



State of California Office of Tax Appeals

Appeals Procedures

This publication is intended to provide you with important information regarding your right to appeal to the Office of Tax Appeals tax and fee determinations made by the Franchise Tax Board and the California Department of Tax and Fee Administration.

INTRODUCTION

The Office of Tax Appeals (OTA) is an independent office established in 2017 to hear and decide tax disputes between taxpayers and the state's tax agencies. Taxpayers who disagree with a determination by the Franchise Tax Board (FTB) or the California Department of Tax and Fee Administration (CDTFA) may file an appeal with OTA, and have the opportunity to provide supporting documentation, file a brief, and present oral arguments in support of their position. Each appeal before OTA is considered by a panel of three Administrative Law Judges (ALJs) who are experts in tax law. Appeals in the Small Case Program (SCP) are assigned to a single ALJ. Following OTA's consideration of the evidence in an appeal, it will issue a written decision. Taxpayers who do not agree with OTA's decision have 30 days to file a petition for rehearing.

TAX APPEALS PROCEDURES

In general, you may appeal an action taken by FTB on a proposed assessment or claim for refund of an income tax matter, or a decision issued by CDTFA's Appeals Bureau on a business tax matter. If you file a protest or claim for refund with FTB, FTB will finalize its decision on the protest by issuing a Notice of Action (NOA). In the case of CDTFA, it will issue a Decision to resolve a petition for redetermination or a claim for refund. If you do not agree with FTB's NOA or CDTFA's Decision, you may file an appeal with OTA. You may also appeal a claim for refund that has not been acted on for six or more months by FTB.

FILING DEADLINE

Generally, you must wait for the NOA or Decision to be issued before you can file an appeal with OTA. Once the NOA or Decision has been issued, you will have a limited amount of time to file an appeal. In most situations, your appeal to OTA must be filed within 30 days after CDTFA issues a Decision, 30 days after FTB issues an NOA on a protest, or 90 days after FTB denies a claim for refund. In addition, if FTB fails to act upon a claim for refund submitted by a taxpayer

within six months, you may file an appeal with OTA at any time before FTB acts on the refund claim. If you do not appeal to OTA before the deadline, you will lose your right to file an appeal with OTA.

CONTENT OF YOUR APPEAL

Appeals to OTA must be made in writing, using physical documentation or through OTA's web portal (OTAP). Your appeal does not need to use formal legal terminology but can be in the form of a letter using informal language. An appeal from FTB must be in writing and contain the following:

- Your name;
- Your social security number or taxpayer identification number, whichever is applicable;
- Your address and telephone number and, if applicable, the address and telephone number of your authorized representative;
- Your email address and the email address of your authorized representative, if available;
- A copy of the notice from which the appeal is made. In cases involving FTB's failure to act on a claim for refund, a request for innocent spouse relief, or a request for interest abatement, you must provide a copy of the claim or request;
- The year or years involved;
- The facts involved and specific reasons for your position, including any legal authorities on which you rely;
- The amount involved, or an estimate of the amount involved, if known;
- Any portion of the amount at issue conceded by you; and
- Your signature and, if applicable, the signature of your authorized representative submitting the appeal.

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

- Your name;
- Your address and telephone number and, if applicable, the address and telephone number of your authorized representative;

- Your email address and the email address of your authorized representative, if available;
- The case identification number (case ID) and account number assigned to you by CDTFA;
- The facts involved and specific reasons for your position, including any legal authorities on which you rely;
- The amount involved, or an estimate of the amount involved, if known;
- Any portion of the amount at issue conceded by you;
- The date of the CDTFA Appeals Bureau Decision from which the appeal is requested;
- A copy of CDTFA Appeals Bureau's Decision from which the appeal is being made; and
- Your signature and, if applicable, the signature of your authorized representative submitting your appeal.

FILING YOUR APPEAL

Please file your appeal with OTA through the Office of Tax Appeals Portal (OTAP), which can be accessed at [OTAP](#) and at appeal.ota.ca.gov. OTAP is a web-based tool that has been developed to provide electronic communication between OTA, taxpayers and their representatives, and the taxing agencies during the appeal process. OTAP provides a platform where you can:

- Contact your analyst to request information about an active appeal;
- Access the real-time status of your appeal;
- Review correspondence from OTA;
- Submit requests, such as a request for an extension;
- Submit briefing materials;
- Review materials and correspondence provided by the state's taxing agency; and
- Download appeal documents and correspondence.

If you previously filed your appeal outside of OTAP but would like to utilize the OTAP platform, you can retrieve your existing appeal by creating an account at [OTAP](#) and at appeal.ota.ca.gov and logging into the OTAP platform. On the

taxpayer's homepage, you can retrieve your appeal by clicking on the "Next" button in the "Retrieve My Appeal" section, located on the right side of the page. There you will be asked to provide your OTA Case Number, Taxpayer Name, and Appeal Claim ID. You must also check the box to declare that you are a person authorized to view the account. If the information that you entered is correct, the system will forward your request to OTA to review and process. If you do not have one or more of these informational items, please contact OTA to obtain this information. Once completed, you will receive an email informing you that you have successfully retrieved your appeal.

Alternatively, you can file a new appeal by either sending your completed OTA Request for Appeal Form or a written request for an appeal by the following methods:

MAIL: State of California Office of Tax Appeals
P.O. Box 989880
West Sacramento, CA 95798-9880

FAX: (916) 492-2089

BRIEFING PROCESS

The briefing process is the time during which taxpayers and the tax agencies provide arguments and evidence in the appeal. Your initial appeal letter or completed form serves as your opening 'brief.' After you file your appeal, staff from OTA Case Management Division (CMD) will send you an acknowledgement letter confirming receipt of your appeal and indicating that FTB or CDTFA will have 60 days to submit its opening brief. If your appeal letter is incomplete and more information is needed for your appeal, CMD staff will request that you provide within 30 days additional information to complete your appeal, before requiring FTB or CDTFA to submit an opening brief. If you do not provide the additional information requested, your appeal could be dismissed. OTA's optional Small Case Program (SCP) is available for certain appeals with amounts in dispute below a specified threshold. If your appeal is

eligible for the SCP, OTA will notify you and FTB or CDTFA in writing of your possible eligibility.

Once your appeal is complete, FTB or CDTFA will submit its opening brief. If your appeal is eligible for the SCP, OTA will perform a second eligibility check after receiving FTB or CDTFA's opening brief. If your appeal remains eligible for the SCP, OTA will notify you in writing and ask if you would like to participate. Participation in the SCP is voluntary on your part, and you may choose not to participate; however, once you choose to participate, you cannot later change your mind and opt out. If your appeal is not eligible for the SCP, or if you chose not to participate, your appeal will proceed through the standard appeal process. Additional briefing will generally not occur for appeals in the SCP.

If you are in the standard appeal process, CMD staff will notify you that you may submit a reply brief within 30 days to respond to new facts or arguments raised by FTB or CDTFA in its opening brief. Upon receipt of your reply brief, briefing is complete unless additional briefing is requested by a party or OTA.

All briefs should clearly state the facts and law supporting your position. Generally, all briefs must be no longer than 30 double-spaced 8½" by 11" pages, or 15 single-spaced 8 ½" by 11" pages, excluding any table of contents, table of authorities, and exhibits. Briefs may be handwritten or typed and printed only on one side in a type-font size of at least 10 points or 12 characters per inch. OTA may grant an exception to these requirements for good cause.

When reviewing your appeal before your hearing, OTA may request additional briefing if it determines that additional explanation or evidence is required to fully develop the issues in the appeal. If additional briefing is requested in your appeal, the letter will indicate the additional evidence needed and may pose specific questions or ask for specific documentation. The additional briefing request will provide you with a deadline by which you must reply.

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

OPTIONS FOR PROCEEDING WITH YOUR APPEAL – ORAL HEARING OR DECISION ON THE WRITTEN RECORD

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

- Have an oral hearing at which you and/or your representative will appear before OTA and present your case, or
- Have OTA decide your appeal based on the written record (evidence and briefing submitted by you and the tax agency), without an oral hearing.

Regardless of the option that you choose, you will receive the same neutral and impartial consideration by a panel of three ALJs (or one ALJ if you chose the SCP) and a written decision which analyzes your case and explains why the ALJs made their decision. You have the option of an oral hearing whether you are in the SCP or the standard process.

More information on each option is presented below.

Requesting and Scheduling an Oral Hearing

After the tax agency files its opening brief, OTA will send you a form where you can elect to have an oral hearing. You may select an oral hearing location in Sacramento, Los Angeles, or Fresno, or you may choose to have a video teleconference oral hearing. An oral hearing must be requested in writing. If you do not affirmatively request an oral hearing, after briefing is complete, your appeal will be submitted for a decision based on the written record, without an oral hearing.

If you requested an oral hearing, OTA will send you a Notice of Oral Hearing. The Notice will be sent at least 45 days prior to the hearing date. You must return the attached Response to Notice of Oral Hearing no later than 15 days from the date the Notice of Oral Hearing was mailed. Your response must indicate that:

- You or your authorized representative(s) will appear at the hearing as scheduled; or

- You waive appearance at the hearing and opt that the appeal be decided on the written record without an oral hearing; or
- You withdraw your request for an oral hearing.

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

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

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

OTA will also send you a Notice of Tax Appeals Panel, identifying the ALJs, or ALJ if you chose to participate in the SCP, who will be conducting your appeal. You will be given 15 days to file an objection, if you have concerns with any of the judges assigned to the panel. Any objection must include the basis for your objection and will be evaluated for cause.

Decision on the Written Record, Without an Oral Hearing

When OTA decides an appeal based “on the written record,” this means the ALJs will decide your case by reviewing the evidence you and the tax agency submitted during the briefing. OTA does not have any information about your case other than what you and the tax agency submit and will not necessarily have any documentation you previously have submitted to the tax agencies. If you choose this option for proceeding with your appeal, you will not have an oral hearing. OTA will decide the case based on the written record when:

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

PRIOR TO YOUR ORAL HEARING

Before your oral hearing occurs, there are preliminary meetings and agreements in order to speed the process and make it as orderly as possible.

Prehearing Conference

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

Prehearing conferences may be conducted by an OTA attorney or ALJ. If the conference is conducted by an ALJ, the lead ALJ will document through minutes any agreements or other matters that occurred at the prehearing conference. If the parties need to complete tasks before a hearing, the ALJ may also issue instructions or orders at the conference. Any minutes and orders following a prehearing conference will be sent to both parties.

SCP Meeting

If you chose to participate in the SCP, you will attend a SCP meeting instead of a prehearing conference. Every appeal in the SCP will have an SCP meeting and occurs whether you requested an oral hearing or not. You or your representative, a representative from FTB or CDTFA, and the ALJ who will decide your appeal will attend the SCP meeting. As with a prehearing conference, the SCP meeting allows the parties to discuss the issues, facts, and evidence that will be considered by the ALJ in deciding your appeal. No decisions will be made at the SCP meeting on the merits of your case.

WHAT TO EXPECT AT YOUR ORAL HEARING

Participation in oral hearings does not require any specialized knowledge and are designed to be informal. OTA is not a court and does not follow formal court-like processes. While you may choose to be represented by someone, you do not need a representative to appear with you at your hearing. You may choose to represent yourself at the hearing or be represented by any person of your choice over the age of 18.

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

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

At the conclusion of your hearing, the case is typically “submitted,” which means the ALJ panel (or ALJ for the SCP) will stop taking any further evidence, arguments, or testimony, and will proceed with issuing a written decision. In some situations, new issues may arise during the oral hearing, and the record will be held open to allow for further evidence or argument.

All OTA hearings are livestreamed and will be available on OTA’s YouTube channel and will be transcribed by a hearing stenographer. The transcripts are available on OTA’s website at ota.ca.gov. Additional information is available in the publication, “Guide to Your Oral Hearing.”

OTA has an Ombudsperson who is available during each hearing (and by telephone and email prior to or after the hearing) to answer any procedural

questions you may have about your case. You may contact OTA's Ombudsperson at 916-206-4355 or by email at info@ota.ca.gov.

OTA'S WRITTEN DECISION

A written decision, also known as an "opinion," will be issued in every appeal heard by OTA and will be sent to you and the tax agency. The decision will describe the facts and law that apply to the case and explain the reason(s) that the ALJs or ALJ arrived at their decision.

If you elected to have an oral hearing, the decision in your appeal will be sent to you within 100 days of your hearing, unless the record is held open to allow for the submission of additional evidence or argument. If you did not elect to have an oral hearing, you will typically receive the decision in your appeal within six months of briefing being completed.

Decisions of OTA become final 30 days after they have been issued, unless you or the tax agency file a petition for rehearing. After the decision becomes final, it will be posted on OTA's website at www.ota.ca.gov.

IF YOU DISAGREE WITH OTA'S DECISION

Petition for Rehearing

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

If you or the tax agency file a petition for rehearing, the non-filing party will have 30 days to file its response to the petition. A petition for rehearing will be decided by the lead ALJ who decided your appeal plus two ALJs who did not participate in deciding your appeal. This new panel of three ALJs will review your petition for rehearing and decide to grant or deny the petition and issue a

written decision explaining the reason(s) for its decision. This process is the same for appeals in the SCP.

If OTA grants a petition for rehearing, both parties to the dispute will be given an opportunity to file additional briefing in support of their case. As in the original appeal, you may elect to have an oral hearing or to have the case decided on the written record. On rehearing, your case will be decided by the panel of three ALJs who granted your petition for rehearing, or a different single ALJ if your appeal is an SCP appeal. OTA's decision on your rehearing will be OTA's final decision on your case.

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

Filing an Action in Superior Court

An appeal with OTA is the final step in the administrative process. If you do not agree with OTA's decision, you may appeal to the California Superior Court based on the following process:

- For an appeal that does not involve a claim for refund, you can pay the tax liability and file a claim for refund with the tax agency. If the tax agency denies your claim, you can file an action against the tax agency in California Superior Court within 90 days of the denial of your claim for refund.
- For an appeal involving a denial of a claim for refund, you can file an action in California Superior Court within 90 days of OTA's decision becoming final.

The standard of judicial review of an OTA decision in Superior Court is review "de novo," meaning that the Superior Court may substitute its own judgment in determining whether OTA's decision correctly applied the law.

IMPORTANT ADDITIONAL CONSIDERATIONS

- You generally have the burden of proof in your appeal, which means that you must produce enough evidence to prove to the ALJs that your position is correct. This burden of proof applies regardless of whether you elect to have an oral hearing or a decision based on the written recording.
- At any time during the process, you may stop your appeal by agreeing to a settlement with CDTFA or FTB. If you are accepted into the tax agency's settlement process, OTA will place your appeal on hold until the process concludes.
- You may request dismissal of your appeal for any reason.
- OTA is a separate and distinct agency from CDTFA and FTB. Therefore, evidence you previously submitted to CDTFA and FTB will not be considered in your appeal unless you or the tax agency submits it to OTA.
- All documents you submit with your appeal become a matter of public record. Any member of the public may request a copy of any documents you submit, and the law requires that OTA comply with that request. If OTA provides a copy of your appeal documents to a member of the public, OTA will redact (remove) personal information (for example, your home address, telephone number, and social security number) to guard against identity theft. OTA may seal records if you show that there is a good reason to do so.
- If your appeal involves an assessment of tax on a joint return, both you and your spouse joint filer should sign the appeal. If you sign the appeal and your spouse joint filer does not, you will be considered the sole party to the appeal. However, the results of the appeal will still affect your joint filer spouse's liability for the assessment.
- While your appeal is pending, you may at any time pay the assessment to stop the accrual of interest. Your appeal will convert to a claim for refund.
- Anyone over the age of 18 can represent you in your appeal, or you can represent yourself. Your representative does not need to be an attorney or an accountant.