Small Case Program. The \$5,000 limit for personal income tax appeals, and the \$50,000 limit for appeals of actions from CDTFA, imposed by Government Code section 15676.2, are not flexible beyond the exceptions contained in subdivision (b) above. Although it is possible such a claim for refund may result in a refund less than the limit imposed by Government Code section 15676.2, it is also possible such a claim for refund may result in a refund exceeding the limit imposed by Government Code section 15676.2. For this reason, a taxpayer appealing a denial of a claim for refund for an unspecified amount, including a claim for refund of “\$1 or more,” may not elect to participate in the Small Case Program.

(g) Petitions for Rehearing. The provisions of Chapter 7 (commencing with regulation 30601) of Division 4.1 of Title 18 of the California Code of Regulations shall apply to proceedings under this regulation, except that:

(1) Any petition for rehearing shall be assigned to a three ALJ Panel, with the Lead ALJ on that three ALJ Panel being the ALJ who issued the decision in the original proceeding. An opinion issued by a three ALJ panel on a petition for rehearing under this regulation shall not have precedential effect.

(2) If a petition for rehearing is granted, any new hearing shall be assigned to a different single Lead ALJ under the provisions of this regulation.

Subdivision (g) provides that taxpayers may file a petition for rehearing of a decision reached through the Small Case Program. The regulations that apply to a decision by a panel of three administrative law judges shall also apply to a decision by a single administrative law judge pursuant to the Small Case Program. Any petition for rehearing from the Small Case Program will be assigned to a panel of three administrative law judges, with the lead administrative law judge being the same administrative law judge that decided the appeal in the Small Case Program. If the petition is granted, a new hearing will be held, and the appeal will be heard by a different administrative law judge (and not by a panel of three judges). An opinion issued by a panel of three administrative law judges on a petition for rehearing on a case within the Small Case Program will not be precedential.

(h) Other Office of Tax Appeals Rules for Tax Appeals. Except as otherwise provided in this Article, the provisions of Division 4.1 of Title 18 of the California Code of Regulations shall apply to proceedings under this regulation.

Subdivision (h) provides that, except where otherwise provided in this regulation, all other OTA regulations apply to appeals in the Small Case Program as with appeals outside the Small Case Program.

(i) Effective Date. The provisions of this Article shall be effective with respect to appeals of the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFB (as defined in subdivision (b) of regulation 30103), as applicable, which are originally filed on or after January 1, 2021.

Subdivision (i) provides that a taxpayer may elect to participate in the Small Case Program if their appeal is originally filed on or after January 1, 2021.