

**California Code of Regulations, Title 18, Division 4.1
Office of Tax Appeals Rules for Tax Appeals**

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**California Code of Regulations, Title 18, Division 4.1
Office of Tax Appeals Rules for Tax Appeals**

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 OTA. Title 18 of Division 4.1 of the California Code of Regulations shall be known and may be cited as the Rules for Tax Appeals.

Note: Authority cited: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 15670, 15671, 15672, 15676.2, 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, petitions for rehearing, and related claims for reimbursement, submitted to or subject to the jurisdiction of the OTA 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).
 - (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 (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: Sections 15679 and 15679.5, Government Code; Section 20, Health and Safety Code. Reference: Section 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, 40209, , 41085, 41101, 41169, 43301, 43452, 43520, 45301, 45652, 45865, 46351, 46502, 46620, 50114, 50140, 50156.9, 55081, 55222, 55330, 60350, 60522 and 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.
- (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 OTA’s Rules for Tax Appeals.
- (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 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**” is 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, 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 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 the one OTA ALJ assigned to a case.
- (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 individual who is at least 18 years of age who has been chosen by a party to an appeal to represent 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.
- (v) “**Submission date**” is the date when a Panel stops receiving any further evidence, arguments or testimony in an appeal, and the appeal proceeding is submitted for an Opinion. The submission date is determined by the Panel, and the record in an appeal proceeding can be re-opened at the Panel’s discretion.
- (w) “**Subpoena**” means an order requiring a person to appear or produce evidence.
- (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 document 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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 15670, 15671, 15672, 15676, 15676.2 and 15679.5, Government Code.

30103. **Jurisdiction**

(a) **Appeals from actions of FTB.** In general, OTA has jurisdiction to hear and decide an appeal that has been timely submitted to OTA pursuant to OTA's Rules for Tax Appeals, 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 a notice of the action that 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 OTA's Rules for Tax Appeals 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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 15600, 15672, 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 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 (Civil Code sections 1798 et seq.), the 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.

Note: Authority cited: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Article III, Section 3.5, California Constitution; Sections, 15600, 15672 and 15674, 15676.2, 15679.5, Government Code; Section 19570, Revenue and Taxation 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 OTA.
- (c) If there is an issue regarding the timeliness of the appeal or OTA's jurisdiction to hear the appeal, 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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 15600, 15672, 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 OTA's Rules for Tax Appeals 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 OTA's Rules for Tax Appeals.
- (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 15600, 15672, 15674, and 15679.5, Government Code; Section 20, Revenue and Taxation Code.

30107. OTA Publication of Notices, Forms and Other Guidance

OTA may generate and 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, 15676.2, 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 of 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, request for innocent spouse relief, 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 from 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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674, 15676.2, and 15679.5, Government Code; Sections 20, 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) When OTA's Rules for Tax Appeals require a written notification or written acknowledgment to one or more parties during the course of an appeal, mail, as defined in regulation 30102, subdivision (o), will be used, unless a party requests and OTA agrees to provide notification and acknowledgment by another method.
- (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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 15679.5, 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674, 15676.2, and 15679.5, Government Code; Sections 20, 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) (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) 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) 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) 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) 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 a notice of the action that grants or denies, in whole or in part, innocent spouse relief. If FTB fails to 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.

- (9) 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 Appeals Bureau decision 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, the appeal before OTA will be dismissed. An appellant may file a new appeal with OTA in 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.
- (5) For purposes of OTA's Rules for Tax Appeals, 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: Sections 15676.2 and 15679, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674, 15676.2, 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: Sections 15676.2 and 15679, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Section 1013, Code of Civil Procedure; Sections 15672, 15674, 15676.2, 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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15672, 15674, 15676.2, 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.

30207. Acknowledging an Appeal

- (a) **Acknowledgment of appeal.** Where OTA receives a timely appeal, OTA will send an acknowledgment of receipt of the appeal to each party to the appeal in a timely manner.
- (b) **Acknowledgment of petition for redistribution.** Where the appeal is a petition for redistribution of local or district tax, in addition to mailing a written acknowledgment of the appeal to the appellant and to CDTFA, OTA will mail a copy of the acknowledgment to the retailer whose allocations are the subject of the petition, and will inform the retailer that it will not be regarded as a party to the appeal unless it chooses to actively participate in the appeal process by submitting a timely brief to OTA in accordance with OTA's Rules for

Tax Appeals.

Note: Authority cited: Sections 15676.2 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11440.20, 15672, 15674, 15676.2, 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.** A perfected appeal is an appeal 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, what additional information is necessary to perfect the appeal, and will provide 30 days for the appellant to perfect the appeal.
 - (1) The appellant must 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11415.40, 15672, 15674, 15676.2, 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 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 an 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 who joins the appeal requests an oral hearing, or if neither spouse responds to a notice of

oral hearing, the appeal will be submitted for an Opinion based upon the written record and without an oral hearing.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22970.2, 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 15606, 15672, 15674, 15676.2, 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 1.5. Small Case Program

30209.1. Total Amount in Dispute, Eligibility; Election to Participate

- (a) **In General.** Pursuant to Government Code section 15676.2, any taxpayer appealing the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, may elect under subdivision (e) of this regulation to have an appeal determined by procedures of the Small Case Program if:
- (1) In the case of an appeal by a taxpayer subject to the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code), the total amount in dispute (within the meaning of subdivision (b)) is less than five thousand dollars (\$5,000); or
 - (2) In the case of an appeal arising from a tax, fee, or penalty administered by the CDTFA, (i) the person filing the appeal has annual gross receipts of less than twenty million dollars (\$20,000,000) per calendar year for each year of the audit or claim period, and (ii) the total amount in dispute (within the meaning of subdivision (b)) is less than fifty thousand dollars (\$50,000) per calendar year (or fraction thereof) for each year of the audit or claim period.
- (b) **Total Amount in Dispute.** For purposes of this regulation, the “total amount in dispute” shall mean the total amount of taxes, fees, and penalties reflected on the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, reduced by:
- (1) The amount of any interest for which appellant elects to not request abatement or suspension,
 - (2) The amount of any taxes, fees or penalties for which appellant elects to not separately dispute their liability for such amounts, or
 - (3) Any amount reflected on the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, for which FTB or the CDTFA, as applicable, concedes in writing in such agency’s opening brief is no longer in dispute.
- (c) **Eligibility Determined Based on Each Year.** For purposes of determining whether an appeal qualifies under this regulation so that a taxpayer may elect to have the appeal

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

- (d) **Special Eligibility Rules.** No taxpayer may elect to have an appeal determined by procedures of the Small Case Program under this regulation if:
- (1) Any of the tax years or tax periods specified in the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, has a total amount in dispute (within the meaning of subdivision (b)) which exceeds the dollar limitations specified in paragraphs (1) or (2) of subdivision (a) of Government Code section 15676.2, as applicable, or
 - (2) The action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, is a denial (or deemed denial) of a claim for refund for an amount identified as "\$1 or more," or other unspecified amount, or
 - (3) The parties do not agree as to the total amount in dispute for any tax year or tax period after applying the rules of this regulation, and OTA is unable to determine whether the total amount in dispute is within the limitations imposed pursuant to this regulation, in which case the amount stated on the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, shall be treated as the total amount in dispute for purposes of this regulation, or
 - (4) The appeal poses an issue of law with significant potential for precedential consideration, pursuant to those factors listed in subdivision (c) of regulation 30502, as determined by OTA, or
 - (5) The appeal involves complex issues of fact or procedure, as determined by OTA, or
 - (6) The appeal involves any issue or issues of law, facts, or procedures, which OTA has designated in a published notice as being incompatible with the goals or procedures of the Small Case Program due to legal, factual, or procedural complexity.
- (e) **Irrevocable Election to Participate in Small Case Program.** The election made pursuant to this subdivision with respect to an appeal shall be irrevocable once made and shall be made within twenty-one (21) calendar days of the date that OTA mails to appellant acknowledgment of OTA's receipt of the opening brief of the FTB or CDTFA, as applicable, and confirmation of eligibility of the appeal for the Small Case Program, which shall be in the form and manner as prescribed by the OTA. Such election shall include a specific waiver with respect to any amounts (except for any amount specified in paragraph (3) of subdivision (b)) that reduce the total amount in dispute pursuant to paragraphs (1) or (2) of subdivision (a), as applicable.

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

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

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

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

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

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

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

- (3) **Example 3.** Assume TP receives a Notice of Determination from the CDTFB for the period July 1, 2017 through December 31, 2018, for a total deficiency of tax of \$75,000. The audit workpapers indicate that the tax for the third quarter 2017 is \$25,000, the tax for the fourth quarter 2017 is \$10,000, and the tax for each quarter of 2018 is \$10,000. Appellant files a timely appeal of such action of the CDTFB with the OTA. Further assume that TP has annual gross receipts during each of the

calendar years relating to the tax periods at issue of \$10,000,000. Would TP qualify to make an election to have the appeal determined under the Small Case Program?

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

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

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

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

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

- (6) **Example 6.** Assume TP receives a Notice of Determination from the CDTFA for the period July 1, 2017 through March 31, 2018, for a total tax deficiency of \$65,000. The audit workpapers indicate that the tax for the third quarter 2017 is \$20,000, the tax for the fourth quarter 2017 is \$20,000, and the tax for the first quarter 2018 is \$25,000. Appellant files a timely appeal of such action of the CDTFA with the OTA. Further assume that TP has annual gross receipts for the calendar year 2017 in the amount of \$17,000,000 and annual gross receipts for the calendar year 2018 in the amount of \$21,000,000. Would TP qualify to make an election to have the appeal determined under the Small Case Program?
Since TP had annual gross receipts for the calendar year 2018 in the amount of \$21,000,000, TP is not eligible to make the election to have the appeal determined under the Small Case Program since those receipts exceed the limitation in clause (i) of paragraph (2) of subdivision (a).

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

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

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

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

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

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

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

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

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

Although TP agrees to concede \$1,500 in additional tax, the total amount in dispute is \$5,500 since TP is still contesting the remaining \$3,400 of additional tax, as well as

waiver of the \$1,500 late-filing penalty and abatement or suspension of the interest of \$600, which exceeds the limitation in paragraph (1) of subdivision (a).

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

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

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

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

- (13) **Example 13.** Assume TP, a PITL taxpayer, receives a final denial (or deemed denial) from the FTB of a protective claim for refund in which TP claimed a refund of "\$1 or more," and files a timely appeal of such action of the FTB with the OTA. Would TP qualify to make the election to have the appeal determined under the Small Case Program?

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

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

- (1) Any petition for rehearing shall be assigned to a three ALJ Panel, with the Lead ALJ on that three ALJ Panel being the ALJ who issued the decision in the original proceeding. An opinion issued by a three ALJ panel on a petition for rehearing under this regulation shall not have precedential effect.
 - (2) If a petition for rehearing is granted, any new hearing shall be assigned to a different single Lead ALJ under the provisions of this regulation.
- (h) **Other Office of Tax Appeals Rules for Tax Appeals.** Except as otherwise provided in this Article, the provisions of Division 4.1 of Title 18 of the California Code of Regulations shall apply to proceedings under this regulation.
- (i) **Effective Date.** The provisions of this Article shall be effective with respect to appeals of the action of the FTB (as defined in subdivision (a) of regulation 30103) or the CDTFA (as defined in subdivision (b) of regulation 30103), as applicable, which are originally filed on or after January 1, 2021.

Note: Authority cited: Section 15679, Government Code. Reference: Section 15676.5, Government 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 with 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 that 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 11445.10, 11445.30, 11445.40, 11470.10, 11511.5, 15676.2 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), and within 30 days of OTA's letter acknowledging the appeal, OTA must be provided with: 1) a copy of the resolution or power of attorney from, or a written contract with, the local entity they represent authorizing their representation; and 2) a copy of a waiver from the taxpayer allowing each representative to have access to the taxpayer's confidential information. If the taxpayer joins the appeal as a party, then no waiver is required.

- (1) **Resolution.** For purposes of this section, "resolution" shall refer to the resolution described in subdivision (b) of Revenue and Taxation Code section 7056.

- (d) **Substitution or withdrawal.** Parties must promptly notify OTA and the opposing party in writing of any substitutions or withdrawals of representation.
- (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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15676, 15676.2 and 15678, Government Code; 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: Sections 15676.2, 15679, and 15679.5, 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 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 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 11507.3 and 15679.5, Government Code.

30212.1. **Bifurcating or Severing Appeals**

- (a) **Bifurcating.** On the motion of a party or upon its own initiative, OTA may bifurcate an issue or issues in an appeal for separate hearings if OTA determines there is good cause and no adverse effect on the substantial right of any party. OTA will issue one Opinion on the bifurcated issues. OTA will promptly notify the parties if an appeal is bifurcated.
- (b) **Severing.** On the motion of a party or upon its own initiative, OTA may sever an issue or issues from an appeal for separate consideration if OTA determines there is good cause and no adverse effect on the substantial right of any party. OTA will issue a separate Opinion for a severed issue or issues. A determination by OTA on an appeal is not final on the severed issues until a determination by OTA that resolves the entire appeal is final. OTA will promptly notify the parties if an appeal is severed.
- (c) **Reverse Bifurcation or Sever.** On the motion of a party or upon its own initiative, OTA may reverse an action to bifurcate or sever if it determines that bifurcating or severing would have an adverse effect on a substantial right of any party or for other good cause. OTA will promptly notify the parties if an action to bifurcate or sever is reversed.
- (d) **Objections.** Any party may submit a written objection to bifurcate or sever or to reverse bifurcate or sever. Any such objection must be submitted within 15 days from the date on the notice bifurcating or severing the appeal. The objection should provide information to establish that bifurcation or severing would have an adverse effect on a substantial right of

the objecting party or other good cause.

Note: Authority cited: Sections 15676.2, 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 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 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 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 adjudication of disputes within OTA's jurisdiction.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, 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: Sections 15676.2, 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 OTA's Rules for Tax Appeals govern the right to and method of discovery as to any proceeding governed by the Rules for Tax Appeals. 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 OTA's Rules for Tax Appeals, a party must show that it has attempted informal discovery.
- (b) **Witness Declarations and Affidavits.** Regardless of whether or not an oral hearing is requested, parties may submit declarations and affidavits of persons who are unable to testify during an oral hearing. Declarations must be signed under penalty of perjury.
 - (1) **Procedure.** 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, whichever is later, 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) **Non-Appearance Matters.** Declarations and affidavits must be filed with the party's brief in accordance with regulation 30303, unless otherwise allowed by OTA.
 - (3) **Oral Hearing 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.
- (c) **Disclosure of witnesses and evidence.** OTA may issue an order regarding the disclosure of witnesses and evidence.
- (d) **Privilege.** Nothing in this section shall authorize the inspection or copying of any writing or item which is privileged, confidential, or otherwise protected from disclosure by law.
- (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) the person requesting the subpoena is the party bearing the burden of proof on the issue to which the subpoenaed materials relate; or
 - (2) the subpoena is to be issued to a nonparty to the appeal.

(f) **Consideration of evidence.** Except as otherwise provided in the Rules for Tax Appeals, 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:

- (1) All relevant evidence shall be admissible.
- (2) A person may prevent relevant evidence that is subject to a privilege from being disclosed as provided in regulation 30211.5.
- (3) 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.
- (4) 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

(g) **Additional discovery.** A request for discovery beyond what is outlined in this section shall be in writing and will be approved or disapproved by 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 15676.2, 15679, and 15679.5, Government Code. References: Sections 11450.05 to 11450.50, 11511, 11512, 11513, 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 OTA a motion to compel discovery pursuant to subdivisions (a) and (b) of Government Code section 11507.7.
- (c) **Order on motion.** If OTA determines that the requested discovery made pursuant to this 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 will be decided based solely on the submissions of the parties, and on any such evidence and argument as OTA may allow.
- (d) **Grounds for denial of motion.** If 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, OTA can deny a party's motion to compel discovery without requesting a response from the other party. 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.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. References: Sections 11450.05 to 11450.50, 11507.6, 11507.7, 11511, 11512, 11513, 11514, 15670 and 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 15676.2, 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) **Accessibility of hearings.** Except as otherwise provided in the Rules for Tax Appeals, Chapter 4.5 (commencing with Government Code section 11400) and Chapter 5 (commencing with Government Code section 11500) 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 (commencing with Section 15670) of Division 3 of Title 2 of the Government Code and OTA's Rules for Tax Appeals, 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. OTA has the discretion to take or allow such actions as are permitted by the Administrative Procedure Act.
- (b) **Nonappearance matters.** Unless otherwise directed by OTA, 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 9.5 (commencing with Section 15670) of Division 3 of Title 2 of the Government Code and OTA's Rules for Tax Appeals.
- (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 OTA's Rules for Tax Appeals. 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 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, 11511.5-11514, 11516-11518 and 11519-11529.
- (f) **Exemption.** Where context or subject matter otherwise requires exception from the provisions of the Administrative Procedure Act, OTA is exempted from such provisions.
- (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 a Presiding ALJ if no Lead ALJ or Panel has been assigned to an appeal.
- (h) **Conflicts.** To the extent that any provision of the Administrative Procedure Act conflicts with OTA’s Rules for Tax Appeals, the Rules for Tax Appeals shall be controlling.

Note: Authority cited: 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 shall impose a frivolous appeal penalty pursuant to Revenue and Taxation Code section 19714.
- (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: Sections 15676.2, 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: Sections 15676.2, 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, 15670, 15672, 15674, 15676.2 and 15679, Government Code.

30219. Application of Burden of Proof

- (a) Except as otherwise specifically provided by law, the burden of proof is upon the appellant as to all issues of fact.
- (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) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

Note: Authority cited: Sections 15676.2, 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, 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 fair and efficient tax administration.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15672, 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 or other efforts have 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15672, 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

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

- (a) The appellant or the appellant's authorized representative submits a written and signed request for dismissal;
- (b) The Agency submits a written concession of the entire amount of the deficiency, refund, or claim at issue;
- (c) The parties submit a written stipulation, signed by all the parties, in which all parties

- agree to dismissal;
- (d) The parties agree to issuance of an order directing a conditional dismissal which shall be signed by an ALJ; or
 - (1) 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.
 - (e) OTA becomes aware that a party is a suspended or forfeited entity.
 - (1) 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.

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

Note: Authority cited: Sections 15676.2, 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) 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 closed. The parties shall notify OTA in writing if CDTFA accepts a request for reconsideration of an Appeals Bureau Decision. After the reconsideration, a request for appeal based on CDTFA's Appeal Bureau's revised supplemental decision can be submitted to OTA.
- (b) When 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: Sections 15676.2, 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 CDTFAs, unless the appeal involves an innocent spouse determination. However, OTA may direct a modified briefing schedule, additional briefing or evidence may be requested pursuant to OTA's Rules for Tax Appeals. 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 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 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 in accordance with the applicable briefing schedule, including any applicable deadlines and extensions, OTA will provide written acknowledgment 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 shall be in writing, must state the reason(s) for the request, identify how much additional time is requested, and 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 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 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 other taxpayers.
- (h) **Motions.** Parties may file and oppose motions during the course of an appeal. All motions shall be in writing, except as permitted by the Lead ALJ. A motion should clearly and concisely state the relief requested and the facts upon which it is based.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 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 acknowledgment. The appeal letter and any supplement to the opening brief together will be considered appellant's opening brief, and shall not 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 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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 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) **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 OTA's Rules for Tax Appeals. A party submitting additional briefing may attach any relevant evidence as exhibits.
- (b) **Requests by 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 additional briefing or evidence from the record.
- (c) **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 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.
- (d) **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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 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 a 30212.1 that grants or denies, in

whole or in part, innocent spouse relief, and which are subject to the jurisdiction of OTA.

Note: Authority cited: Sections 15676.2, 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, 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 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 appeal.
- (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.
- (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 on whether the Agency granted or denied innocent spouse relief.
- (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 on whether the Agency granted or denied innocent spouse relief.

Note: Authority cited: Sections 15676.2, 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, 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.
- (b) If both spouses submit timely appeals, then their appeals will be consolidated for briefing, hearing, and Opinion. Each spouse will be treated as an appealing spouse and will have an equal opportunity to submit briefs.
- (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 opening brief to the non-appealing spouse and notify the non-appealing spouse of his or her right to participate in the appeal.

- (d) OTA shall use the best available information to contact the non-appealing spouse.
- (e) OTA's jurisdiction over an innocent spouse appeal will be determined at the time of filing of the 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.
- (g) Either spouse participating in an innocent spouse 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 within 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 or that other factors weigh in favor of granting the request.
 - (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.
- (i) **Requests for closed hearing.** A party in an innocent spouse appeal may request that an oral hearing or a portion of the oral hearing be closed to the public.
 - (1) **Requests for Closed Hearings.** Any such request should be made in writing to OTA, preferably at the time of submitting the appeal, but by the due date of the appellant's response to the notice of oral hearing.
 - (2) **Requests to Seal the Record.** 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.

- (3) **Procedures.** Requests to close a hearing or seal the record must state the grounds upon which 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: Sections 15676.2, 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, 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, to ensure that the personal identifying information of one spouse is not provided to the other spouse.

Note: Authority cited: Sections 15676.2, 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, 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 supplemental opening brief. If the appealing spouse requests the opportunity to submit a supplemental opening brief, 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 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: Sections 15676.2, 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, 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 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: Sections 15676.2, 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, 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 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, 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 or 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 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 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: Sections 15676.2, 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, 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 and 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 must request an oral hearing in writing 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 include the requested location of the oral hearing. OTA has permanent hearing facilities in Sacramento, Los Angeles, and Fresno counties.
- (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. 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 may conduct separate oral hearings if requested in accordance with regulation 30312, subdivision (g).

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11440.20, 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 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 11440.20, 11445.30, 11509, 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 who wishes to have an oral hearing must provide OTA with a signed and completed response to the notice of oral hearing 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 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 describe the type of interpreter requested.
- (c) If a person requires special accommodation for other reasons, the response to the notice of oral hearing should describe the 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: Sections 15676.2, 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 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 respond to the hearing notice.

Note: Authority cited: Sections 15676.2, 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, 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 days before the hearing date.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code; Sections 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.

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 testifies at an oral hearing, such testimony shall be given under oath or affirmation. Nothing in this regulation limits the authority and discretion of the ALJs to control proceedings as otherwise provided in these Rules for Tax Appeals or permitted by law.

Note: Authority cited: Sections 15676.2, 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 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: Sections 15679, and 15679.5, Government Code. Reference: Article VI, Section 18, California Constitution; Sections 11425.30, 11425.40, 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 11425.10, 11425.50, 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 15676.2, 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 an 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 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 no later than 15 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 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 to OTA and provide a copy to the other party at least 15 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. 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, a summary of each person’s credentials to testify as an expert, and a copy of any relevant reports prepared by the expert witness.

- (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, video conference, teleconference video, 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: Sections 15676.2, 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 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: Sections 15676.2, 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 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 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, full financial account 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, 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 the personal information of an individual at a hearing.

- (d) There is no right to confidentiality as to relevant information that OTA includes in an opinion that is required to be published pursuant to Government Code section 15675.

Note: Authority cited: Sections 15676.2, 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. Any such request must be made in writing, preferably at the time of submitting the appeal, but by the due date of the appellant's response to the notice of oral hearing. The request 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: Sections 15676.2, 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 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.
 - (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 the CPA and the taxpayer, 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.
- (c) Any request to seal records will be applied to as narrow a set of records as required under the circumstances.
- (d) No later than 15 days after the mailing of an Opinion, a party may mail a written request to redact information in the Opinion or in other documents filed with OTA.
- (e) This section will be applied and interpreted in a manner that recognizes the public interest in transparency. The mere 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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 5095, Business and Professions Code; Sections 6254, 11124.1, 11425.10, 11425.20, 15619, 15674, 15675, 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: Sections 15676.2, 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. OTA Opinions

30501. Publication of an Opinion

- (a) **Publication of Opinions.** OTA shall publish an opinion for each appeal decided by a Panel. The Panel that decides an appeal will issue an opinion explaining its reasons for granting or denying the appeal, in whole or in part.
- (b) **Contents of Opinions.** The Opinion 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) and any ALJ(s) concurring in or dissenting from the Panel's opinion.
- (c) **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 is for the purpose of avoiding unnecessary delay in issuing an Opinion.
- (d) **Concurrences and dissents.** To issue 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 set forth in the opinion. A concurring or dissenting member may provide a written statement explaining the basis for the member's concurrence or dissent.
- (e) **Timeframe for publication.** Within 100 days after the date the Panel's opinion becomes final, OTA will publish the Panel's opinion as OTA's Opinion for the appeal on OTA's website.
- (f) **Numbering.** OTA's posted Opinions will be given an Opinion number using the following format: YEAR-OTA-NUMBER. The number is the sequential number of the appeal in that year. 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 Opinion, its Opinion number would be "2018-OTA-002P."
- (g) **Sealing the record or redaction.** An appellant may request that OTA seal the record in an appeal or redact information in an Opinion as described in regulation 30432.

Note: Authority cited: Sections 15676.2, 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 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, 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 opinion of OTA is not precedential in any other appeal before OTA unless OTA designates the published 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 Opinion as precedential.

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

(e) **Posting of precedential Opinions.** Precedential 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 Opinion automatically becomes Precedential unless noted as "Nonprecedential" on the website.

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, 11425.60, 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**

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.

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, 11425.60, 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 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 OTA removes, in whole or in part, the precedential status of that opinion 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.

Note: Authority cited: Sections 15676.2, 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, 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, 4535, 46355, 50118, 55085 and 60354, Revenue and Taxation Code.

30505. Finality of Opinions

- (a) **Date Opinion becomes final.** A Panel will decide the appeal by issuing an opinion, and that Opinion becomes final 30 days from the date the Panel issues its 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 opinion issued by a Panel, regardless of whether an oral hearing was held. A Panel issues its opinion on the date the 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 opinion is received by a party.
- (b) **Correction of errors.** If OTA discovers typographical or non-substantive errors in 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 Opinion becomes final. For purposes of this section, an error is typographical or non-substantive if it does not change, in whole or in part, the holding of the case.

Note: Authority cited: Sections 15676.2, 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, 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 15676.2, 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 or filed a petition for rehearing, and the “non-filing party” is the party who does not or did not submit a petition for rehearing.

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

Sections 15672 and 15679.5, Government Code; Sections 19048, 19334 and 19346, Revenue and Taxation Code.

30602.1. **General Briefing for Petitions for Hearing**

- (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 15676.2, 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;
- (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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15672, 15679 and 15679.5, Government Code; Sections 19048, 19334 and 19346, Revenue and Taxation Code.

30604. **Grounds 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 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 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 Opinion;
 - (4) insufficient evidence to justify the Opinion;
 - (5) the Opinion is contrary to law; or
 - (6) 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: 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 an Opinion on the petition for rehearing or a Panel’s issuance of 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: Authority cited: Sections 15676.2, 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) **Panel on Petition for Rehearing.** 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 Opinion that is subject to the petition, where at all possible. The

presiding ALJ or Chief Counsel may delegate the presiding ALJ's 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 Opinion in the appeal will be held in abeyance pending resolution of the rehearing.
- (c) **Scope of Rehearing.** A Panel may limit the scope of the rehearing.
- (d) **Minor Corrections Without Rehearing.** Pursuant to section 30505, OTA may modify the prior Opinion based on the written record, including the petition for rehearing and the briefing submitted with it, to make typographical or non-substantive changes, without granting the petition for rehearing. For purposes of this section, errors are typographical or non-substantive if they do not change, in whole or in part, the holding of the Opinion.
- (e) **Finality of Opinion.** If a Panel denies a petition for rehearing, then OTA's underlying Opinion in the appeal, and the Panel's Opinion on Petition for Rehearing, become final 30 days from the date on which the Panel issued its Opinion on Petition for Rehearing.
- (f) **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: Sections 15676.2, 15679 and 15679.5, Government Code. Reference: Sections 15672, 15674, 15675, Government Code; Sections 19048, 19334, 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.
- (b) **Briefing schedule; single petition granted.** After a Panel grants a single petition for rehearing, the following briefing schedule applies:
 - (1) **Filing party's opening brief.** The filing party 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 reply brief.
 - (3) **Filing party's reply brief.** The filing party 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.
- (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).
- (d) **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) **Alternate briefing schedule.** Notwithstanding subdivisions (b) and (c), OTA may order any briefing schedule that it deems appropriate for a rehearing. Either party may submit a motion to change the briefing order based on the outcome of the petition for rehearing.
- (f) **Extensions.** The parties may request extensions of time as allowed for in subdivision (c) of regulation 30302.

Note: Authority cited: Sections 15676.2, 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

30701. Jurisdiction

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

- (a) Personal Income Tax, Administration of Franchise and Income Tax, and Corporation Tax (Revenue and Taxation Code sections 17001 –18181, 18401–19802, and 23001–25141.)
- (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 30001–30483)
 - (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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15670, 15672, 15674, 15676 and 15679.5, Government Code; Sections 20, 7091, 7156, 8269, 9269, 19047, 19085, 19333, 19345, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

30702. Appeals from Actions of Agency

For reimbursement claims from actions of FTB in applying Part 10 or 11 of the Revenue and Taxation Code, or from actions of CDTFA involving a tax or fee program administered by CDTFA 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, 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 the Agency’s opening brief. Fees and expenses are reimbursable only if a Panel issues a finding in writing that the action taken by the Agency was unreasonable. To determine whether the Agency has been unreasonable, a Panel will consider whether 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15670, 15672, 15674, 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, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code..

30705. Claim Procedure

- (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 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 no later than one year after the date the 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.
- (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 due date 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: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15672, 15676.2, 15676.5, 15679 and 15679.5, Government 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 will dismiss a claim that is not timely within the meaning of section 30705(a).
- (b) **Agency statement.** Within 60 days of OTA's acknowledgment 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 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, 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 Opinion on the written record.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 11440.20, 15674, 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 Opinion

OTA will send written notice of the Opinion to the claimant and to the Agency. The 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 submitted under this chapter.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 11440.20, 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.