

Final Text of California Code of Regulations, Title 18, Division 4.1

Office of Tax Appeals Rules for Tax Appeals

~~(A new division to be added to the California Code of Regulations)~~

CHAPTER 1. Title of Division

30000. STATEMENT OF INTENT; TITLE OF DIVISION

In fulfillment of its statutory duties and consistent with the Taxpayer Transparency and Fairness Act of 2017 (Stats. 2017, Ch. 16), and Assembly Bill 131 (Stats. 2017, Ch. 252), the Office of Tax Appeals hereby promulgates this division to provide regulations governing the administrative review processes for all appeals and related claims for reimbursement subject to the jurisdiction of the Office of Tax Appeals. These regulations shall be known and may be cited as the Rules for Tax Appeals.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. Reference: Sections 15670, 15671, 15672, 15679 and 15679.5, Government Code.

CHAPTER 2. Jurisdiction, Definitions, and General Applicability

ARTICLE 1. APPLICATION OF DIVISION 4.1, DEFINITIONS, AND JURISDICTION

30101. APPLICATION OF DIVISION 4.1

Division 4.1, Rules for Tax Appeals, applies to appeals ~~and~~, petitions for rehearing, and related claims for reimbursement, submitted to or subject to the jurisdiction of the Office of Tax Appeals pursuant to:

- (a) The Administration of Franchise and Income Tax Laws (part 10.2 of division 2 of the Revenue and Taxation Code).
- (b) Part 9.5 of division 3 of title 2 of the Government Code.
- (c) An appeal of a tax or fee program administered by CDTFA. For purposes of this subdivision, a tax or fee program administered by CDTFA includes, but is not limited to:
 - (1) Cannabis Tax (part 14.5 of division 2 of the Revenue and Taxation Code).
 - (2) Cigarette and Tobacco Products Tax Law (part 13 of division 2 of the Revenue and Taxation Code).
 - (3) Cigarette and Tobacco Products Licensing Act (division 8.6 of the Business and Professions Code).
 - (4) Diesel Fuel Tax Law (part 31 of division 2 of the Revenue and Taxation Code).
 - (5) Emergency Telephone Users Surcharge Law (part 20 of division 2 of the Revenue and Taxation Code).
 - (6) Energy Resources Surcharge Law (part 19 of division 2 of the Revenue and Taxation Code).

- Code).
- (7) Hazardous Substances Tax Law, which is also applicable to the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee (part 22 of division 2 of the Revenue and Taxation Code).
 - (8) Integrated Waste Management Fee Law (part 23 of division 2 of the Revenue and Taxation Code).
 - (9) Lead-Acid Battery Recycling Act (~~part~~article 10.5 of chapter 6.5 of division 20 of the Health & Safety Code).
 - (10) Motor Vehicle Fuel Tax Law (part 2 of division 2 of the Revenue and Taxation Code).
 - (11) Oil Spill Response, Prevention, and Administration Fees Law (part 24 of division 2 of the Revenue and Taxation Code).
 - (12) Sales and Use Tax Law (part 1 of division 2 of the Revenue and Taxation Code).
 - (13) Transactions and Use Tax Law and Additional Local Taxes (parts 1.6 and 1.7 of division 2 of the Revenue and Taxation Code).
 - (14) Underground Storage Tank Maintenance Fee Law (part 26 of division 2 of the Revenue and Taxation Code).
 - (15) Uniform Local Sales and Use Tax Law (part 1.5 of division 2 of the Revenue and Taxation Code).
 - (16) Use Fuel Tax Law (part 3 of division 2 of the Revenue and Taxation Code).
 - (17) Taxes and fees collected pursuant to the Fee Collection Procedures Law (part 30 of division 2 of the Revenue and Taxation Code), including those specified in California Code of Regulations, title 18, section 3500.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code; ~~Sections 20, 7051, 8251, 9251, 13170, 30451, 32451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code; Section 25215.74, Health~~Section 20Health and Safety Code. Reference: Section ~~15672~~15670, 15671, 15672, 15674, 15675, and 15676, 15679.5, Government Code; Section 25215.45, Health and Safety Code; Sections 6561, 6814, 6902, 7091, 7156, 7710, 8128, 8269, 8851, 9152, 9269, 12428, 12978, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 20645, 21013, 30261, 30362, 30458.9, 32301, 32402, 38441, 38602, 38708, 40091, 40112, ~~41033~~40209, 41085, 41101, 41169, 43301, 43452, 43520, 45301, 45652, 45865, 46351, 46502, 46620, 50114, 50140, 50156.9, 55081, 55222, 55330, 60350, 60522 and ~~60522~~60630, Revenue and Taxation Code.

30102. DEFINITIONS

Unless the context or subject matter otherwise requires, the following definitions apply to this division:

- (a) “**Agency**” refers to a governmental agency that is a party to an appeal before OTA. The term Agency includes, but is not limited to, FTB and CDTFA.
- (b) “**ALJ**” means an administrative law judge.
- (c) “**Appeals Bureau**” refers to the bureau within CDTFA that issues the final written

- decision of that Agency ~~regarding an appeal.~~;
- (d) **“Appeals Bureau decision”** means any written decision, including a supplemental decision, issued by CDTFA’s Appeals Bureau, as described in California Code of Regulations, title 18, sections 35065 and 35066.
- (e) **“Brief”** means a written document containing an argument or arguments supporting a party’s position. A brief may, but is not required to, include citations to specific laws, regulations, or other authorities. A brief may be in the form of a letter, other informal writing, or formal legal writing.
- (f) **“CDTFA”** means the California Department of Tax and Fee Administration.
- (g) **“Days”** means calendar days, unless specifically provided otherwise in these regulations.
- (h) **“Discovery”** means the process of requesting and disclosing information and evidence that is relevant to the tax appeal.
- (i) **“Evidence”** means any information contained in the written record or oral hearing record that the Panel may consider when deciding an appeal.
- (j) **“Ex parte communication”** means any communication to or from OTA outside the presence of ~~the~~all parties to an appeal without notice to all parties concerning a pending or impending proceeding.
- (k) **“FTB”** means the California Franchise Tax Board.
- (l) **“Lead ALJ”** means the ALJ that has been designated by OTA to govern the conduct of an appeal.
- (m) **“Local entity”** means, except where context requires otherwise, any city, county, city and county, special district or other local jurisdiction that has adopted a local or district tax, or a “notified jurisdiction” as that term is defined by California Code of Regulations, title 18, section 35056.
- (n) **“Local or district tax”** means a local sales or use tax, or a district tax, adopted pursuant to Revenue and Taxation Code sections 7200 et seq., 7251 et seq., or 7285 et seq.
- (o) **“Mail”** ~~includes mailis~~ properly addressed correspondence, sent through the United States Postal Service, or other carriers, postage prepaid, or sent by electronic transmission such as facsimile or email.
- (p) **“Motion”** means a written or oral request that OTA make a specified ruling or order.
- (q) **“Oral hearing record”** refers to the administrative record in an appeal where an oral hearing was held before a Panel, and shall include, but not be limited to, any briefs, motions, notices, orders, ~~written decisions~~Opinions, testimony, admitted evidence, transcriptions of all recorded proceedings, and other written communication addressing issues pertinent to the case. The record shall not include any evidence that a party has withdrawn, if such withdrawal has been approved by the Lead ALJ.
- (r) **“OTA”** means the Office of Tax Appeals.
- (s) **“Panel”** means a group of three OTA ~~ALJ’s~~ALJs who are assigned to a case within the meaning of subdivision (c) of Government Code section 15670. In cases that are assigned pursuant to Government Code section 15676.2, “Panel” means one OTA ALJ.
- (t) **“Relevant evidence”** means and includes any evidence tending to prove or disprove any disputed fact that is of significance to the appeal.
- (u) **“Representative”** means any person~~individual~~ who is at least 18 years of age ~~that~~who has been chosen by a party to an appeal ~~has chosen~~ to represent ~~them~~that party in a matter before OTA. A person whose only function is to interpret for a party to an appeal

is not a representative.

~~(u)~~(v) “**Submission date**” is the date ~~upon which~~when a Panel stops receiving any further evidence, arguments or testimony in ~~a matter~~an appeal, and the appeal proceeding is submitted for ~~a written decision~~an Opinion. The ~~determination of the~~ submission date is ~~at the discretion of~~determined by the Panel, and the record in an appeal proceeding can be re-opened at the Panel’s discretion.

~~(v)~~(w) “**Subpoena**” means an order requiring a person to appear or produce evidence.

~~(w)~~(x) “**Written record**” refers to the record that a Panel may consider in reaching a determination when the appellant has declined an oral hearing, or waived the right to an oral hearing pursuant to regulation 30404, and includes but is not limited to the following:

- (1) the statements and arguments in the briefs and other documents filed with OTA;
- (2) motions;
- (3) notices and orders issued by an Agency;
- (4) notices and orders issued by OTA;
- (5) all exhibits that were not opposed by the other party, and any exhibits the Panel may include over the objection of a party;
- (6) declarations made under penalty of perjury;
- (7) facts taken by official notice; and
- (8) any other relevant evidence that a Panel determines to be the sort of evidence responsible persons are accustomed to rely on in the conduct of serious affairs.

The written record shall not include any evidence that a party has withdrawn, if such withdrawal is approved by the Lead ALJ, nor any document to which an objection has been raised and sustained by the Lead ALJ.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections ~~11425.10, 15670~~ 15672 to 15672, 15676 and 15679.5, Government Code.

30103. JURISDICTION

(a) **Appeals from actions ~~from the~~of FTB.** In general, OTA has jurisdiction to hear and decide an appeal that has been timely submitted to OTA pursuant to these regulations, if any of the following circumstances apply:

- (1) FTB mails a notice of action on a proposed deficiency assessment of additional tax, which may also include penalties, fees, and interest.
- (2) FTB mails a notice of action on a proposed carryover adjustment.
- (3) FTB mails a notice of action on cancellation, credit or refund, or any other notice which denies any portion of a perfected claim for a refund of tax, penalties, fees, or interest.
- (4) FTB fails to act on a claim for a refund of tax, penalties, fees, or interest within six months after the claim is filed with FTB.
- (5) FTB mails a notice of determination not to abate interest, or any other notice, that denies an abatement, in whole or in part, of paid or unpaid interest, under Revenue and Taxation Code section 19104.

- (6) FTB fails to act on a request for abatement of interest within six months after the request is submitted with FTB under Revenue and Taxation Code section 19104. This paragraph does not apply to requests for interest abatement made in connection with a protest or an appeal from a notice of action on a protest.
 - (7) FTB mails a notice that disallows interest on a refund.
 - (8) FTB mails ~~any~~ notice ~~that~~ of the action grants or denies, in whole or in part, innocent spouse relief under Revenue and Taxation Code sections 18533, subdivisions (b), (c), (f), or (i), or 19006, subdivision (c), or fails to act on a request for innocent spouse relief within six months of the date that the request for innocent spouse relief is filed with FTB.
 - (9) FTB mails a notice of determination, or fails to act within 90 days, on a petition for review of FTB's finding of jeopardy.
- (b) **Appeals from actions of CDTFA.** In general, OTA has jurisdiction to hear and decide an appeal that has been timely submitted pursuant to these regulations if any of the following circumstances apply:
- (1) An Appeals Bureau decision is adverse to the taxpayer, in whole or in part.
 - (2) A local entity is a party to a petition for redistribution of local or district tax and the Appeals Bureau decision is adverse to that local entity, in whole or in part.
 - (3) A state agency other than CDTFA is a party to a taxpayer's appeal and the Appeals Bureau decision is adverse to that other state agency, in whole or in part.
- (c) This section contains general rules governing OTA's jurisdiction ~~with respect to~~ appeals. Changes in the law may expand or limit OTA's jurisdiction.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code.
 Reference: Sections ~~15570.54~~, 15600, 15672 ~~and~~, 15674, 15676.2, and 15679.5, Government Code; Sections 20, 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

30104. LIMITATIONS ON JURISDICTION

OTA's jurisdiction is set forth in statute. Areas where OTA does not have jurisdiction ~~to~~ consider include, but are not limited to, the following:

- (a) Whether a California statute is invalid or unenforceable under the United States or California Constitutions, unless a federal or California appellate court has already made such a determination.
- (b) Whether a provision of the California Constitution is invalid or unenforceable under the United States Constitution, unless a federal or California appellate court already has made such a determination.
- (c) Whether FTB or CDTFA violated the Information Practices Act of 1977 (Civil Code

sections 1798 et seq.), the California Public Records Act (Government Code sections 6250 et seq.), or any similar provision of the law.

- (d) Whether the appellant is entitled to a remedy for an Agency's actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal. Examples include but are not limited to:

(1) OTA does not have jurisdiction to determine whether the appellant is entitled to a remedy on the basis that there was no FTB protest hearing, or that CDTFA failed to provide the appellant with an appeals conference.

(2) In a valid claim for refund, OTA has jurisdiction to determine whether an Agency levied an incorrect taxpayer for the liability at issue in an appeal before OTA.

- (e) An appeal from an FTB notice of proposed assessment or notice of proposed overassessment.
- (f) An action or decision by another state or local agency that is not subject to review by FTB or CDTFA.
- (g) An action or decision by CDTFA, a petition for redistribution of local tax or district tax, or an action or decision by another state agency that is subject to review by the CDTFA Appeals Bureau, if the Appeals Bureau decision has not yet been issued.
- (h) Whether a liability has been or should have been discharged in bankruptcy under the United States Bankruptcy Code, 11 U.S.C. 101, et seq.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Article III, Section 3.5, California Constitution; Sections ~~15570.54, 6250, et seq.,~~ 15600, 15672 and 15674, 15679.5, Government Code; Section 19570, Revenue and Taxation Code; Section 1798, Civil Code; and 11 U.S.C. 101, et seq., United States Bankruptcy Code.

30105. QUESTIONS OF JURISDICTION AND TIMELINESS

- (a) OTA may request additional information and briefing from the parties to an appeal including on any issues related to jurisdiction or timeliness.
- (b) If OTA accepts an appeal and does not raise any issues regarding jurisdiction or timeliness, any such issues may be raised and addressed in briefing, and if raised, will be determined by ~~an assigned Panel as part of the Panel's decision on the appeal~~OTA.
- (c) If there is an issue regarding the timeliness of the appeal or OTA's jurisdiction to hear the appeal, ~~the appeal may be assigned to a Panel. The Panel may:~~OTA may:
- (1) rule on such issues before it receives briefing pursuant to the general briefing schedule;
 - (2) request further information or briefing on such issues;
 - (3) direct that any such jurisdictional or timeliness issues be addressed by the parties in briefs submitted pursuant to the general briefing schedule; or
 - (4) take other action as it deems appropriate to determine such issues.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference:

Sections ~~15570.54~~, 15600, 15672 ~~and~~, 15676.2 15674, and 15679.5, Government Code; Sections 20, 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

30106. JURISDICTION OVER TRANSITIONING APPEALS

- (a) As of January 1, 2018, OTA has jurisdiction over any appeal which was heard by, or filed with, the State Board of Equalization for which the State Board of Equalization either failed to issue a decision before January 1, 2018, or issued a decision that was not final before January 1, 2018.
- (b) Where the State Board of Equalization issued a decision in an appeal that was not final before January 1, 2018, and for which a party filed a timely petition for rehearing with the State Board of Equalization before January 1, 2018, OTA will treat that petition as a petition for rehearing under Chapter 7. Where the State Board of Equalization issued a decision for an appeal that was not final before January 1, 2018, any party may submit a petition for rehearing to OTA pursuant to these regulations before the decision becomes final.
- (c) If, prior to January 1, 2018, the State Board of Equalization has, in writing, established a briefing schedule providing for briefing to be submitted on or after January 1, 2018, that briefing schedule will remain applicable to the appeal unless otherwise directed by OTA. When a brief submitted pursuant to this subdivision is acknowledged by OTA, OTA's acknowledgment of the brief will inform the parties whether OTA requests further briefing, and if so, the contents and due dates of such additional briefs. This section does not foreclose subsequent requests for additional briefing pursuant to these regulations.
- (d) All other appeals for which CDTFA's Appeals Bureau had issued its decision and a party had made a timely request for an oral hearing prior to January 1, 2018, are subject to the provisions of this division. OTA will notify the parties to each of those appeals as to the next step in their respective appeals.

Note: Authority cited: Section 15679, Government Code. Reference: Sections ~~15570.54~~, 15600, 15672, 15674, and ~~15674~~15679.5, Government Code; Section 20, Revenue and Taxation Code.

30107. OTA PUBLICATION OF NOTICES, FORMS AND OTHER GUIDANCE

OTA may establish or issue notices, forms and other guidance regarding any procedures, rules or processes that affect taxpayers, their representatives, or other members of the public in matters before OTA.

Note: Authority: Section 15679, Government Code. Reference: Sections 15672, 15672.2, 15676.5, 15679, and 15679.5, Government Code.

CHAPTER 3. Appeal Requirements and Procedures

ARTICLE 1. FILING AN APPEAL

30201. APPEAL FILING REQUIREMENTS

Every appeal from an action of FTB or from a CDTFA Appeals Bureau decision must be in writing, whether written by hand or typed, and may use ordinary and informal language. The appeal must adhere to the length limitations and other requirements of regulation 30302, subdivision (d), and must contain the following:

- (a) The name, address, and telephone number of each appellant submitting the appeal, and, if applicable, the name, address, and telephone number of each appellant's authorized representative(s);
- (b) The email address for each appellant and authorized representative(s), if available;
- (c) The facts involved and the specific reasons for the appellant's position;
- (d) If applicable, the appeal should include any legal authorities upon which the appellant relies, such as statutes, regulations, and judicial and administrative decisions;
- (e) The amount at issue or an estimate of the amount at issue, if known, and any amount conceded, or an estimate of the amount conceded by the appellant; and
- (f) The signature of the party seeking an appeal or that party's authorized representative.
- (g) In addition, every appeal from an action of FTB must contain:
 - (1) The social security number or taxpayer identification number, whichever is applicable, of each appellant submitting the appeal;
 - (2) The year(s) or tax period(s) involved; and
 - (3) A copy of FTB's notice from which the appeal is made, unless FTB has failed to act on a claim for refund, request for innocent spouse relief, or a request for interest abatement, in which case the appellant must provide a copy of the claim for refund or request for interest abatement.
- (h) In addition, every appeal from a CDTFA Appeals Bureau decision must contain:
 - (1) CDTFA's account number for each appellant, and the case identification number(s) assigned by the CDTFA's Appeals Bureau to the appeal;
 - (2) The date of the CDTFA Appeals Bureau decision for which an appeal is requested; and
 - (3) A copy of the CDTFA Appeals Bureau decision from which the appeal is being made.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672 ~~and~~, 15674, and 15679.5, Government Code; Sections 20, ~~6561~~, 6561.5, 7710.5, 8851.5, 19045,

19047, 19048, 19085, 19087, 19104, 19331, 19333, 19334, 19345, 19346, 20645, 30261.5, 38442, 40092, 41086, 41091, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

30202. METHODS FOR DELIVERY OF WRITTEN DOCUMENTS AND CORRESPONDENCE

- (a) Appeals, petitions for rehearing, briefs, and related documents and correspondence may be mailed to the address below or submitted to OTA electronically. If submitted electronically, an electronic copy of such document must be transmitted to OTA at the fax number provided below, or in accordance with any instructions provided on OTA's website at: www.ota.ca.gov. Regardless of how the documents are delivered, the submitting party should retain a copy of the documents and evidence of the date of the submission, such as proof of mailing or a facsimile confirmation page.

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

(b) Unless otherwise directed by OTA, physical delivery to any mailing address other than the address specified in subdivision (a) is not sufficient to establish timely filing with OTA.

~~(c)~~ (c) When these regulations require a written notification or written acknowledgement to one or more parties during the course of an appeal, mail, as defined in regulation 30102, subdivision (~~no~~), will be used, unless ~~there is an agreement with~~ a party requests and OTA agrees to ~~receive~~ provide notification and acknowledgement by another method.

~~(d)~~ (d) Unless and until a party notifies OTA in writing that they do not agree to electronic notice, email or other electronic notice shall be considered proper notice of any action by OTA to that party.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 15679.5, 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672 ~~and~~ 15674, and 15679.5, Government Code; Sections 20, ~~6561~~, 6561.5, 6566, 7710.5, 8851.5, 19045, 19047, 19048, 19085, 19087, 19104, 19331, 19333, 19334, 19345, 19346, 20645, 30261.5, 38442, 40092, 41086, 41091, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

30203. TIME FOR SUBMITTING AN APPEAL

- (a) **Appeals from actions of FTB.** An appeal is timely if it is mailed to or received by OTA within the applicable time period specified in the Revenue and Taxation Code. The Revenue and Taxation Code requires that any appeal must be submitted:

- (1) ~~Not later than the later of: (A)~~ (A) Within 30 days from the date FTB mails a notice of action upon the protest of an unpaid assessment, or (B) Within the 30 day period

- prior to the date indicated on the notice as the deadline for submitting an appeal.
- (2) Not later than the later of: (A) 30 days from the date FTB mails a notice of action affirming a proposed carryover adjustment, (B) the date indicated on the notice as the deadline for submitting an appeal, or (C) at any time, if FTB failed to act on a claim for a refund of tax, penalties, fees, or interest within six months after the claim was filed (except as provided in paragraph (3)).
- (3) ~~Not later than~~Within 90 days from the date FTB mails a notice of action on cancellation, credit, or refund, or any other notice, that denies a claim for a refund of tax, penalties, fees, or interest.
- (4) ~~Not later than~~Within 30 days from the date FTB mails a notice of determination not to abate interest, or any other notice, that specifically denies the abatement of unpaid interest.
- (5) ~~Not later than~~Within 90 days from the date FTB mails a notice of determination not to abate interest, or any other notice, that specifically denies a request for abatement of paid interest.
- (6) At any time, if FTB failed to act on a request to abate interest within six months after the request was submitted. However, if FTB denies a request to abate interest in writing, the appeal must be submitted within the time period specified in paragraph (4) in the case of unpaid interest, or within the time period specified in paragraph (5) in the case of paid interest.
- (7) ~~Not later than~~Within 90 days from the date FTB mails a notice that disallows interest on a refund.
- (8) Not later than 30 days from the date FTB mails ~~any~~a notice of the action that grants or denies, in whole or in part, innocent spouse relief.
- (9) If FTB fails to ~~act on a request for~~ mail a notice of the action that grants or denies, in whole or in part, innocent spouse relief within six months of the date that the request for innocent spouse relief is filed with FTB, the individual requesting innocent spouse relief may appeal to OTA at any time except that, once FTB mails a notice granting or denying, in whole or in part, innocent spouse relief, any appeal must be filed within 30 days of that notice.
- (10) Not later than 60 days from the earlier of: (A) the date FTB mails a notice of its determination on a petition for review of a finding of jeopardy, or (B) the 91st day after a petition for review of a finding of jeopardy was submitted with FTB.

(b) **Appeals from decisions of CDTFA.** If an appeal is from a CDTFA Appeals Bureau decision the following timelines apply:

- (1) Where a decision of CDTFA Appeals Bureau is adverse to the taxpayer or to another state agency, in whole or in part, the taxpayer or other state agency may file an appeal to OTA no later than 30 days from the date the CDTFA Appeals Bureau decision is issued.
- (2) Where a local entity is a party to a petition for redistribution of local or district tax and the CDTFA is adverse to that local entity, in whole or in part, the local entity may appeal to OTA no later than 60 days from the date the CDTFA Appeals Bureau decision is issued.
- (3) If CDTFA's Appeals Bureau issues a revised or supplemental decision during the

period within which a timely appeal could otherwise be filed with OTA, or notifies the taxpayer and any other parties in writing of its intent to do so, the time for filing an appeal will be extended to 30 days following the issuance of such revised or supplemental decision. As an exception, in the case of a petition for redistribution of local or district tax, the time for filing an appeal will be extended to 60 days following the issuance of such revised or supplemental decision.

- (4) If a party timely files an appeal with OTA, but also timely files a request for reconsideration of a CDTFA Appeals Bureau decision that is accepted by CDTFA's Appeals Bureau ~~a request for reconsideration of an Appeals Bureau decision~~, the appeal before OTA will be held dismissed. An appellant may file a new appeal with OTA in ~~abeyance pending CDTFA's Appeals Bureau's resolution of the request for reconsideration or appellant's withdrawal of the request for reconsideration. The time for filing an appeal from an adverse CDTFA Appeals Bureau decision will be extended to 30 days~~ accordance with subdivision (b)(1) of this section, after CDTFA's Appeals Bureau either issues an adverse revised or supplemental decision in response to the request for reconsideration, or notifies the party in writing that the request for reconsideration is not accepted. ~~If a party files a request for reconsideration with CDTFA, the appeal will be deferred until the request for reconsideration is denied, resolved, or withdrawn by the requesting party.~~
- (5) For purposes of ~~this division~~ these regulations, the CDTFA Appeals Bureau decision is issued on the date it is mailed to the parties, except where the decision remands the appeal for reaudit. If the Appeals Bureau decision remands the appeal for reaudit, the Appeals Bureau decision is issued on the date in which the Appeals Bureau mails a letter to the parties explaining the results of the reaudit.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674 15679, and 15679.5, Government Code; Sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19341, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30204. EXTENSIONS

Unless the law provides otherwise, the deadlines for submitting an appeal or petition for rehearing via mail, other than electronic mail or facsimile, are extended, pursuant to Code of Civil Procedure section 1013, as follows:

- (a) Five days, if the notice or decision being appealed was mailed to an address within California;
- (b) Ten days, if the notice or decision being appealed was mailed to an address outside California, but within the United States; or
- (c) Twenty days, if the notice or decision being appealed was mailed to an address outside the United States.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Section 1013, Code of Civil Procedure; Sections 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30205. DATE OF MAILING

Generally, in the absence of other evidence, the mailing date is the postmark date or the date of delivery to a delivery service where the submission was properly addressed with the postage paid, or the date of receipt if the document is submitted electronically. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday, or a state holiday, then the deadline is extended to the next business day.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

~~30206. TRANSITION PROVISION FOR APPEALS FILED WITH OTHER AGENCIES~~

~~Appeals must be submitted to OTA as set forth in this division. Notwithstanding this requirement, if an appeal or petition for rehearing should have been filed with OTA on or after January 1, 2018, but is timely submitted to the State Board of Equalization or CDTEA on or prior to December 31, 2019, and it is received by OTA within sixty days of its submission, OTA may deem it to have been timely submitted to OTA if the error in submission was a good faith error and acceptance of the appeal or petition for rehearing will not interfere with the administration of tax.~~

~~Note: Authority cited: Section 15679, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674 and 15679, Government Code; Sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.~~

30207. ACKNOWLEDGING AN APPEAL

- (a) **Acknowledgment of appeal.** Where OTA receives a timely appeal, OTA will send an acknowledgement of receipt of the appeal to each party to the appeal in a timely manner.
- (b) **Acknowledgement of petition for redistribution.** Where the appeal is a petition for redistribution of local or district tax, in addition to mailing a written acknowledgement of

the appeal to the appellant and to CDTFA, OTA will mail a copy of the acknowledgement to the ~~taxpayer~~retailer whose allocations are the subject of the petition, and will inform the ~~taxpayer~~retailer that it will not be regarded as a party to the appeal unless it chooses to actively participate in the appeal process by ~~either~~ submitting a timely brief to OTA ~~or requesting to make a presentation at a hearing before OTA.~~in accordance with regulation 30301 et seq.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11440.20, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 6015, 6538.5, 6539, 6562, 6566, 7700.5, 7707, 7711, 8828.5, 8829, 8852, 8855, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30244, 30262, 30265, 38434, 38443, 38447, 40093, 40097, 41087, 41091, 43303, 43307, 45303, 45307, 46353, 46357, 50116, 50120, 55087, 55083, 60352 and 60340, Revenue and Taxation Code.

30208. PERFECTING AN APPEAL

- (a) **Generally.** ~~An appeal that has been accepted as valid is referred to as~~ A perfected appeal. ~~OTA will accept~~ is an appeal ~~as valid if it~~that contains substantially all of the information required by regulation 30201, and in which OTA can identify the appeal and the contact information for the party or the party's representative along with the signature of each appellant or authorized representative. OTA will accept timely, perfected appeals.
- (b) **Time to perfect an appeal.** If an appeal does not contain substantially all of the information required by regulation 30201, OTA will notify all parties in writing that the information received by OTA is insufficient to be accepted as a valid appeal, ~~and~~ what additional information is necessary to perfect the appeal, and will provide 30 days for the appellant to ~~complete its filing of~~perfect the appeal.
- (1) The appellant must ~~complete its filing of~~perfect the appeal not later than 30 days from the date of the notice. However, OTA may extend the time period for perfection for good cause. All parties will be notified in writing of any extension.
 - (2) If the party submits the required information within the 30-day period, OTA will accept the appeal ~~as a valid appeal.~~
 - (3) If the party fails to perfect the appeal within the 30-day period, or within any extension period granted, the appeal may be dismissed. All parties will be notified in writing of the dismissal.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11415.40, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19335, 19343, 19345, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30209. SUBMISSION FOR ~~DECISION~~AN OPINION WITHOUT AN ORAL HEARING

- (a) **Generally.** If the appellant does not request an oral hearing under regulation 30401, or if the appellant does not timely respond to a notice of oral hearing, the appellant waives the right to an oral hearing and the appeal may be submitted for decisionan Opinion based upon the written record and without an oral hearing.
- (b) **Innocent spouse appeals.** If neither the appealing spouse nor the non-appealing spouse requestwho joins the appeal requests an oral hearing, or if neither spouse responds to a notice of oral hearing, the appeal will be submitted for decisionan Opinion based upon the written record and without an oral hearing.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 22970.2, 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15606, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 6538.5, 6562, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 20645 and 34013, Revenue and Taxation Code.

ARTICLE 2. APPEAL PROCEDURES

30210. CONFERENCES

- (a) **Application.** The provisions of this article shall apply to all proceedings before OTA, including nonappearance matters and oral hearing matters.
- (b) **Generally.** Either OTA or a party to an appeal may request a conference. A conference may be requested at any time in the appeal process and may be requested regardless of whether an oral hearing has been requested. OTA will determine whether any conference is necessary, and the order, deadlines, and conditions of any conference. Unless otherwise directed by OTA, all conferences will be informal in nature and will not be recorded.
- (c) **Requests by a party to an appeal.** Any party may request a conference. Any such request should be made in writing and shouldwith a copy sent to the other party or parties to the appeal.
- (d) **Location of conference.** Conferences generally may be held telephonically, by video conference, or in person at an office of OTA in the counties of Sacramento, Los Angeles, or Fresno. Conferences may be held by telephone or other electronic means if each participant in the conference has an opportunity to participate in and to understand the entire proceeding while it is taking place.
- (e) **Notice and scheduling.** OTA will provide reasonable notice to the parties of the time and location of a prehearing conference. OTA will consult with the parties regarding the scheduling of any other conference and will provide reasonable written notice to the parties of the time and location of the conference.
- (f) **Matters to be covered.** A conference may deal with one or more of the following matters:
 - (1) clarification and discussion of issues or facts;
 - (2) evidence and witnesses, and any objections to the admission of evidence or witnesses;
 - (3) schedules for the submission of any additional briefs or evidence, and schedules for the commencement and conduct of any oral hearing; and
 - (4) any other matters asthat may promote the fair, objective, and timely resolution of the

appeal.

- (g) **Additional evidence.** Unless otherwise directed by OTA, if any party anticipates providing evidence not already provided to OTA for discussion at the conference, such evidence should be provided to OTA, with a copy to the other party or parties to the appeal, no later than three business days prior to the conference.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 11445.10, 11445.30, 11445.40, 11470.10, 11511.5 and 15679.5, Government Code.

30211. REPRESENTATION

- (a) **Representation.** A party may be represented in an appeal by any authorized person or persons, at least 18 years of age, of the party's choosing.
- (b) **Recognition of representative.** OTA will recognize all authorized representatives who are identified in writing or orally at a hearing by the taxpayer. Authorized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to act on behalf of the taxpayer in connection with an appeal before OTA.
- (c) **Local Entity Representation.** Notwithstanding subdivision (b), representatives for local entities must provide OTA a copy of the resolution from the local entity they represent authorizing their representation in accordance with Revenue and Taxation Code 7056 within 30 days of OTA's letter acknowledging the appeal.
- ~~(e)~~ (d) **Substitution or withdrawal.** Parties must promptly notify OTA and the opposing party in writing of any substitutions or withdrawals of representation.
- ~~(d)~~ (e) **Suspended or disbarred representatives.** Notwithstanding subdivision (a), a person suspended or disbarred from practice before FTB pursuant to Revenue and Taxation Code section 19523.5 shall promptly notify OTA of the suspension or disbarment and may not represent any taxpayer in an appeal before OTA after the date of the suspension or disbarment.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 15676 and 15678, Government Code; ~~Section~~Sections 19523.5, 6015, 7056, Revenue and Taxation Code.

30211.5. PRIVILEGES

The rules pertaining to privileges shall apply to the extent that they are required by law to be recognized. In addition, the protections of confidentiality shall apply to communications between a taxpayer and a federally authorized tax practitioner as provided in Revenue and Taxation Code sections 7099.1 and 21028.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 912, 954 and 980, Evidence Code; Sections 7099.1 and 21028, Revenue and Taxation Code.

30212. CONSOLIDATION AND DECONSOLIDATION

- (a) **Consolidation.** On the motion of a party or upon its own initiative, OTA may consolidate

appeals for oral hearing or decision for an Opinion on the written record if the facts and issues are similar and no substantial right of any party will be prejudiced. OTA will promptly notify the parties if an appeal is consolidated.

- (b) **Deconsolidation.** On the motion of a party or upon its own initiative, OTA may deconsolidate appeals if it determines that consolidation would have an adverse effect on a substantial right of any party or if other good cause exists to deconsolidate the appeals. OTA will promptly notify the parties if an appeal is deconsolidated.
- (c) **Objections.** Any party may submit a written objection to consolidation or deconsolidation. Any such objection should must be submitted within 15 days of the party receiving notice of the request for consolidation or deconsolidation and should establish that consolidation or deconsolidation would have an adverse effect on a substantial right of the objecting party.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 11507.3 and 15679.5, Government Code.

30212.1 BIFURCATING OR SEVERING APPEALS

A Panel may bifurcate issues in an appeal, or sever an issue or issues from an appeal for separate consideration and issue an Opinion on the severed issue or issues prior to deciding the appeal.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2, and 22979, Business and Professions Code; Sections 11425.10, 11425.50, 15672, 15674, 15675, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 40, 8852, 8853, 18533, 19043.5, 19045, 19047, 19048, 19085, 19087, 19104, 19112, 19116, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19347, 19348, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354, Revenue and Taxation Code.

30213. AUTHORITY OF ADMINISTRATIVE LAW JUDGES

- (a) To the extent not otherwise provided by regulation or statute, in any proceeding where a Panel has been assigned to conduct an appeal, or otherwise consider a motion in a case before OTA, the Lead ALJ, or any member of the Panel, shall have full power, jurisdiction, and authority to:
 - (1) Hold a fair hearing, including the examination of witnesses, documents, and other relevant evidence, administer oaths and affirmations, rule on objections, privileges, defenses, and the receipt of relevant and material evidence, for the purpose of ascertaining the facts on which a decision an Opinion may be based;
 - (2) Determine the order that witnesses will testify at the hearing;
 - (3) Request that each party state the issues to be heard and the agreed-upon facts, and identify the evidence upon which a party wishes to rely to prove or disprove contested facts;

- (4) Ask relevant questions of any witness or party to clarify the record at a conference or during a hearing, and ask for additional briefing or evidence;
- (5) Issue interlocutory and final orders, instructions, and ~~decisions~~ Opinions;
- (6) Issue post-hearing orders and sanctions as provided in regulation 30213.5;
- (7) Issue rulings on all motions timely and properly submitted to ~~a Panel~~ OTA;
- (8) Order the closure of the record from receipt of further evidence or argument (or reopen a previously closed record);
- (9) Issue and vacate submission orders; and
- (10) Take any other action deemed necessary for the fair and orderly ~~and fair~~ adjudication of disputes within OTA's jurisdiction.

Note: Authority cited: Section 15679, Government Code. Reference: Article VI, Section 18, California Constitution; Sections 11425.50, 11425.60, 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15670, 15672, 15674, 15679 and 15679.5, Government Code; Sections 20, 19047, 19087, 19331, 19333, 19335 and 19345, Revenue and Taxation Code.

30213.5 **ORDERS**

OTA may issue orders and sanctions to the parties to facilitate the fair and orderly resolution of appeals. Orders may be enforced under the provisions of Government Code sections 11455.10 through 11455.30.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 11515 and 11523, Government Code; Sections 451 and 452, Evidence Code.

30214. **EVIDENCE**

- (a) **Informal discovery.** The provisions of ~~the Rules for Tax Appeals~~ these regulations govern the right to and method of discovery as to any proceeding governed by these regulations. OTA expects that parties appearing before OTA will cooperatively engage in the voluntary exchange of relevant information and documents (informal discovery) prior to requesting OTA involvement in the discovery process. Prior to the use of any process covered by these regulations, a party must show that it has attempted informal discovery.
- (b) **Witness Declarations and Affidavits.** Parties may submit declarations and affidavits of persons who will not be present at the hearing. Declarations must be signed under penalty of perjury. Declarations and affidavits must be filed with the party's brief in accordance with regulation 30303, unless otherwise directed by OTA.
 - (1) **Timing.** The opposing party will have 30 days after receipt of a witness declaration or affidavit, or 30 days from the date of the notification of the panel to mail or deliver to the other party, with a copy to OTA, relevant written questions for the declarant or affiant and/or a request for documentation relating to the declarant or affiant statements, otherwise that party will waive their right to question the declarant or affiant, except as provided in the subdivision (2) of this section. The declarant or affiant should provide a response to the opposing party, signed under penalty of

perjury, with a copy to OTA, within 30 days of receiving the questions and/or request.

(2) Appearance Matters. At any time 15 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any written witness declaration or affidavit from the proffering party to introduce in evidence. Upon showing of good cause by the proffering party, a written declaration may be accepted into evidence less than 15 days prior to the oral hearing in the matter. Nothing in this provision should limit a party's right to question a witness at an oral hearing.

~~(b)~~(c) **Disclosure of witnesses and evidence.** OTA may ~~request or require~~ issue an order regarding the disclosure of witnesses and evidence ~~in an order.~~

~~(e)~~(d) **Privilege.** Nothing in this section shall authorize the inspection or copying of any writing or item which ~~are~~ is privileged, confidential, or otherwise protected from disclosure by law ~~or otherwise made confidential or protected as the attorney's work product.~~

~~(d)~~(e) **Subpoenas.** Upon a showing of good cause, OTA may allow subpoenas in accordance with the provisions of Government Code sections 11450.05 through 11450.50, if:

- (1) ~~(1)~~ the person requesting the subpoena is the party bearing the burden of proof on the issue to which the subpoenaed materials relate; or
- (2) ~~(2)~~ the subpoena is to be issued to a nonparty to the appeal.

~~(e)~~(f) **Consideration of evidence.** Except as otherwise provided in ~~the Rules for Tax Appeals~~ these regulations, rules relating to evidence and witnesses contained in the California Evidence Code and California Code of Civil Procedure shall not apply to any proceedings, including oral hearings, before OTA. The following rules shall be applied to evidence presented to OTA:

- (2) All relevant evidence shall be admissible.
- (3) A person may prevent relevant evidence that is subject to a privilege from being disclosed as provided in regulation 30211.5.
- (4) The Lead ALJ has discretion to exclude evidence if he or she determines that its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- (5) The Panel may use the California rules of evidence when evaluating the weight to give evidence presented in a proceeding before OTA. Any party may provide argument on the relevant weight that should be given to an item of evidence

~~(f)~~(g) **Additional discovery.** A request for discovery beyond what is outlined in this section shall be in writing and will be ~~decided~~ approved or disapproved by ~~an ALJ~~ OTA. Additional discovery will only be granted upon a showing of good cause, taking into consideration the factors set forth in regulation 30214.5.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. References: Sections 11450.05 to 11450.50, 11511, 11512, 11513, ~~11414, 11450.05 to 11450.50 and~~ 11514, 15670, 15679.5, Government Code.

30214.5. **NONCOMPLIANCE WITH DISCOVERY REQUESTS:**

- (a) **General.** OTA expects the parties to cooperatively exchange requested information that is relevant to an appeal. In considering discovery requests, OTA will strive to provide an informal and efficient administrative process, and will consider the burden imposed on other parties, the risk of delay, the likelihood that relevant information may be obtained, the materiality of the information sought to the issues in dispute, and any other factors relevant to the conduct of a fair and efficient appeal process.
- (b) **Motion to require discovery.** Any party claiming ~~that~~ a request for discovery made pursuant to regulation 30214 has not been complied with may file with ~~the~~ OTA a motion to compel discovery pursuant to subdivisions (a) and (b) of Government Code section 11507.7. OTA may request a response from the opposing party. If a response is requested, the other party shall have a minimum of 30 days to respond to such a motion to compel discovery.
- (c) **Order on motion.** ~~If in its discretion,~~ If OTA determines that the requested discovery made pursuant to this ~~section~~ regulation is proper, OTA may issue an order to compel discovery as provided by subdivision (f) of Government Code section 11507.7. Notwithstanding Government Code section 11507.7, there is no right to present oral arguments on a motion to compel discovery. The motion ~~shall~~ will be decided based solely on the ~~papers filed by~~ submissions of the parties, and on any such evidence as OTA may allow.
- (d) **Grounds for denial of motion.** If ~~in its discretion,~~ OTA determines that a discovery request made pursuant to this section is overly burdensome, invasive, or otherwise not in the interest of fair and efficient adjudication of the hearing ~~before it~~, OTA can deny a party's motion to compel discovery without requesting a response from the other party. ~~OTA will inform the parties that such a~~ If the request for discovery is denied, OTA will inform the parties in writing no more than 15 days after OTA has acknowledged its receipt of the discovery motion ~~is acknowledged by~~ OTA.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. References: Sections 11450.05 to 11450.50, 11507.6, 11507.7, 11511, 11512, 11513, ~~11414, 11450.05 to~~ 11450.50 11514, 15670 and ~~15670~~ 15679.5, Government Code.

30215. **EX PARTE COMMUNICATIONS**

OTA shall follow the rules restricting ex parte communications contained in the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges, and those rules found in Government Code sections 11430.10 through 11430.80. To the extent there is any conflict between the Code of Judicial Ethics and Government Code sections 11430.10 through 11430.80, the Code of Judicial Ethics shall be controlling.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. References: Sections 11413.10 through 11413.80, 15679.5 and 15670, Government Code.

30216. INCORPORATION OF THE ADMINISTRATIVE PROCEDURE ACT

- (a) ~~(a)~~ **Accessibility of hearings.** Except as otherwise provided in these regulations, Chapter 4.5 (Government Code section 11400, et seq.) and Chapter 5 (Government Code section 11500, et seq) of the Administrative Procedure Act shall apply to the conduct of all appeals hearings and proceedings before OTA. To the extent not inconsistent with Part 9.5 ~~of (commencing with Section 15670) of~~ Division 3 of Title 2 of the Government Code and these regulations, hearings and proceedings before OTA will be conducted in accordance with the Administrative Procedure Act using hearing procedures that are accessible to all representatives, including those who are not lawyers, and to parties who are representing themselves. ~~A Panel~~OTA has the discretion to take or allow such actions as are permitted by the Administrative Procedure Act. ~~Prior to assignment of a Panel, a Presiding ALJ may take such actions with respect to an appeal.~~
- (b) ~~(b)~~ **Nonappearance matters.** Unless otherwise directed by OTA, ~~where~~when an oral hearing is not requested or is waived, appeal proceedings will be conducted under Chapter 4.5 of the Administrative Procedure Act, to the extent not inconsistent with Part 9.5 (commencing with Section 15670) of Division 3 of Title 2 of the Government Code and these regulations. ~~However, OTA will retain the discretion to utilize aspects of Chapter 5 and prohibit usage of portions of Chapter 4.5 of the Administrative Procedure Act.~~
- (c) **Oral hearing matters.** Where an oral hearing is requested, OTA will conduct the hearing process pursuant to Chapter 5 of the Administrative Procedure Act. However, OTA will retain the discretion to utilize aspects of Chapter 4.5 and prohibit usage of portions of Chapter 5 of the Administrative Procedure Act to the extent not inconsistent with Part 9.5 (commencing with Section 15670) of Division 3 of Title 2 of the Government Code and these regulations. In determining whether a hearing is conducted solely under Chapter 5 of the Administrative Procedure Act, several criteria may be considered such as: (1) the nature of the appeal; (2) representation of the parties; (3) complexity of the case; (4) length of the hearing; (5) number of witnesses; (6) types, number, and length of documents; and (7) number of objections. OTA strives to have the least formal proceedings as necessary for each case. If an appeal has been set for an oral hearing and is subsequently set to be decided without an oral hearing, subdivision (b) will apply.
- (d) **Informal hearing procedures.** Notwithstanding any other part of this regulation, pursuant to subdivision (c) above, OTA may in its discretion use the informal hearing procedures found in the Administrative Procedure Act Chapter 4.5.
- ~~(e)~~ **Non-applicability of the Administrative Procedures Act.** Notwithstanding subdivision (a), the following provisions ~~included in Chapters 4.5 and 5~~ of the Administrative Procedure Act shall not apply to the conduct of any appeals, hearings or proceedings before OTA: Government Code sections 11405.10-11405.80, 11415.60, 11420.10-11420.30, 11425.10, subdivision (e) of 11425.50, 11435.05-11435.65, 11440.10, 11440.30, 11460.10-11460.80, 11465.10-11465.70, 11470.10-11470.50, 11500-11507, 11507.5-11509, 11511.5-~~11513~~11514, 11516-11518 and 11519-11529.

- ~~(e)~~(f) **Exemption.** Where context or subject matter otherwise requires exception from the provisions of the Administrative Procedure Act, OTA is exempted from such provisions.
- ~~(f)~~(g) **Lead ALJ.** Where the Administrative Procedure Act uses the term “Presiding Officer” that term shall have the meaning of “Lead ALJ” or “Panel” as context and utilization requires, or ~~the~~a Presiding ALJ if no Lead ALJ or Panel has been assigned to an appeal.
- ~~(e)~~ **Informal hearing procedures.** ~~Notwithstanding any other part of this regulation, OTA may in its discretion use the informal hearing procedures found in the Administrative Procedure Act Chapter 4.5.~~
- ~~(g)~~(h) **Conflicts.** To the extent that any provision of the Administrative Procedure Act conflicts with these regulations, these regulations shall be controlling.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 11513, 15674 and 15679.5, Government Code.

30217. DETERMINATION THAT APPEAL IS FRIVOLOUS

- (a) **Generally.** If a Panel determines that a franchise or income tax appeal is frivolous or has been filed or maintained primarily for the purpose of delay, or that the appellant unreasonably failed to pursue available administrative remedies, OTA ~~may~~shall impose a frivolous appeal penalty, ~~under~~ pursuant to Revenue and Taxation Code section 19714, ~~on an appellant~~.
- (b) **Factors considered.** OTA may consider any relevant factors in determining whether to impose a frivolous appeal penalty. Factors which may be relevant in determining whether to impose a frivolous appeal penalty, and in what amount, include, but are not limited to:
 - (1) Whether the appellant is making arguments that OTA, in a precedential Opinion, or the State Board of Equalization, in a precedential Opinion, or courts have rejected;
 - (2) Whether the appellant is making the same arguments that the same appellant made in prior appeals;
 - (3) Whether the appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed;
 - (4) Whether the appellant has a history of submitting frivolous appeals or failing to comply with California’s tax laws; or
 - (5) Whether the appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code; Section 19714, Revenue and Taxation Code. Reference: Sections 15606, 15670, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19714 and 20645, Revenue and Taxation Code.

30218. APPLICATION OF ETHICS CODES

Each OTA ALJ shall abide by the Code of Judicial Ethics adopted by the California Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges, including, but not limited to, those canons governing conflicts of interest and ex parte communications.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Article VI, Section 18, California Constitution; Sections 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, ~~15606~~, 15670, 15672, 15674, 15676.2 and 15679, Government Code.

30219. APPLICATION OF BURDEN OF PROOF

- (a) ~~(a)~~ Except as otherwise specifically provided by law, the burden of proof is upon the appellant as to all issues of fact.
- (b) ~~(b)~~ In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue is upon the Agency by clear and convincing evidence.
- (c) ~~(c)~~ Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Article VI, Section 18, California Constitution; Sections 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, ~~15606~~, 15670, 15672, 15674, 15676.2 and 15679, Government Code.

ARTICLE 3. POSTPONEMENTS, DEFERRALS, AND DISMISSALS

30220. POSTPONEMENT AND DEFERRAL

- (a) OTA may postpone or defer proceedings in an appeal, including hearings and briefing, for good cause.
- (b) For purposes of this regulation, good cause for a deferral or postponement may include, but is not limited to:
 - (1) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;
 - (2) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;
 - (3) A party has obtained a new representative who requires additional time to become familiar with the case;
 - (4) All parties desire a postponement;
 - (5) 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.
- (c) OTA will not postpone or defer proceedings where the postponement request will result in unreasonable delay or is otherwise not in the interests of ~~proper~~ fair and efficient tax administration.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 15672 ~~and~~, 15674, and 15679.5. Government Code; Sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30221. SETTLEMENT OR RESOLUTION

OTA may postpone or defer proceedings in an appeal if a party seeks time to settle or otherwise resolve the appeal. If an Agency notifies OTA that it has accepted an appeal for settlement consideration, OTA will defer appeal proceedings pending resolution of the settlement negotiations. If settlement negotiations ~~are not successful, and upon notification from a party that settlement negotiations~~ or other efforts have ~~terminated without a settlement~~ not resolved the appeal, OTA may reactivate the appeal and advise the parties as to the next step in the appeal. OTA may reactivate the appeal upon notification by either party that a resolution could not be reached.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: ~~Section~~Sections 15672 and 15679.5, Government Code; Sections 7093.5, 9271, 19442, 30459.1, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332 and 60636, Revenue and

Taxation Code.

30222. WRITTEN NOTICE

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

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 15672 ~~and~~ 15674, and 15679.5, Government Code; Sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30223. DISMISSAL

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

- (1) The appellant or the appellant's authorized representative submits a written and signed request for dismissal;
- (2) The Agency submits a written concession of the entire amount of the deficiency, refund, or claim at issue; ~~or~~
- (3) The parties submit a written stipulation, signed by all the parties, in which all parties agree to dismissal;
- (4) The parties agree to issuance of an order directing a conditional dismissal which shall be signed by an ALJ; or
 - (A) A conditional dismissal shall become final after expiration of a set amount of time set forth in the order directing the conditional dismissal. For purposes of this subdivision, a conditional dismissal means an agreement by all parties to dismiss the case subject to certain terms as agreed upon by the parties.
- (5) OTA becomes aware that a party is a suspended or forfeited entity.
 - (A) If OTA provides written notice to a party that its status with the California Secretary of State is suspended or forfeited, and the party fails to establish within 30 days of such notice that it is no longer suspended or forfeited, the appeal will be dismissed. Upon a showing of good cause by the affected party, OTA may in its discretion extend the 30-day deadline.

(b) Upon dismissal, OTA will notify the parties that the appeal has been dismissed.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 15672 and 15674, Government Code; Sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30224. REQUEST FOR RECONSIDERATION OF CDTFA APPEALS BUREAU DECISION

- (a) ~~(a)~~—Except as provided in subdivision (b), where a party to an appeal timely submits to CDTFA Appeals Bureau a request for reconsideration of a CDTFA Appeals Bureau decision, or provides other notification from CDTFA that it is reconsidering the CDTFA

Appeals Bureau decision, the appeal before OTA will be held closed. The parties shall notify OTA in abeyance pending CDTFA's Appeals Bureau resolution of the writing within 15 days if CDTFA accepts a request for reconsideration or appellant's withdrawal of an Appeals Bureau Decision. After the request for reconsideration, a request for appeal based on CDTFA's Appeal Bureau's revised supplemental decision can be submitted to OTA.

- (b) ~~(b)~~ When ~~CDTFA~~ CDTFA's Appeals Bureau either issues a revised or supplemental decision in response to the request for reconsideration or notifies the party in writing that the request for reconsideration is not accepted, the time for submitting an appeal will restart pursuant to the relevant provisions of regulation 30203.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 15672 and 15674, Government Code; Sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

CHAPTER 4. Briefing Schedules and Procedures

ARTICLE 1. GENERAL BRIEFING SCHEDULE

30301. APPLICATION OF CHAPTER

- (a) **Generally.** The general briefing schedule in this chapter applies to all appeals from actions of FTB or CDTFA, unless the appeal involves an innocent spouse determination. However, OTA may direct a modified briefing schedule ~~or~~, additional briefing or evidence may be requested pursuant to these regulations. In the case of a petition for redistribution of local or district tax, OTA also will provide a copy of the briefing schedule to the ~~taxpayer~~ retailer whose allocations are the subject of the petition.
- (b) **Jeopardy determination.** If an appeal involves a jeopardy determination, OTA may compose a suitable briefing schedule after consideration of all the facts and circumstances of that appeal.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54,~~ 15672, 15674, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 6538, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

30302. GENERAL REQUIREMENTS

- (a) **Generally.** The parties to an appeal must adhere to the briefing schedules and other requirements set forth in this chapter. Throughout the period of the briefing schedule, OTA will inform the parties of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence in the appeal.
- (b) **Submission and acknowledgment.** Upon receipt of any brief submitted within the scope of in accordance with the applicable briefing schedule, including any applicable

deadlines and extensions, OTA will provide written acknowledgement of receipt to all parties and will provide each opposing party with a copy of the brief and any supporting exhibits. OTA may waive this requirement if the parties represent that they have provided a copy of the brief and any supporting exhibits to the other parties.

- (c) **Extensions.** A party may request an extension of time for filing a brief. An extension request ~~should~~shall be in writing, ~~should~~must state the reason(s) for the request, how much additional time is requested, and ~~should~~ be submitted to OTA, copying the other party, prior to the scheduled due date for that brief. OTA may extend, defer, or postpone briefing deadlines for good cause. OTA will notify the party whether the request is granted or denied. When OTA grants a request for an extension, its notification will state the extended due date for the brief and will be provided to all parties. If warranted, the notification will include a revised due date for briefs to be submitted by other parties.
- (d) **Formatting.** Unless otherwise directed, all briefs must be no longer than 30 double-spaced 8½" by 11" pages, or 15 single-spaced 8½" by 11" pages (or the hand-written equivalent), excluding any table of contents, table of authorities, and exhibits. Briefs may be hand-written or typed and shall only be printed on one side of the page using a type-font size of at least 10 points or, at most, 12 characters per inch, or the equivalent. OTA may grant an exception to these requirements for good cause.
- (e) **Nonconforming briefs.** In the event a brief does not conform to the form and page limits specified above, OTA may return the submitted brief and direct the party to comply with the form and page limits by the date specified by OTA, or in its discretion, accept the brief. Failure to submit a compliant brief by the specified date will constitute a waiver of the opportunity to submit the brief. A party may request to file a nonconforming brief. The request must be in writing, state the reasons for the nonconformance, and be filed at least 15 days prior to the due date of the brief.
- (f) **Failure to submit a brief.** The failure to submit a brief that conforms to the requirements specified above, within the scope period of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to submit that brief. However, OTA may request ~~a~~ further briefing.
- (g) **Non-party briefing.** At the discretion of OTA, non-party (amicus) briefs may be submitted. Any non-party briefs that are accepted by OTA will be provided to the parties, and OTA may, in its discretion, request responses thereto. In determining whether amicus briefs will be accepted, various criteria may be considered, including: (1) complexity of the legal issues in the appeal; (2) the need for additional relevant information or arguments; and (3) the extent to which the Opinion would affect a group of taxpayers.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15676.2, 15679, and 15679 .5, Government Code; Sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

30303. GENERAL BRIEFING SCHEDULE

- (a) **Appellant's opening brief.** The appellant's appeal letter, if accepted as a valid appeal,

will constitute the appellant's opening brief, unless the appellant requests the opportunity to submit a supplement to the opening brief. If the appellant requests with its opening brief, or before its opening brief is perfected pursuant to regulation 30208, the opportunity to submit a supplement to appellant's opening brief, OTA will permit appellant to file a supplemental opening brief within 60 days from OTA's acknowledgement. The appeal letter and any supplement to the opening brief together will be considered appellant's opening brief, and cannot exceed a total of 30 pages, formatted pursuant to regulation 30302, subdivision (d), unless otherwise permitted by OTA.

- (b) **Respondent's opening brief.** The respondent must submit an opening brief not later than 60 days from the date OTA acknowledges receipt of the appellant's opening brief, unless OTA grants additional time for submission of respondent's opening brief.
- (c) **Appellant's reply brief.** The appellant may submit a reply brief and any such reply brief must be submitted not later than 30 days from the date OTA acknowledges receipt of the respondent's opening brief, unless OTA grants additional time for the submission of the reply brief. The appellant's reply brief, if submitted, may only address new facts, issues, or arguments raised in the respondent's opening brief.
- (d) **End of the briefing process.** The submission of appellant's reply brief generally will end the briefing process, unless additional briefing is or evidence are permitted pursuant to regulation 30304. For nonappearance matters, the record will be closed at the end of the briefing process. For oral hearing matters, the record will be closed pursuant to regulation 30412.

Note: Authority cited: Section 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15570.54, 15672, 15674, 15676.2, 15679, and 15679.5, 15679.5, Government Code; Sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

30304. REQUESTS FOR ADDITIONAL BRIEFING OR EVIDENCE

- (a) ~~(a)~~ — **Generally.** Either OTA or a party to an appeal may request additional briefing or evidence. OTA will address any request by a party for additional briefing or evidence, and determine the order, deadlines, and conditions under which any additional briefing or evidence may be permitted. Unless otherwise directed, additional briefing is subject to the same format and length limitations as briefing filed pursuant to the regular briefing schedule set forth in these regulations. A party submitting additional briefing may attach any relevant evidence as exhibits.
- (b) ~~(b)~~ — **Requests by a party OTA for additional briefing.** If a party does not comply with OTA's request for additional briefing or evidence but later provides the additional briefing or evidence requested, without good cause for the delay, the Lead ALJ has the discretion to exclude such evidence from the record.
- (b) **Requests by a party for additional briefing or evidence.** A party to an appeal may request an opportunity to submit an additional brief or evidence. Any such request must be made in writing, should copy be copied to the other party or parties to the appeal, and should be made promptly following the event or circumstance that caused the party to make the request. Grounds for a request for additional briefing or evidence may include

new facts, arguments, evidence, or any other matter essential to the resolution of the appeal. If an additional brief or evidence is submitted outside of the applicable briefing schedule, OTA will determine whether there is good cause to accept the submission, and whether to request a reply from the other party or parties.

- (c) **Informality of briefing.** Unless otherwise directed by OTA, additional briefs may use ordinary and informal language, and may be hand-written or typed.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

ARTICLE 2. GENERAL BRIEFING SCHEDULE FOR INNOCENT SPOUSE APPEALS

30310. APPLICATION

The briefing schedule in this article applies to all appeals from ~~notices, actions, or other decisions~~ a notice of the action that ~~grant~~grants or ~~deny~~denies, in whole or in part, innocent spouse relief, and which are subject to the jurisdiction of OTA.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 18533, 19006, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1 and 60210.5, Revenue and Taxation Code.

30311. DEFINITIONS

For purposes of this ~~section~~article:

- (a) An “appealing spouse” is an individual who submitted a timely appeal to OTA, from an Agency’s grant or denial, in whole or in part, of innocent spouse relief. An “appealing spouse” can also be a person who submits a request for innocent spouse relief on or during the ~~individual who submitted the appeal with OTA.~~ appeal.
- ~~(a)~~(b) A “non-appealing spouse” is an individual who ~~has not submitted a timely appeal with OTA.~~ filed a joint return(s) for the year(s) at issue with the appealing spouse. A non-appealing spouse may become a party to an appeal by timely joining the appealing spouse’s appeal.
- ~~(b)~~(c) The “requesting spouse” is the individual who requested innocent spouse relief. The requesting spouse may be either the appealing spouse or the non-appealing spouse, depending ~~upon~~on whether the Agency granted or denied innocent spouse relief.
- ~~(c)~~(d) The “non-requesting spouse” is the individual who did not request innocent spouse relief. The non-requesting spouse may be either the appealing spouse or the non-

appealing spouse, depending ~~upon~~on whether the Agency granted or denied innocent spouse relief.

~~(d) The “non-appealing spouse” is the individual with whom the appealing spouse filed a joint return for the year(s) at issue.~~

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54,~~ 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345 and 19346, Revenue and Taxation Code.

30312. SPECIAL RULES AND PROCEDURES

(a) When an appealing spouse’s opening brief does not contain substantially all of the information required by regulation 30201, the appeal must be perfected according to the provisions of regulation 30208.

~~(a)~~(b) If both spouses submit timely appeals, then ~~the~~their appeals will be consolidated for briefing, hearing, and ~~decision~~Opinion. Each spouse will be treated as an appealing spouse and will have an equal opportunity to submit briefs.

~~(b)~~(c) If only one spouse submitted a timely appeal, then upon receipt of a perfected appeal from the appealing spouse, OTA will provide a copy of the appealing spouse’s perfected ~~appeal~~opening brief to the non-appealing spouse and notify the non-appealing spouse of his or her right to participate in the appeal.

~~(c)~~(d) OTA shall use the best available information to contact the non-appealing spouse.

~~(d)~~(e) OTA’s jurisdiction over an innocent spouse appeal will be determined at the time of filing of ~~appellant’s~~appealing spouse’s opening brief and shall remain in effect through the conclusion of the appeal, notwithstanding any Agency withdrawal of a notice or decision. Any subsequent Agency notice or decision issued to a party to the appeal for the years at issue shall stand in place of the original notice or decision.

(f) Innocent spouse relief may be raised as an affirmative defense. If a party raises innocent spouse relief as an affirmative defense, OTA will retain jurisdiction over the appeal and defer proceedings pending a determination of the underlying innocent spouse claim by the Agency.

~~(e)~~(g) Either ~~party~~spouse participating in an innocent spouse ~~case~~appeal may request a separate hearing ~~, or to appear remotely.~~

(1) Requests for Separate Oral Hearings. At the close of briefing, OTA will send the parties a form to request an oral hearing or a confirmation notice to confirm a request for an oral hearing. Either spouse participating in the appeal has no later than 15 days from the date on the form to submit a written request or written confirmation of a previously made request, for a separate oral hearing. If a request for a separate oral hearing is not received by OTA no later than 15 days after the date on the form, the spouse will be deemed to have waived the right to a separate oral hearing. Upon receipt of a timely request for a separate oral hearing, OTA will send written acknowledgment of the request to all parties.

- (2) Evaluation of a request for separate oral hearings. OTA will grant a request for a separate oral hearing based on good cause, or if:
- (A) A court order would prohibit the spouses from appearing at the same hearing;
 - or
 - (B) OTA determines that conducting one oral hearing is likely to be unsafe, disruptive, or unjust.
- (3) Untimely requests. An untimely request for a separate oral hearing may be accepted by OTA if it determines that the requesting party's failure to make a timely request was due to good cause.
- (4) Requests to appear remotely. Requests to appear remotely may be made at any time prior to the oral hearing. OTA will grant a request to appear remotely based on good cause.
- (h) Separate oral hearings. If a Panel conducts separate oral hearings, the Panel will not decide the appeal until both hearings have concluded.
- ~~(f)~~ (i) Requests for closed hearing. A party in an innocent spouse ~~ease~~ appeal may request that an oral hearing or a portion of the oral hearing be closed to the public, ~~and may request that items in the written record or the oral hearing record, in whole or in part, be sealed.~~ Any such request should be made in writing to OTA, preferably at the time of submitting the appeal, but ~~prior to~~ by the due date of the appellant's response to the notice of oral hearing. ~~The request should~~ A party in an innocent spouse appeal may request that items in the written record or the oral hearing record, in whole or in part, be sealed. Any such request must be made in writing, preferably at the time of submitting the appeal, but by no later than 15 days after the mailing of an Opinion. Such requests must state the grounds upon which ~~it is~~ they are based. The contents of the request will only be used in determining whether to grant the request. OTA will notify the other party that such a request has been made. OTA may identify parts of an oral hearing record that should be sealed. In the event OTA determines that the oral hearing record should be sealed in whole or in part, OTA will notify the parties of its intention to do so.
- (j) Request for Innocent Spouse Relief During Appeal. If, prior to a Panel's decision on an appeal, the Agency considers a request for innocent spouse relief for the first time during the appeal that will affect the disposition of the pending appeal, the Agency must confirm that it previously provided, or made reasonable efforts to provide, notice to the non-requesting spouse of the requesting spouse's request for such relief. Upon receiving such confirmation, OTA will send notice to the parties of the request for innocent spouse relief, and may alter the regular briefing schedule and/or request additional briefing or evidence pursuant to regulation 30304 in order to address the request for innocent spouse relief.
- (k) Grant or Denial of Relief During Appeal. If, prior to a Panel's decision on the appeal, the Agency grants or denies innocent spouse relief, in whole or in part, to a party to the appeal or to a former or current spouse of a party to the appeal with respect to a tax year on appeal, OTA may alter the regular briefing schedule and/or request additional briefing or evidence pursuant to regulation 30304. However, where the Agency grants relief based on a determination under Internal Revenue Code section 6015, Regulation 30316 will apply, rather than this section.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference:

Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345 and 19346, Revenue and Taxation Code.

30313. PROTECTION OF CONFIDENTIAL INFORMATION

Where appropriate or when requested, OTA will take reasonable steps, including redaction ~~where appropriate~~, to ensure that the personal identifying information of one spouse is not provided to the other spouse.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345 and 19346, Revenue and Taxation Code.

30314. OPENING BRIEFS

- (a) **Appealing spouse's opening brief.** The appealing spouse's perfected appeal letter is the appealing spouse's opening brief, unless the appealing spouse requests the opportunity to submit a ~~separate~~ supplemental opening brief. If the appealing spouse requests the opportunity to submit ~~an~~ a supplemental opening brief, ~~it will~~ the appealing spouse must make such a request in its appeal letter and submit the opening brief within 60 days, unless OTA grants additional time for the submission of the opening brief. The appeal letter and any opening brief cannot exceed a total of 30 pages, formatted pursuant to regulation 30302, unless otherwise permitted by OTA.
- (b) **Respondent's opening brief.** The Agency may submit an opening brief no later than 60 days from the date OTA acknowledges receipt of the appealing spouse's opening brief; unless OTA grants additional time for the submission of the opening brief.
- (c) **Non-appealing spouse's opening brief.** The non-appealing spouse may submit an opening brief not later than 60 days from the date of the notification of ~~his or her~~ the non-appealing spouse's right to participate in the appeal. The submission of the non-appealing spouse's opening brief joins the non-appealing spouse as a party to the appeal. A failure by the non-appealing spouse to submit an opening brief within the time provided is a waiver of the non-appealing spouse's right to participate in the appeal, unless the non-appealing spouse establishes that such failure was due to good cause.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345 and 19346, Revenue and Taxation Code.

30315. REPLY BRIEFS

- (a) **Appealing spouse's reply brief.** The appealing spouse may submit a reply brief not later than 30 days from the later of:
- (1) The date OTA acknowledges receipt of the Agency's opening brief;
 - (2) The date OTA acknowledges receipt of the non-appealing spouse's opening brief, if one is submitted; or
 - (3) The date on which OTA notifies the parties that the non-appealing spouse has not filed an opening brief by the deadline or has waived the non-appealing spouse's right to submit an opening brief.
- (b) **Contents of reply brief.** The appealing spouse's reply brief, if submitted, may only address points of disagreement with the Agency's opening brief and the non-appealing spouse's opening brief.
- (c) **Other reply briefs.** The non-appealing spouse may file a reply brief within 30 days from the date OTA acknowledges the appealing spouse's reply brief. The Agency may request permission to file a reply brief. A reply brief may only address points of disagreement with a brief previously submitted by another party.
- (d) **Conclusion of briefing.** The submission of the appealing spouse's reply brief generally will end the briefing process, unless additional briefing or evidence is permitted pursuant to regulation 30304. If neither the non-appealing spouse nor the Agency ~~submit~~submits a reply brief, the briefing schedule is concluded.
- (e) **Additional briefing or evidence.** Additional briefing or evidence may be requested pursuant to regulation 30304.
- (f) **General requirements.** The provisions of regulation 30302 shall apply to any briefing submitted pursuant to this section.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345 and 19346, Revenue and Taxation Code.

30316. CONFORMITY WITH FEDERAL ACTION

If, prior to a Panel's ~~decision~~Opinion on the appeal, any party to an income tax appeal receives notification that the requesting spouse has been granted relief under Internal Revenue Code section 6015, the following procedures will apply in addition to the other procedures set forth in this Article:

- (a) **Federal action.** 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.
- (b) **Notification to other parties.** Regardless of whether the non-requesting spouse has joined the appeal, ~~OTA will notify FTB and~~the Agency must confirm that it provided notice to the non-requesting spouse of the federal grant of innocent spouse relief. Not later than 30 days from the date of the notification, FTB and the non-requesting spouse may provide

“information that indicates that relief should not be granted,” as that phrase is defined in Revenue and Taxation Code section 18533, subdivision (i)(2).

- (c) **Additional briefing or evidence.** If FTB and/or the non-requesting spouse provides information as permitted by subdivision (b) of this regulation, the requesting spouse may submit an additional brief or evidence. If FTB did not provide information as permitted by subdivision (b), it may also submit an additional brief or evidence. Additional briefs or evidence must be submitted not later than 30 days from the date OTA acknowledges receipt of the information described in subdivision (b) of this regulation. Any brief submitted pursuant to this subdivision may only address points of disagreement with the information submitted pursuant to subdivision (b) of this regulation. If this section becomes applicable after the briefing schedule has concluded, then briefing will be reopened for the purpose of complying with this section, and any hearing or decision Opinion will be postponed as appropriate.
- (d) **Briefing schedule.** If a party receives notification that relief has been granted under Internal Revenue Code section 6015, then the briefing schedule will not be concluded until the requirements of this regulation are satisfied. 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 to comply with this regulation and any hearing or decision Opinion will be postponed as appropriate.
- (e) **Limitation.** 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.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections ~~15570.54~~, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 18533, 19006, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345 and 19346, Revenue and Taxation Code.

CHAPTER 5. General Oral Hearing Procedures

ARTICLE 1. SCHEDULING AN ORAL HEARING

30401. PROCESS FOR REQUESTING AN ORAL HEARING

- (a) **Written request required.** Every appellant has the right to an oral hearing before a Panel upon written request, except as otherwise provided by law. An appellant ~~may~~ must request an oral hearing in writing at any time prior to the completion of briefing, unless otherwise permitted by OTA. The request may be included in the appellant’s appeal letter or briefing and should ~~indicate whether~~ include the appellant is requesting a requested location of the oral hearing. OTA has permanent hearing facilities in Sacramento, Los Angeles, ~~or~~ and Fresno counties.

~~(1) At the close of briefing OTA will send the appellant a form to request an oral hearing or a confirmation notice to confirm a request for an oral hearing. The appellant has 15 days from the date of the form to request or confirm a previously made request for an~~

~~oral hearing in writing. If a request for oral hearing is not received by OTA 15 days after the date of the form, the appellant will be deemed to have waived the right to an oral hearing and the matter may be determined on the written record.~~

- ~~(2) Upon receipt of a timely request for oral hearing, OTA will send written acknowledgment of the request to all parties.~~
- ~~(3) An untimely request for oral hearing may be accepted by OTA if it determines that the requesting party's failure to make a timely request was due to good cause.~~
- ~~(4)~~**(1) Confirmation.** OTA may send an appellant a confirmation notice(s) to determine whether the appellant still seeks an oral hearing. If the appellant fails to respond to OTA's confirmation notice by the deadline set in the confirmation notice, the appellant waives the right to have an oral hearing, unless OTA is advised by the appellant that it still wants an oral hearing and OTA determines that there is good cause for appellant's failure to timely respond to the confirmation notice.
- (2) Forfeiture.** A taxpayer forfeits the right to an oral hearing if the taxpayer's presence at an oral hearing may threaten the health or safety of any other person.

(b) Innocent spouse appeals. Both the appealing spouse and the non-appealing spouse, as those terms are defined in regulation 30311, may request an oral hearing pursuant to subdivision (a) of this ~~section~~regulation. The non-appealing spouse may request an oral hearing only if he or she has been joined as a party to the appeal. If such a request is made by either or both spouses, a Panel typically will conduct one oral hearing and invite both spouses to appear. However, a Panel ~~will~~may conduct separate oral hearings if: requested in accordance with regulation 30312, subdivision (g).

- ~~(1) A court order would prohibit the spouses from appearing at the same hearing; or~~
- ~~(2) OTA determines that conducting one oral hearing is likely to be unsafe, disruptive, or unjust.~~

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

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11440.20, ~~15570.54,~~ 15672, 15674, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 6562, 7711, 8852, 18533, 19006, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30402. NOTICE OF ORAL HEARING

- (a) Notice of oral hearing.** If an oral hearing is granted under regulation 30401, OTA will notify the parties that ~~that~~ an oral hearing will be scheduled by sending a notice of oral hearing.
- (b) Time of notice.** Unless all parties agree to waive this notice requirement and agree to a shorter notice period, a notice of oral hearing will be sent to the parties at least 45 days prior to the oral hearing date.
- (c) Contents of notice.** The notice of oral hearing will contain the following information:

- (1) The name of the taxpayer, and OTA's case identification number for the appeal;
- (2) The date, time, and location of the oral hearing;
- (3) The due date of the response to the notice of oral hearing; and
- (4) The date the notice of oral hearing was mailed.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11440.20, 11445.30, 11509, ~~15570.54~~15676.2, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30403. RESPONSE TO NOTICE OF ORAL HEARING

An appellant ~~that~~who wishes to have an oral hearing must provide OTA with a signed and completed response to the notice of oral hearing ~~no~~not later than 15 days from the date the notice of oral hearing was mailed. Each party or its authorized representative must respond to the notice of oral hearing with the following information, and provide a copy to the other party or parties:

- (a) A statement indicating whether the party or party's authorized representatives: (1) will appear at the hearing at the time and place noticed; (2) requests a postponement (and the reasons for any such request); (3) waives the opportunity to appear and be represented at the hearing, in which case the appeal will be decided on the basis of the written record and without an oral hearing; or (4) withdraws the party's appeal (or in the case of the Agency, withdraws its action from which the party appeals).
- (b) Persons participating in oral hearings who ~~speak a language other than English, or are deaf, and~~ require an interpreter are entitled to an interpreter at no charge. The response to the notice of oral hearing should set forth the party's request for an interpreter and state describe the ~~primary language spoken by the person for whom an~~type of interpreter ~~is~~ requested.
- (c) If a person requires special accommodation for other reasons, the response to the notice of oral hearing should describe the ~~person's disability~~reason for a special accommodation and the accommodation sought.
- (d) The name and address of all witnesses who will testify for the party.
- (e) If a witness will be testifying in an expert capacity, a summary of that person's credentials to testify as an expert shall be provided, together with a brief summary of the nature and purpose of the expert's testimony.
- (f) Such other information as OTA may reasonably request in order to facilitate a fair and orderly oral hearing.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11425.10, 11435.15, 11435.20, 11435.25, 11435.55, 11435.60, 11440.20, 11445.30, 11509, 15672, 15674, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104,

19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30404. WAIVER OF ORAL HEARING

- (a) **Failure to respond to notice of oral hearing.** If the party or parties who requested an oral hearing fail to return the response to notice of oral hearing by the deadline stated in the notice of oral hearing, or fail to appear at the oral hearing, OTA will notify the parties in writing that the matter has been removed from the oral hearing calendar and the matter will be submitted to a Panel for a decision on the basis of the written record without an oral hearing, unless OTA determines otherwise pursuant to subdivision (b) below.
- (b) **Good cause exception.** Prior to a Panel ~~decision~~ issuing a written Opinion, OTA, in its discretion, may make exceptions to return the matter to the oral hearing calendar upon a showing of good cause for a party failing to appear or ~~return~~ respond to the hearing notice.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11415.40, 11440.20, 11445.30, 11509, ~~15570.54~~, 15672, 15674, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 3303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

30405. POSTING OF THE ORAL HEARING SCHEDULE ON OTA'S WEBSITE

A matter that has been scheduled for an oral hearing date will be posted on OTA's website at least 15 ~~calendar~~ days before the hearing date.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11440.20, 11445.30, 11509, ~~15570.54~~, 15672, 15674, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

ARTICLE 2. CONDUCTING AN ORAL HEARING

30410. ORAL HEARING RIGHTS

Each party shall have these rights at an oral hearing: to call and question witnesses; to introduce exhibits; and to respond to the evidence against that party. Where a party offers oral testimony as evidence testifies at an oral hearing, ~~the oral evidence~~ such testimony shall be ~~taken only~~ engiven under oath or affirmation. Nothing in this regulation limits the authority and discretion of the ALJ's ALJs to control proceedings as otherwise provided in these Rules for Tax Appeals regulations or permitted by law.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 11513 and 11528, Government Code.

30411. **DISQUALIFICATION OF ADMINISTRATIVE LAW JUDGE FOR CAUSE**

Any party may file a motion to disqualify for cause any ~~of the ALJ's~~ALJ assigned to a Panel, based upon the grounds set forth in Government Code sections 11425.30 to 11425.40. There is no right to peremptory challenges.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Article VI, Section 18, California Constitution; Sections 11425.30, 11425.40, ~~11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70,~~ 15670, 15672, 15674, 15679.2 and 15679.5, Government Code.

30412. **CONCLUDING AN ORAL HEARING**

Upon concluding an oral hearing proceeding, the Panel will determine the submission date when the official oral hearing record will be closed and no further evidence or argument will be received from the parties. For good cause, the Panel may defer its determination of the submission date or reopen the oral hearing record.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 11425.10, 11425.50 ~~and~~, 15672, 15679.5, Government Code; Sections 20, 19047, 19333 and 19345, Revenue and Taxation Code.

30413. **CORRECTING AN ORAL HEARING TRANSCRIPT**

Any party may request that OTA make a correction to the substance of an oral hearing transcript. Notice that such a request has been filed with OTA shall be given to all parties. Any such request must be made in writing in accordance with any instructions or form provided on OTA's website (www.ota.ca.gov) and shall include:

- (a) The name of the requesting party and the OTA case number.
- (b) The date of the oral hearing.
- (c) The page and line number of the proposed correction, and the requested change to be made to the transcript.
- (d) An approximate timestamp to the video or audio recording to reference each alleged error in the transcript.

OTA shall review the request and determine whether the correction will be made. OTA will give notice of its decision to all parties. OTA will not make any non-substantive corrections.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. Reference: Sections 11425.10, 11425.20, 15674, 15676.2, 15679.5, Government Code.

ARTICLE 3. MOTIONS AND PRESENTATION OF EVIDENCE AT AN ORAL HEARING

30420. PRESENTING INFORMATION AND DOCUMENTS AT ORAL HEARING

- (a) **Exhibits.** Each party may provide exhibits and, if a party provides exhibits, the party should include them with their opening briefs and provide a list of its exhibits that includes a brief description of each document exhibit. All exhibits should be labeled as follows: the appellant should use numbers to identify exhibits, and the respondent should use letters to identify exhibits. Unless the parties decide otherwise, the Agency may also prepare joint exhibits containing any exhibits that both parties agree should be admitted. Joint exhibits should be labeled numerically and preceded with the letter “J.”

The parties should exchange all exhibit lists and copies of their exhibits at least no later than 15 calendar days before the hearing, or earlier if directed to do so by OTA, or later upon a showing that the noncomplying party had good cause for a later exchange.

The Agency should must 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.

- (b) **Witness Lists.** Each party must submit to OTA a list of all witnesses, including the appellant (if applicable), who will testify on its behalf at the hearing, including the appellant (if applicable), to OTA and provide a copy to the other party at least 15 calendar days before the hearing or earlier if directed to do so by OTA, unless the party establishes that its failure to comply was due to good cause.

Any witness who will testify as an expert must be clearly identified as such on the witness list, and. At least 15 days prior to the hearing, the party calling that witness shall include in its witness list a brief description of the nature and purpose of each expert witness’s testimony, and provide a summary of each person’s credentials to testify as an expert, and a copy of any relevant reports prepared by the expert witness at least 15 calendar days prior to a hearing.

- ~~(c) **Witness Declarations.** Parties may submit declarations of persons who will not be present at the hearing. Declarations should be signed under penalty of perjury and filed with the party’s brief in accordance with regulation 30303, unless otherwise directed by OTA.~~

~~The opposing party will have 30 calendar days after receipt of a witness declaration to mail or deliver to the other party, with a copy to OTA, written questions for the witness and/or a request for documentation relating to the subject matter of the witness statements, otherwise that party will waive their right to question the witness. The witness should provide a response, signed under penalty of perjury, with a copy to OTA, within 30 calendar days of receiving the questions and/or request. If a party waives their right to question the witness and/or request related documentation, the declaration, if~~

~~introduced in evidence, shall be given the same effect as if the witness had testified orally. If a witness does not provide a timely response to written questions or request for related documentation, the declaration may be introduced into evidence, but may be given limited weight.~~

(c) **Electronic witness testimony:** Upon written request by either party, or upon determination by the Lead ALJ, the Lead ALJ may conduct all or part of an oral hearing by telephone, television, or other electronic means if each participant has an opportunity for meaningful participation in the oral hearing and has access to the exhibits. Any party may, within 30 days of such a request, file an objection with OTA.

(1) In ruling on an objection to electronic witness testimony, the Lead ALJ shall consider:

- (A) whether attending the hearing would create an undue financial burden on the witness;
- (B) whether attending the hearing in person would be an undue physical hardship for the witness;
- (C) the nature of the witness' intended testimony; and
- (D) any other factors which, in fairness, would impact the determination of whether to allow electronic testimony.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 11445.30, 11509, 11511, 11513, 11514, 15672, 15674, 15679, and 15679.5, Government Code; Sections 20, 19047, 19087, 19333 and 19345, Revenue and Taxation Code.

30421. MOTIONS

- (a) All motions made prior to the oral hearing shall be directed to the Lead ALJ or to a Presiding ALJ.
- (b) A motion shall be made with written notice to all parties, unless the motion is made during ~~a~~an oral hearing while on the record.
- (c) The Lead ALJ assigned to a Panel or a Presiding ALJ may decide prehearing motions, order additional briefing on the issue, request additional evidence, or defer a decision until the date of the hearing. The timing and response shall be at the discretion of the Lead ALJ or a Presiding ALJ. For example, although these rules provide for deadlines for submitting exhibits, a Lead ALJ may require submission by an earlier date in a complex case, or may extend the deadline if good cause is shown to warrant a later deadline.
- (d) Except as otherwise provided by statute or regulation, or as permitted by the Lead ALJ or a Presiding ALJ, a motion shall be filed at least 15 days before the start of the oral hearing, and any response to the motion shall be filed by the due date specified by OTA.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 11445.30, 11509, 11511.5, 11512, 15672, 15674, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 19047, 19087, 19333 and 19345, Revenue and Taxation Code.

ARTICLE 4. OBSERVATION OF ORAL HEARINGS

30430. PUBLIC TRANSPARENCY

- (a) Oral hearings before a Panel are open to the public, unless otherwise ordered in accordance with this ~~section~~article. The submission of 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, including CDTFA or FTB. OTA may disclose information pursuant to Revenue and Taxation Code section 19545, the California Public Records Act (Government Code sections 6250 et seq.), part 9.5 of division 3 of title 2 of the Government Code, and other applicable law.
- (b) The waiver described in subdivision (a) does not apply to any ~~person's~~individual's personal information. For the purposes of this section, "personal information" means an individual's address, telephone number, social security number, federal identification number, ~~or other full financial~~ account number, and such information numbers, full names of minor children, or full dates of birth. Personal information of an individual will not be provided to the public in response to a request made pursuant to the California Public Records Act (Government Code sections 6250 et seq.).
- (c) Nothing in this regulation prohibits any party to an OTA hearing, ~~ALJ's~~ALJs, or OTA staff from referring to information described in this regulation in briefs submitted under this division, or otherwise using the information in a manner that will not disclose ~~any person's actual address, telephone number, social security number, federal identification number, or bank account number~~the personal information of an individual at a hearing.
- (d) There is no right to confidentiality as to relevant information that OTA includes in ~~a~~written an Opinion that is required to be published pursuant to Government Code section 15675.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 6254, 11124.1, 11425.10, 11425.20, 11579.5, 15619, 15674 and 15675, Government Code; Sections 20, 7081, 19542, 19543, 19545, 19549, and 20645, Revenue and Taxation Code.

30431. REQUESTS TO CLOSE AN ORAL HEARING FROM PUBLIC OBSERVATION OR SEAL THE RECORD

- (a) An appellant may request that an oral hearing or a portion of the oral hearing be closed to the public, ~~and may request that items in the written record or the oral hearing record, in whole or in part, be sealed.~~ Any such request ~~should~~must be made in writing, preferably at the time of submitting the appeal, but ~~prior to~~by the due date of the appellant's response to the notice of oral hearing. The request ~~should~~must state the grounds upon which it is based and copy all other parties, including the Agency.
- (b) An appellant may request that items in the written record or the oral hearing record, in whole or in part, be sealed. Any such request must be made in writing, preferably at the time of submitting the appeal, but by no later than 15 days after the mailing of an Opinion. The request must state the grounds upon which it is based and copy all other parties, including the Agency.

Note: Authority cited: ~~Section~~Sections 15676.5, 15679 and 15679.5, Government Code.
Reference: Sections 6254, 11124.1, 11425.10, 11425.20, 15619, 15674, 15675 and 15676.5,
Government Code; Sections 20, 7081, 19542, 19543, 19545, 19549, and 20645, Revenue and
Taxation Code.

30432. CLOSING HEARINGS, SEALING THE RECORD, AND REDACTING INFORMATION

(a) OTA shall determine whether to grant a request, pursuant to regulation 30431, to close an oral hearing or seal items that are contained in the written record or the oral hearing record, in whole or in part, or redact information in ~~a decision~~an Opinion or other documents based upon the following objective criteria:

- (1) Whether the appeal involves trade secrets or other confidential research, development, or other information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person. In reaching such a determination, OTA may consider:
- (2) Whether such information is not otherwise publicly available and would ordinarily be considered to be private and sensitive;
- (3) Where a request for a closed hearing is made, whether such information is likely ~~to~~ be disclosed during an oral hearing;
- (4) Where a request for a closed hearing is made, whether any risk of disclosure of such information can be mitigated by instructing the parties to limit the content of their presentations at the oral hearing, or by only closing a portion of the hearing, testimony or evidence.

~~(4) 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.~~

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

(6) Where a request for a closed hearing is made, to ensure the ability of the party to be represented by the person at the Certified Public Accountant (CPA) firm of their choice, in the circumstances of that particular case.

(A) A closed hearing shall generally be granted when the taxpayer provides a statement from the CPA firm and the taxpayer, signed under penalty of perjury by both parties, and affirming:

1. That the taxpayer is a current attest client of the CPA firm, or that the taxpayer is an affiliate of a current attest client of the CPA firm,
2. That the taxpayer wants to be represented by the CPA firm at the oral hearing before OTA,
3. That the taxpayer wants a closed hearing, and
4. The CPA firm cannot represent the client unless the oral hearing is closed.

(b) When a request for a closed hearing is granted pursuant to subdivision (a), the reason for the closed hearing will be noted on the agenda. The names of the taxpayer and the representatives will be listed on the hearing agenda. The matter will be called and then the hearing will be closed to the public. Only the parties, witnesses, and OTA staff will be present at the closed hearing. The hearing agenda and Opinion will be posted on OTA's website.

~~(b)~~(c) Any request to seal records will be applied to as narrow a set of records as required under the circumstances.

~~(e)~~(d) No later than 15 days after the mailing of ~~a decision~~an Opinion, a party may mail a written request to redact information in the ~~decision~~Opinion or in other documents filed with OTA.

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

Note: Authority cited: ~~Section~~Sections 15676.5, 15679 and 15679.5, Government Code.
Reference: Sections 5095, Business and Professions Code; Sections 6254, 11124.1, 11425.10, 11425.20, 15619, 15674, 15675 ~~and~~, 15676, 15676.5, 15679.5, Government Code; Sections 20, 7081, 19542, 19545 and 20645, Revenue and Taxation Code.

30433. **RULING UPON A REQUEST TO CLOSE AN ORAL HEARING, SEAL RECORDS, OR REDACT INFORMATION**

OTA shall issue a written notice granting or denying any request provided in regulation 30432.

Note: Authority cited: ~~Section~~Sections 15676.5, 15679 and 15679.5, Government Code.
Reference: Sections 6254, 11124.1, 11425.20, 15619, 15674 and 15676.5, Government Code; Sections 20, 7081, 19542, 19545 and 20645, Revenue and Taxation Code.

CHAPTER 6. ~~Decision by Written Opinion~~OTA Opinions

30501. **PUBLICATION OF ~~A WRITTEN DECISION~~AN OPINION**

- (a) **Publication of Opinions.** OTA shall publish ~~a written~~an Opinion for each appeal decided by a Panel. The Panel that decides an appeal will issue ~~a written~~an Opinion explaining its reasons for granting or denying the appeal, in whole or in part.
- (b) **Contents of ~~opinion~~Opinions.** The written Opinion ~~will~~may include findings of fact, a statement of the legal issue(s) presented, applicable law, analysis, the holding of the Panel, and the names and signatures of the adopting ~~ALJ's~~ALJ(s) and any ALJ(s) concurring in or dissenting from the Panel's Opinion.
- (c) **Concurring Delegation of signature authority.** An ALJ may authorize a designee to sign an Opinion on the ALJs behalf. Delegation of signature authority does not constitute a change in the Panel, and ~~dissenting opinions~~is for the purpose of avoiding unnecessary delay in publishing an Opinion.

- ~~(e)~~ **(d) Concurrences and dissents.** To issue ~~a decision~~ an Opinion on an appeal, at least two of the three Panel members must concur in the holding of each issue and the final disposition of each holding set forth in the Opinion. A concurring or dissenting member may provide a ~~separate~~ written opinion statement explaining the basis for the member's concurrence or dissent.
- ~~(d)~~ **(e) Timeframe for publication.** Within 100 days after the date the Panel's ~~decision~~ opinion becomes final, OTA will publish the Panel's opinion as OTA's ~~written decision~~ Opinion for the appeal on OTA's website.
- ~~(e)~~ **(f) Numbering.** ~~Posted OTA decisions~~ OTA's posted Opinions will be given a ~~decision~~ an Opinion number using the following format: YEAR-OTA-NUMBER. The number is the sequential number of the appeal in that year. Decisions Opinions posted as precedential will have a "P" at the end of the sequential number of the appeal. For example, if the second Opinion published in 2018 were a precedential ~~decision~~ Opinion, its ~~decision~~ Opinion number would be "2018-OTA-002P."
- ~~(f)~~ **(g) Sealing the record or redaction.** An appellant may request ~~to~~ that OTA seal the record in an appeal or redact information in ~~a decision~~ an Opinion as described in regulation 30432.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11425.10, 11425.50, ~~15570.54~~, 15672, 15674, 15675 and 15679, Government Code; Sections 20, 40, 8852, 8853, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085 and 60354, Revenue and Taxation Code.

30502. CITATION OF OTA OPINIONS AND PRECEDENTIAL EFFECT

- (a) **Requesting precedential status.** Any person may propose that an Opinion be given precedential effect. ~~Parties may communicate, in whole or in part.~~ Such a proposal may be communicated to an email address listed on OTA's website.
- (b) **Nonprecedential opinions.** A published ~~written~~ Opinion of OTA is not precedential in any other appeal before OTA unless OTA designates the published ~~written~~ Opinion as precedential in accordance with Government Code section 11425.60.
- (c) **Determination of precedential status.** OTA will decide whether an Opinion will be precedential. OTA may consider the following factors in determining whether to designate an Opinion as precedential:
- (1) Whether the Opinion would establish a new interpretation of law, apply an existing rule to a set of facts significantly different from those stated in published Opinions, or modify or repeal an existing interpretation of law;
 - (2) Whether the Opinion would resolve an apparent conflict in the law;
 - (3) Whether the Opinion would involve a legal issue of continuing public interest;
 - (4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or

judicial history of a provision of a constitution, statute, or other written law; and
(5) Any other basis OTA determines justifies publishing a Panel's ~~decision~~Opinion as a ~~precedential opinion~~.

(d) **Review of precedential status.** The Chief Counsel of OTA or his or her designee shall determine if a ~~written~~an Opinion should be precedential in consultation with the ~~Presiding ALJ's~~ALJs and staff attorneys. The Director of OTA or his or her designee can reject a ~~decision~~determination to make a ~~written~~an Opinion precedential.

- (1) The Director of OTA shall not be involved in deciding any appeal.
- (2) The Director shall only have the authority to accept or reject the determination that a ~~decision~~an Opinion shall be precedential.

(e) **Posting of precedential ~~decisions~~Opinions.** Precedential ~~decisions~~Opinions shall be posted on the website, and when first posted will be marked as "Pending Precedential." Thirty days after being posted as "Pending Precedential," the ~~decision~~Opinion automatically becomes Precedential unless noted as "Nonprecedential" on the website.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11425.10, 11425.50, 11425.60, ~~15570.54~~, 15672, 15674, 15675, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085 and 60354, Revenue and Taxation Code.

Sections 15679 and 15679.5, Government Code.

30503. WITHDRAWAL OF PRECEDENTIAL OTA OPINIONS

~~In the written opinion for an appeal before OTA,~~ OTA may withdraw, in whole or in part, the precedential status of an Opinion previously designated as precedential. OTA shall explain why the precedential status is being removed. Removing the precedential status of an Opinion, in whole or part, does not nullify the holding in that Opinion. When OTA withdraws the precedential status of a previously issued Opinion, the notation of the precedential status will be removed from the Opinion ~~and published as an overturned decision on OTA's website.~~

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11425.10, 11425.50, 11425.60, ~~15570.54~~, 15672, 15674, 15675, 15676.2, 15679, and 15679.5, Government Code; Sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085 and 60354, Revenue and Taxation Code.

30504. PRECEDENTIAL ~~DECISIONS~~OPINIONS OF THE BOARD OF EQUALIZATION

A precedential opinion of the State Board of Equalization that was adopted prior to January 1, 2018, may be cited as precedential authority to OTA unless ~~a Panel~~OTA removes, in whole or in part, the precedential status of that opinion ~~as part of a written opinion that the Panel issues~~ pursuant to this chapter. Where OTA removes the precedential status of an opinion of the State Board of Equalization, it will publish on its website a notation that the previously precedential State Board of Equalization opinion is no longer precedential, ~~along with information identifying OTA's opinion removing the precedential status.~~

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11425.10, 11425.50, 11425.60, ~~15570.54~~, 15672, 15674, 15675, 15679, and 15679.5, Government Code; Sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085 and 60354, Revenue and Taxation Code.

30505. FINALITY OF ~~WRITTEN~~ OPINIONS

- (a) **Date ~~decision~~Opinion becomes final.** A Panel will decide the appeal by issuing ~~a written~~an Opinion, and that ~~decision~~Opinion becomes final 30 days from the date the Panel issues its ~~written~~ Opinion, unless within that 30-day period, a party to the appeal files a petition for rehearing. A petition for rehearing may be submitted to seek reconsideration of any ~~written~~ Opinion issued by a Panel, regardless of whether an oral hearing was held. A Panel issues its ~~written~~ Opinion on the date the ~~written~~ Opinion is mailed to the parties at the address provided by the parties to OTA, and not the date that notice of the Panel's ~~written~~ Opinion is received by a party.
- (b) **Correction of errors.** If OTA discovers a typographical or non-~~substantial~~substantive error in ~~a decision~~an Opinion that has been issued, OTA may correct such errors in the published decision and include an addendum identifying such corrections. Such corrections do not affect the date the ~~decision~~Opinion becomes final. For purposes of this section, an error is typographical or non-~~substantial~~substantive if it does not change, in whole or in part, the holding of the case.
- ~~(c) **Severing an appeal.** A Panel may sever an issue or issues from an appeal for separate consideration and issue an opinion on the severed issue or issues prior to deciding the appeal. In situations where this occurs, the Panel's decision will not become final on the severed issues until the Panel's decision resolving the entire appeal becomes final.~~

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11425.10, 11425.50, ~~15570.54~~, 15672, 15674, 15675, 15679, and 15679.5, Government Code. ~~Reference: ;~~ Sections 20, 40, 8852, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085 and 60354, Revenue and Taxation Code.

30506. REVISING AN OPINION AFTER ISSUANCE

- (a) **Motion to revise.** A party may file a timely motion to revise an Opinion based on a non-substantive error or errors in an Opinion that has been issued by OTA. For purposes of this section, an error is non-substantive if it does not change, in whole or in part, a holding of the case. A party who files a motion to revise an Opinion concedes the holding(s) of the Opinion unless a timely petition for rehearing is filed with regard to such holding(s).
- (b) **Time to file.** A motion to revise an Opinion is timely if it is mailed within the 30-day period described in Regulation 30505, subdivision (a). The filing party should obtain and retain proof of timely mailing. OTA will provide all parties with notification of its receipt of a motion to revise the Opinion.
- (c) **Revisions.** In its discretion, OTA may reject the motion, or OTA may revise the Opinion to make non-substantive changes. If OTA elects to revise the Opinion, OTA will prepare a proposed revised Opinion and will establish a schedule to allow the parties an opportunity to address the proposed revisions. OTA will then issue a revised Opinion that will replace the previously issued Opinion. Any revisions made will not affect the date on which the original Opinion became final.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11425.10, 11425.50, 15672, 15674, 15675, 15679 and 15679.5, Government Code; Sections 20, 40, 8852, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19112, 19116, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085 and 60354, Revenue and Taxation Code.

CHAPTER 7. Petitions for Rehearing

30601. DEFINITIONS

For purposes of this chapter only, the “filing party” is the party who files a petition for rehearing, and the “non-filing party” is the party who does not submit a petition for rehearing. the “appellant” is the party who filed the underlying appeal with OTA based on an Agency’s action or failure to act (as described in regulation 30103), and the respondent is the party whose decision or action is subject to an appeal before OTA.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Section 15672, Government Code; Sections 19048, 19334 and 19346, Revenue and Taxation Code.

30602. TIME FOR FILING A PETITION FOR REHEARING

A petition for rehearing is timely if it is mailed within the 30-day period described in regulation 30505, subdivision (a). The filing party should obtain and retain proof of timely mailing. OTA will provide all parties with notification of its receipt of a petition for rehearing. If OTA finds that a timely petition for rehearing does not satisfy the requirements of regulation 30603, its

notification of receipt will explain the deficiency and will allow the party who submitted the petition 30 days to cure the deficiency and satisfy the requirements of regulation 30603. If, by the end of that additional 30-day period, the filing party has ~~still~~ not provided sufficient information to satisfy the requirements of regulation 30603, OTA will reject the petition and mail written notification to the parties of that rejection unless OTA determines that the petition substantially complies with regulation 30603, or that other good cause exists to accept the petition for rehearing.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: ~~Section~~Sections 15672 and 15679.5, Government Code; Sections 19048, 19334 and 19346, Revenue and Taxation Code.

30602.1. GENERAL BRIEFING FOR PETITIONS FOR REHEARING

- (a) General application.** Regulation 30302 applies to the administration of this section and to any documents submitted under this section.
- (b) Briefing Schedule.** The following briefing schedule applies when a party files a perfected petition for rehearing:
 - (1) Filing party's petition for rehearing.** Unless otherwise directed by OTA, the filing party will not be permitted to submit any additional briefing or evidence after the submission of a perfected petition for rehearing.
 - (2) Non-filing party's reply brief.** Not later than 30 days from the date on which OTA acknowledges receipt of a perfected petition for rehearing, the non-filing party may file a reply brief to the petition for rehearing.
 - (3) More than one non-filing party:** If there is more than one filing party, then each party may file a reply brief to each petition for rehearing under the requirements of paragraph (2).
 - (4) Conclusion of briefing:** After OTA's receipt of the reply brief, the briefing process is concluded unless OTA requests additional briefing or evidence.

Note: Authority: Sections 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674, 15679 and 15679.5, Government Code; Sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19112, 19116, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346 and 20645, Revenue and Taxation Code.

30603. FORM AND CONTENT OF THE PETITION FOR REHEARING

Every petition for rehearing must be in writing, must meet the formatting requirements of regulation 30302, subdivision (d), and must contain the following:

- (a) The name or names of the party or parties submitting the petition for rehearing;
- (b) The address and telephone number of the filing party and, if applicable, the filing party's

- authorized representative;
- (c) Any portion of the amount at issue conceded by the filing party;
- (d) The signature of each filing party or the signature of an authorized representative made on behalf of each filing party; ~~and~~
- (e) Facts and argument explaining why the filing party believes there are grounds for rehearing-; ~~and~~
- (f) Any relevant evidence to support the facts and argument explaining why the filing party believes there are grounds for a rehearing.

Note: Authority cited: ~~Section~~Sections 15679 ~~and 15679.5~~, Government Code. Reference: ~~Section~~Sections 15672, 15679 and 15679.5, Government Code; Sections 19048, 19334 and 19346, Revenue and Taxation Code.

30604. **GROUND FOR REHEARING**

- (a) A rehearing may be granted where one of the following grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing:
 - (1) an irregularity in the appeal proceedings which occurred prior to issuance of the ~~written~~ Opinion and prevented fair consideration of the appeal;
 - (2) an accident or surprise which occurred during the appeal proceedings and prior to the issuance of the ~~written~~ Opinion, which ordinary caution could not have prevented;
 - (3) newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to issuance of the ~~written~~ Opinion;
 - (4) insufficient evidence to justify the ~~written opinion or~~ Opinion; the Opinion is contrary to law; or
 - (4)(5) an error in law in the appeals hearing or proceeding.

(b) For purposes of this section, the “contrary to law” standard of review shall involve a review of the Opinion for consistency with the law. A procedural “error in law” shall mean an error in the appeals hearing or proceeding, other than a legal error in the Opinion. For example, the erroneous admission of evidence subject to attorney-client privilege, over the objection of the party petitioning for a rehearing, might be a basis for a rehearing due to an error in law if the error was material.

Note: Authority cited: ~~Section~~Sections 15679 ~~and 15679.5~~, Government Code. Reference: ~~Section~~Sections 15672 ~~and 15679.5~~, Government Code; Section 657, Code of Civil Procedure; Sections 19048, 19334 and 19346; Revenue and Taxation Code.

30605. **NUMBER OF PETITIONS FOR REHEARING**

A party may not submit more than one petition for rehearing regarding the same Opinion. In the case of a bifurcated or severed appeal-, a party may submit a petition for rehearing

with regard to an Opinion issued on any bifurcated or severed matter. A party may not submit a petition for rehearing in response to ~~a decision~~an Opinion on the petition for rehearing or a ~~Panel's~~Panel's issuance of ~~a written opinion after a~~an Opinion on rehearing, even if the underlying petition for rehearing was filed by the other party. If OTA receives a submission intended as such a petition for rehearing, OTA must reject the submission.

Note: Sections 15679 and 15679.5, Government Code. Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Section 15672, Government Code; Sections 19048, 19334 and 19346, Revenue and Taxation Code.

30606. DECISIONS ON PETITIONS FOR REHEARING

- (a) ~~A “Decision~~**Panel on Petition for Rehearing” is.** A panel deciding upon a petition for rehearing shall consist of a presiding ALJ, an ALJ who was not on the original Panel, and the Lead ALJ who authored the written decision~~Opinion~~Opinion that is subject to the petition, where at all possible. The presiding ALJ or Chief Counsel may delegate their role on the panel to an ALJ who was not on the original panel.
- (b) **Opinion on Petition for Rehearing.** An “Opinion on Petition for Rehearing” is an Opinion that provides the basis of a Panel’s decision to grant or deny a rehearing. If the Opinion on Petition for Rehearing holds that a rehearing should be granted, then the initial decision~~Opinion~~Opinion in the appeal will be held in abeyance pending resolution of the rehearing.
- ~~(a)~~(c) **Scope of rehearing.** A Panel, in its discretion, may limit the scope of the rehearing. A Panel~~OTA~~OTA may also modify the prior decision~~Opinion~~Opinion based on the written record, including the petition for rehearing and the briefing submitted with it, to make a typographical or non-~~substantial~~substantive change without granting the petition for rehearing. For purposes of this section, an error is typographical or non-~~substantial~~substantive if it does not change, in whole or in part, the holding of the ~~case~~Opinion.
- (d) **Finality of Opinion.** If a Panel denies a petition for rehearing, then OTA’s initial decision~~underlying Opinion~~Opinion in the appeal, and the Panel’s decision to deny the petition, becomes~~Opinion on Petition for Rehearing, become~~Opinion on Petition for Rehearing, become final 30 days from the date on which the Panel issued its ~~decision~~Opinion on ~~the~~ Petition for Rehearing.
- ~~(b)~~(e) **Oral Hearing.** The rules for requesting an oral hearing as provided in regulations 30401 and 30209 shall apply on rehearing. If an oral hearing has not been requested, or it has been waived, the matter will be decided based on written record.

Note: Authority ~~cited:~~; Section 15679, Government Code. Reference: ~~Section~~Sections 15672, 15674, 15675, Government Code; Sections 19048, 19334 ~~and,~~ 19346, Revenue and Taxation Code

30607. BRIEFING ON A GRANTED REHEARING

- (a) **General application.** Regulation 30302 applies to the administration of this

section and to any documents submitted under this section.

~~(a)~~ **Briefing schedule; single petition granted.** ~~If~~ After a Panel grants a single petition for rehearing, the ~~following~~rehearing briefing schedule ~~applies~~:

~~(b)~~ Filing party's will follow the general briefing schedule outlined in regulation 30303, beginning with the appellant's opening brief.

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

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

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

~~(3)~~ Appellant's reply brief. The appellant may submit a reply brief not later than 30 days from the date on which OTA acknowledges receipt of the respondent's reply brief.

~~(b)~~(c) **Briefing schedule; multiple petitions granted.** If there is more than one filing party and the Panel grants more than one petition for rehearing, the following briefing schedule applies:

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

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

~~Additional briefing. On the request of a party, or upon OTA's initiative, OTA may permit or require additional briefs in connection with a petition for rehearing.~~

~~(e)~~(d) **Alternate briefing schedule.** Notwithstanding subdivisions (b) and (c), OTA may order any briefing schedule that it deems appropriate ~~on~~for a rehearing. Either party may submit a motion to change the briefing order based on the outcome of the petition for rehearing.

~~(e)~~ Additional briefing or evidence. On the request of a party, or upon OTA's initiative, OTA may permit or require additional briefs or additional evidence in connection with a petition for rehearing.

~~(f)~~ Additional briefing or evidence. On the request of a party, or upon OTA's initiative, OTA may permit or require additional briefs or additional evidence in connection with a petition for rehearing.

~~(e)~~(g) **Extensions.** The parties may request extensions of time as allowed for in subdivision (c) of regulation 30302.

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Section 15672, Government Code; Sections 19048, 19334 and 19346, Revenue and Taxation

Code.

CHAPTER 8. Taxpayer Bill of Rights Reimbursement Claims

TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS

30701. JURISDICTION

This chapter applies to reimbursement claims under any of the following programs:

- ~~(a)~~ Corporate Personal Income Tax, Administration of Franchise and Income Tax
- ~~(b)~~ (a) Personal Income and Bank, and Corporation Income Tax (Revenue and Taxation Code sections 17001–18181, 18401–19802, and 23001–25141.)
- ~~(c)~~ (b) Business Taxes and Fees:

- (1) Childhood Lead Poisoning Prevention Fee (Health and Safety Code section 105310; Revenue and Taxation Code sections 43001–43651)
- (2) Cigarette and Tobacco Products Tax (California Constitution Article XIII B, section 12; Revenue and Taxation Code sections 30001–~~30481~~30483)
- (3) Diesel Fuel Tax (Revenue and Taxation Code sections 60001–60709)
- (4) Emergency Telephone Users Surcharge (Revenue and Taxation Code sections 41001–41176)
- (5) Energy Resources Surcharge (Revenue and Taxation Code sections 40001–40216)
- (6) Fees collected pursuant to the Fee Collection Procedures Law, including those fees specified in California Code of Regulations, title 18, section 3500. (Revenue and Taxation Code sections 55301–55337)
- (7) Hazardous Substances Tax (Revenue and Taxation Code sections 43001–43651)
- (8) Integrated Waste Management Fee (Revenue and Taxation Code sections 45001–45984)
- (9) Motor Vehicle Fuel Taxes (California Constitution Article XIX, Sections 1–9; Revenue and Taxation Code sections 7301–8526)
- (10) Occupational Lead Poisoning Prevention Fee (Health and Safety Code section 105190; Revenue and Taxation Code sections 43001–43651)
- (11) Oil Spill Response, Prevention and Administration Fees (Revenue and Taxation Code sections 46001–46751)
- (12) Sales and Use Tax (including State-administered local sales, transactions and use taxes) (Revenue and Taxation Code sections 6001–7279.6)
- (13) Underground Storage Tank Maintenance Fee (Revenue and Taxation Code sections 50101–50162)
- (14) Use Fuel Tax Law (Revenue and Taxation Code sections 8601–9355)

Note: Authority cited: ~~Section~~Sections 15679 and 15679.5, Government Code. Reference: Sections 15670, 15672, 15674 ~~and~~, 15676 and 15679.5, Government Code; Sections 20, 7091, 7156, 8269, 9269, ~~18533, 19043.5~~, 19047, 19085, ~~19104~~, 19333, 19345, ~~20645~~, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

30702. APPEALS FROM ACTIONS OF ~~FTB~~ AGENCY

For reimbursement claims from actions of FTB in applying Part 10 or 11 of the Revenue and Taxation Code, or from actions of CDTFAs involving a tax or fee program administered by CDTFAs and specified in regulation 30701, only those fees and expenses incurred after the date of a notice of determination, a notice of proposed deficiency assessment ~~or~~, jeopardy assessment, or a denial of a claim for refund, are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before OTA do not include fees and expenses incurred in cases where an appeal has been submitted, but is resolved before the submission of ~~FTB's~~ the agency's opening brief. Fees and expenses are reimbursable only if a Panel issues a finding in writing that the action taken by ~~FTB~~ the Agency was unreasonable. To determine whether ~~FTB~~ the Agency has been unreasonable, a Panel will consider whether ~~FTB~~ the Agency has established that its position was substantially justified. An appellant whose appeal was not granted does not have an eligible claim.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections 15670, 15672, 15674 and, 15676, and 15679.5, Government Code; Sections 20, 7091, 7156, 8269, 9269, 18533, 19043.5, 19047, 19085, 19104, 19324, 19331, 19333, 19334, 19343, 19345, 19346, 20645 and 21013, Revenue and Taxation Code.

~~30703. APPEALS FROM CDTFAs~~

- ~~(a) **Limitation on reimbursement claims.** For reimbursement claims involving a tax or fee program administered by CDTFAs and specified in regulation 30701, 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.~~
- ~~(b) **Limitations on fees and expenses.** Fees and expenses are “related to a hearing before OTA” for purposes of the applicable statute authorizing reimbursement only if all of the following conditions are satisfied:~~
- ~~(1) The claimant had previously submitted an appeal to OTA for review of an unfavorable decision issued by CDTFAs’s Appeals Bureau;~~
 - ~~(2) a Panel granted, in whole or in part, the appeal in favor of the taxpayer; and~~
 - ~~(3) a Panel, after considering whether CDTFAs has established that its position was substantially justified, issues a finding in writing that the action taken by CDTFAs was unreasonable.~~

~~Note: Authority cited: Section 15679, Government Code. Reference: Sections 15670, 15674 and 15676, Government Code; Sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.~~

~~30704. DETERMINATION OF REASONABLE FEES~~

- ~~(a) **Appeals from FTB.** With respect to reimbursement claims from actions of FTB,~~

~~reasonable fees for professional representation will be as provided in Revenue and Taxation Code section 19717, subdivision (c)(1)(B)(iii).~~

- ~~(b) **Appeals from CDTFA.** With respect to reimbursement claims in business tax and fee appeals from CDTFA, reasonable fees for professional representation will be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).~~

~~Note: Authority cited: Section 15679, Government Code. Reference: Sections 15672 and 15674, Government Code; Sections 7091, 7156, 8269, 9269, 19717, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.~~

30705. CLAIM PROCEDURE

- ~~(a)~~ (a) A reimbursement claim must be submitted to OTA ~~–~~ in writing.

- (1) **Appeals from actions of FTB.** The claim cannot be submitted before FTB has filed an opening brief. The claim must be submitted ~~after the decision~~ no later than one year after the appeal is withdrawn, dismissed, or after the Opinion of the Panel becomes final.
- (2) **Appeals from actions of CDTFA.** The claim must be submitted after the Opinion of the Panel becomes final and ~~not~~ no later than one year after the date the ~~decision~~ Opinion became final.

- (b) A reimbursement claim must include the following information:

- (1) The claimant's full name, address, and phone number;
- (2) The OTA case identification number;
- (3) The taxable period(s) at issue;
- (4) An explanation of the fees and expenses being claimed, and supporting documents;
- (5) The signature of the claimant(s) or representative(s); and
- (6) The grounds for the claim for reimbursement.

- ~~(a)~~ (c) OTA may grant extensions of time to submit a completed claim upon a showing of good cause, if the written request is submitted to OTA prior to the ~~scheduled~~ due date ~~of~~ to file the claim. If the claim is incomplete, the claimant will be granted 30 additional days to complete the claim. Failure to submit a complete claim within the time granted will result in dismissal of the claim by OTA.

Note: Authority cited: ~~Section~~ Sections 15679 and 15679.5, Government Code. Reference: Sections ~~11440.20, 15670, 15674 and 15672,~~ 15676.2, 15676.5, 15679 and 15679.5, Government Code; Sections ~~20, 7091, 7156, 8269, 9269, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630,~~ Revenue and Taxation Code.

30706. DISMISSAL; AGENCY STATEMENT; RESPONSES; ORAL HEARINGS

The following provisions shall apply to a reimbursement claim submitted to OTA:

- (a) **Dismissal of ineligible claim.** OTA ~~must~~will dismiss a claim if a Panel previously disposed of the appeal without granting the appeal in whole or in part.
- (b) **Agency statement.** Within 60 days of OTA's acknowledgement of a completed claim, the Agency may submit a statement in response to the claim. OTA may grant extensions of time to submit the statement upon a showing of good cause, if a written request is submitted with OTA before the scheduled due date of the statement.
- (c) **Claimant response.** OTA shall send a copy of the Agency statement to the claimant, who will be given the opportunity to respond within 60 days of mailing of the statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. OTA may grant extensions of time to submit a response upon a showing of good cause if the written request for extension is submitted ~~with~~to OTA before the scheduled due date of the response. If the claimant submits new information or documentation in the response, the Agency may be given an additional 30 days to respond to the new material.
- (d) **Oral hearing.** After the submission of documents described in this ~~section~~regulation, the claim will be scheduled for oral hearing, if an oral hearing is timely requested pursuant to regulation 30401. The claimant and the Agency will receive notice of the hearing at least 45 days prior to the scheduled date and time. Oral hearing may be waived by the claimant, in which case the matter will be submitted for ~~decision~~Opinion on the written record.

Note: Authority cited: ~~Section~~Sections 15679 ~~and~~15679.5, Government Code. Reference: Sections 11440.20, ~~15670, 15674 and~~, 15676 ~~and~~15679.5, Government Code; Sections 20, 7091, 7156, 8269, 9269, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

30707. NOTICE OF ~~DECISION~~OPINION

OTA will send written notice of the ~~decision~~Opinion to the claimant and to the Agency. The ~~decision~~Opinion on the claim is final 30 days from the date it is mailed. OTA will not accept a petition for rehearing of a claim ~~made~~submitted under this chapter.

Note: Authority cited: ~~Section~~Sections 15679 ~~and~~15679.5, Government Code. Reference: Sections 11440.20 ~~and~~, 15674 ~~and~~15679.5, Government Code; Sections 7091, 7156, 8269, 9269, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.