

**Text of Changes to  
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), OTA hereby promulgates this division to provide regulations governing the administrative review processes for all appeals, petitions for rehearing, and related claims for reimbursement submitted to, or subject to the jurisdiction of, OTA. Title 18 of division 4.1 of the California Code of Regulations shall be known and may be cited as "OTA's 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. General Applicability, Definitions, and Jurisdiction**

**Article 1. Application of Division 4.1, Definitions, and Jurisdiction**

**30101. Application of Division 4.1**

OTA's Rules for Tax Appeals apply to appeals, petitions for rehearing, and related claims for reimbursement, submitted to, or subject to the jurisdiction of, 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) OTA's authorizing legislation (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 any of the following:
  - (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) Integrated Waste Management Fee Law (part 23 of division 2 of the Revenue and Taxation Code).

- (8) Lead-Acid Battery Recycling Act (article 10.5 of chapter 6.5 of division 20 of the Health & Safety Code).
- (9) Motor Vehicle Fuel Tax Law (part 2 of division 2 of the Revenue and Taxation Code).
- (10) Oil Spill Response, Prevention, and Administration Fees Law (part 24 of division 2 of the Revenue and Taxation Code).
- (11) Sales and Use Tax Law (part 1 of division 2 of the Revenue and Taxation Code).
- (12) Transactions and Use Tax Law and Additional Local Taxes (parts 1.6 and 1.7 of division 2 of the Revenue and Taxation Code).
- (13) Underground Storage Tank Maintenance Fee Law (part 26 of division 2 of the Revenue and Taxation Code).
- (14) Uniform Local Sales and Use Tax Law (part 1.5 of division 2 of the Revenue and Taxation Code).
- (15) Use Fuel Tax Law (part 3 of division 2 of the Revenue and Taxation Code).
- (16) 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.
- (17) Taxes and fees collected pursuant to the Hazardous Substances Tax Law (part 22 of division 2 of the Revenue and Taxation Code), including, but not limited to, the Hazardous Substances Tax, the Childhood Lead Poisoning Prevention Fee (chapter 5 of part 5 of division 103 of the Health and Safety Code), and the Occupational Lead Poisoning Prevention Fee (chapter 2 of part 5 of division 103 of the Health and Safety Code).

Note: Authority cited: Sections 15679 and 15679.5, Government Code. Reference: Sections 15670, 15671, 15672, 15674, 15675, 15676, and 15679.5, Government Code; Section 25215.45, Health and Safety Code; Sections 20, 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.

### **30101.5. Inapplicability of Division 2.1**

The regulations contained in division 2.1 of title 18 of the California Code of Regulations are inapplicable to all appeals, petitions for rehearing, and related claims for reimbursement submitted to, or subject to the jurisdiction of, OTA. Instead, OTA's Rules for Tax Appeals supplants division 2.1 in its entirety with respect to any such proceedings before OTA.

Note: Authority cited: Sections 15679 and 15679.5, Government Code. Reference: Sections 15670, 15672, 15674, and 15676.2, Government Code.

### **30102. Definitions**

The following definitions apply to this division:

- (a) **“Administrative record”** means all documents and evidence concerning an appeal that were submitted to OTA by a party to the appeal, including any item contained in the oral hearing record or written record, withdrawn filings, and any information which was submitted but not admitted into evidence. The term also includes all final written correspondence concerning the appeal between OTA and the parties, including letters, orders, and the oral hearing transcript. Regulation 30430.5 sets forth OTA’s procedures for protecting confidential information contained in the administrative record.
- (b) **“Action of CDTFA”** means an action as defined in subdivision (b) of regulation 30103.
- (c) **“Action of FTB”** means an action as defined in subdivision (a) of regulation 30103.
- (d) **“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.
- (e) **“ALJ”** means an administrative law judge.
- (f) **“Appeal”** shall have the same meaning as defined in subdivision (a) of Government Code section 15671.
- (g) **“Appeals Bureau”** refers to the bureau within CDTFA that issues the final written decision of that Agency.
- (h) **“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.
- (i) **“Brief”** means a written document containing an argument or arguments concerning 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.
- (j) **“California Public Records Act”** refers to division 10 of title 1 of the Government Code.
- (k) **“CDTFA”** means the California Department of Tax and Fee Administration.
- (l) **“Days”** means calendar days, unless specifically provided otherwise in OTA’s Rules for Tax Appeals.
- (m) **“Discovery”** means the process of requesting and disclosing information and evidence that is relevant to the party’s tax appeal before OTA.
- (n) **“Evidence”** means any information contained in the written record or oral hearing record that the Panel may consider when deciding an appeal. This may include any relevant evidence that a Panel determines to be the sort of evidence responsible persons are accustomed to relying on in the conduct of serious affairs.
- (o) **“FTB”** means the Franchise Tax Board.
- (p) **“Lead Panel Member”** means the Panel Member designated by OTA to govern the conduct of an appeal.
- (q) **“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.
- (r) **“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.
- (s) **“Material,”** unless the context provides otherwise, means and includes something which has the potential to change the holding or disposition of an appeal before OTA. Any determinations regarding materiality, such as whether a disputed item could materially

affect the disposition of an appeal, will be made by the Panel or Lead Panel Member, as applicable.

- (t) **“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, email, or submitted under the party’s account with OTA via the appeals portal on OTA’s website (ota.ca.gov).
- (u) **“Motion”** means a written or oral request that OTA make a specified ruling or order.
- (v) **“Opinion”** means a written decision issued by a Panel on an appeal before OTA.
- (w) **“Oral hearing record”** means the record that a Panel shall consider in reaching a determination when an appeal is submitted for decision following an oral hearing before a Panel. The oral hearing record may include, but is not limited to, the following:
  - (1) The parties’ oral and written arguments;
  - (2) Any concessions or admissions made by a party;
  - (3) Any factual stipulations or agreements between the parties, including those which may be summarized in minutes, or an order, prepared by OTA;
  - (4) The procedural record as shown by the notices and orders issued by OTA;
  - (5) Admitted evidence;
  - (6) Facts taken by official notice; and
  - (7) OTA’s official transcript of the oral hearing.
- (x) **“OTA”** means the Office of Tax Appeals.
- (y) **“Panel”** means a “tax appeals panel,” as that term is used in subdivision (c) of Government Code section 15670, consisting of three Panel Members who are assigned to an appeal before OTA. In appeals assigned pursuant to Government Code section 15676.2, “Panel” means the one Panel Member assigned to an appeal. A panel performs any duties required by Government Code section 15674.
- (z) **“Panel Member”** means an ALJ, Business Taxes Specialist, or Program Specialist serving on a Panel pursuant to subdivision (c) of Government Code section 15670.
- (aa) **“Regulation”** means a section in OTA’s Rules for Tax Appeals unless otherwise specified.
- (bb) **“Relevant evidence”** means and includes any evidence tending to prove or disprove any disputed fact, document, or other evidentiary item that is of significance to the appeal.
- (cc) **“Representative”** means any individual who is at least 18 years of age and chosen by a party to represent that party in an appeal before OTA. A person whose only function is to interpret for a party to an appeal is not a representative.
- (dd) **“Submission date”** is the date when a Panel stops receiving any further evidence, arguments, or testimony in an oral hearing appeal proceeding, and the appeal proceeding is submitted for an Opinion. The submission date is determined by the Panel, and the record in an oral hearing appeal proceeding can be re-opened if the Panel determines there is a need for additional evidence or briefing.
- (ee) **“Subpoena”** means an order requiring a person to appear or produce evidence.
- (ff) **“Written record”** means the record that a Panel shall consider in reaching a determination when the appellant has declined an oral hearing, or waived the right to an oral hearing, and may include, but is not limited to, the following:

- (1) The statements and arguments in the briefs and other documents filed with OTA;
- (2) Any concessions or admissions made by a party and submitted to OTA;
- (3) Any factual stipulations or agreements between the parties, including those which may be summarized in minutes prepared by OTA, or an order;
- (4) The procedural record as shown by the notices and orders issued by OTA;
- (5) All exhibits and other evidence that was not opposed by the other party, and any evidence the Panel may include over the objection of a party;
- (6) Declarations made under penalty of perjury; and
- (7) Facts taken by official notice.

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

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 7920.000, 15670, 15671, 15672, 15676, 15676.2, and 15679.5, Government Code.

### 30103. **Jurisdiction**

- (a) **Appeal from an action 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 perfected claim for a refund of tax, penalties, fees, or interest within six months after the claim is filed with FTB. For purposes of this subdivision, a perfected claim for refund does not include any claim which is considered a claim solely for purposes of tolling the statute of limitations within the meaning of subdivision (a) of Revenue and Taxation Code section 19322.1.
- (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 to 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 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 FTB 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 on, or fails to act within 90 days of, a petition for review of FTB's finding of jeopardy.
- (b) **Appeal from an action 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, or a supplemental decision or revised decision (if the original decision is supplemented or revised), 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 an appeal and the Appeals Bureau decision is adverse to that Agency, in whole or in part.

Except in cases where the law specifically provides otherwise, OTA's jurisdiction includes the ability to: (i) determine the validity of an action, including an Agency's collection action such as an intercept, lien, levy, or wage garnishment, from which appellant made a timely appeal of an adverse Appeals Bureau decision; and (ii) determine the issue of whether the person appealing the Appeals Bureau decision is the person liable for the tax or fee at issue.

- (c) This regulation 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 has already made such a determination.
- (c) Whether FTB or CDTFA violated the Information Practices Act (Civil Code section 1798 et seq.), the California Public Records Act, or any similar provision of the law.
- (d) OTA does not have jurisdiction to determine whether a provision of OTA's Rules for Tax Appeals is invalid, or to refuse to follow the regulation on that basis.

- (e) 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 of how to interpret this subdivision include, but are not limited to, the following:
  - (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.
  - (2) OTA does not have jurisdiction to determine whether the appellant is entitled to a remedy on the basis that CDTFA failed to provide the appellant the opportunity to discuss the audit at an exit conference, or to discuss the appeal at an appeals conference.
- (f) Subdivision (e) shall not be constructed to mean: (i) that OTA lacks jurisdiction to determine the validity of an action, including an Agency's collection action such as an intercept, lien, levy, or wage garnishment, from which appellant made a timely appeal; or (ii) that OTA lacks jurisdiction to determine the issue of whether an appellant is in fact the taxpayer liable for the tax or fee at issue. Jurisdiction over such matters shall be governed by regulation 30103 and shall not be limited by subdivision (e).
- (g) An appeal from an FTB notice of proposed assessment or notice of proposed overassessment.
- (h) An action or decision by another state or local Agency that is not subject to review by FTB or CDTFA.
- (i) The authority to issue an order for declaratory relief, to issue an advisory Opinion, or to otherwise include in any Opinion a holding or disposition that is advisory or hypothetical in nature.
- (j) 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 CDTFA's Appeals Bureau, where the Appeals Bureau decision has not yet been issued.
- (k) 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, 15674, 15676.2, and 15679.5, Government Code; Section 19570, Revenue and Taxation Code; *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d. 910, 912; *Newco Leasing, Inc. v. State Bd. of Equalization* (1983) 143 Cal.App.3d 120, 124.

### **30105. Questions of Jurisdiction and Timeliness**

- (a) OTA may request additional information and briefing from the parties to an appeal including on 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 the parties to address such jurisdictional or timeliness issues 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 subdivision 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 procedures, rules, or processes that affect taxpayers, their representatives, or other members of the public in matters or appeals before OTA.

Note: Authority cited: Section 15679, Government Code. Reference: Sections 15672, 15672.2, 15676.2, 15679, and 15679.5, Government Code.

### **Chapter 3. Appeal Requirements and Procedures**

#### **Article 1. Filing an Appeal.**

##### **30201. Appeal Filing Requirements**

- (a) **Generally.** Every appeal from an action of FTB or CDTFA must be in writing, whether written by hand, typed and submitted electronically, or printed and mailed. An appeal may use ordinary and informal language. The appeal must adhere to the length limitations and other requirements of regulation 30302, and must contain the following:
  - (1) 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);
  - (2) The email address for each appellant and authorized representative(s), if available;
  - (3) The facts involved and the specific reasons for the appellant's position;
  - (4) If applicable, the appeal should include any legal authorities upon which the appellant relies, such as statutes, regulations, and judicial and administrative decisions;
  - (5) 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
  - (6) The signature of the party seeking an appeal or that party's authorized representative.
- (b) **Action of FTB.** In addition to subdivision (a), 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) Where possible, 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.
- (c) **Action of CDTFA.** In addition to subdivision (a), every appeal from an action of CDTFA must contain:
  - (1) CDTFA's account number for each appellant, and the case identification number(s) assigned by CDTFA's Appeals Bureau to the appeal;
  - (2) The date of CDTFA's Appeals Bureau decision from which an appeal is requested;

and

- (3) Where possible, a copy of CDTFA's Appeals Bureau decision from which the appeal is being made. For appeals where CDTFA's Appeals Bureau issued more than one decision, copies of the original Appeals Bureau decision and any supplemental or revised decisions for the appeal at issue should also be included with the 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, 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 should be submitted to OTA electronically on OTA's website at: [appeal.ota.ca.gov](http://appeal.ota.ca.gov). Alternative options for submitting documents and correspondence are via mail or fax, as provided below, or in accordance with instructions provided on OTA's website. 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

Unless otherwise directed by OTA, proof of physical delivery to a mailing address other than the address specified in subdivision (a) is not sufficient to establish timely filing with OTA. For purposes of this regulation, mail addressed to a physical office location of OTA, or to any location other than the address specified in subdivision (a), is not considered a proper address for delivery of appeal correspondence.

OTA may accept properly addressed appeal correspondence that is timely but erroneously delivered by a mail carrier to the wrong address, provided the recipient promptly forwards the mail to OTA and it is received by the recipient before any applicable due date.

- (b) 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, will be used, unless a party requests and OTA agrees to provide notification and acknowledgment by another method.
- (c) 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) **Appeal from an action 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) **Notice of action (proposed assessment or specified deadline).** (A) Within 30 days from the date FTB mails a notice of action upon the protest of a proposed assessment, or (B) within the 30-day period prior to the date indicated on the notice as the deadline for submitting an appeal.
  - (2) **Notice of action (denial of refund).** 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.
  - (3) **Notice of action (innocent spouse relief).** 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.
  - (4) **Notice of determination – finding of jeopardy.** 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 91<sup>st</sup> day after a petition for review of a finding of jeopardy was submitted with FTB.
  - (5) **Notice of determination – interest abatement (unpaid).** 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.
  - (6) **Notice of determination – interest abatement (paid).** 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.
  - (7) **Notice of disallowed interest.** Within 90 days from the date FTB mails a notice that disallows interest on a refund.
  - (8) **Deemed denial – interest abatement (unpaid or paid).** 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 (5) in the case of unpaid interest, or within the time period specified in paragraph (6) in the case of paid interest.
  - (9) **Deemed denials (refunds):** 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 (2).)

- (10) **Other notices.** (A) Within 30 days from the date FTB mails a notice of action affirming a proposed carryover adjustment, or (B) within the date indicated on the notice as the deadline for submitting an appeal.

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

- (1) **Generally.** Where the Appeals Bureau decision 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 Appeals Bureau decision is issued.
- (2) **Local entity appeal.** Where 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, the local entity may appeal to OTA no later than 60 days from the date the Appeals Bureau decision is issued.
- (3) **Revised or supplemental decision.** If the 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) **Simultaneous appeals to CDTFA and OTA.** If a party timely files an appeal with OTA, but also timely files a request for reconsideration of the Appeals Bureau decision that is accepted by CDTFA, the appeal before OTA will be dismissed. An appellant may file a new appeal with OTA in accordance with subdivision (b)(1) after the Appeals Bureau issues an adverse revised or supplemental decision, or notifies the party in writing that the request for reconsideration is not accepted.

For purposes of OTA's Rules for Tax Appeals, the 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 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 deadline for filing an appeal or petition for rehearing with OTA is 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 prepaid, 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 California 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.** When 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.** When the timely appeal specified in subdivision (a) involves a petition for redistribution of local or district tax OTA will also 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 filing a timely brief with 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 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 an appeal that is perfected as provided in subdivision (b).
- (b) **Time to perfect an appeal.** If an appeal does not contain substantially all 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, identify the additional information necessary to perfect the appeal, and 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 grant an extension for good cause. All parties will be notified in writing of any extension.
  - (2) If the appellant submits the required information within the 30-day period, OTA will accept the appeal as a valid appeal.
  - (3) If the appellant 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**

- (a) **Submission on the written record.** 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. The appeal will then be submitted for an Opinion based upon the written record.
- (b) **Submission on the oral hearing record.** When a Panel conducts an oral hearing, the appeal will be submitted for an Opinion based upon the oral hearing record after the record is closed.
- (c) **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. If an oral hearing is held before OTA, the appeal will be submitted for an Opinion based upon the oral hearing record after the record is closed.

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**

### **30209.05. Definitions**

For purposes of this article the following definitions shall apply:

- (a) **“Gross receipts”** means and includes all gross receipts reported on the taxpayer’s federal income tax return, and all gross receipts reportable for federal income tax purposes.
- (b) **“Small Case Program”** means the process authorized by Government Code section 15676.2 under which a taxpayer filing an appeal with OTA may opt to appear before one Panel Member.

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

- (a) **Generally.** A taxpayer appealing an action of FTB or CDTFA, as applicable, may elect under subdivision (e) to participate in the Small Case Program if:
  - (1) **FTB total amount in dispute limitation.** In the case of an appeal of an action of FTB 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 is less than five thousand dollars (\$5,000) per tax year as specified in subdivision (c); or
  - (2) **CDTFA gross receipts and total amount in dispute limitations.** In the case of an appeal of an action of CDTFA arising from a tax, fee, or penalty administered by the CDTFA, (i) the person filing the appeal has gross receipts of less than twenty million dollars (\$20,000,000) for each federal income tax year that is included, in whole or part, in the CDTFA liability or claim period, and (ii) the total amount in dispute is less than fifty thousand dollars (\$50,000) per calendar year (or fraction thereof) for each calendar year of the liability or claim period as specified in subdivision (c).
- (b) **Total amount in dispute.** For purposes of determining eligibility for the Small Case Program, the “total amount in dispute” shall mean the total amount of taxes, fees, and penalties reflected on the action of FTB or CDTFA, as applicable, reduced by:
  - (1) The amount of any interest for which the taxpayer elects to not request abatement, relief, or suspension,

- (2) The amount of any taxes, fees, or penalties for which the taxpayer elects to not separately dispute the taxpayer's liability for such amounts, or
  - (3) Any amount reflected on the action of FTB or CDTFA, as applicable, and for which the Agency asserting the liability concedes in writing in its opening brief is no longer in dispute.
- (c) **Eligibility determined based on each year.** For purposes of determining whether an appeal qualifies for the Small Case Program, each year or reporting period (or fraction of a year or reporting period), reflected on the action of FTB or CDTFA, as applicable, shall be treated separately in applying the applicable total amount in dispute limitation specified under subdivision (a).
- (1) **Deconsolidation.** For purposes of applying this regulation and regulation 30212, the inability to meet qualifications for the Small Case Program unless the appeals are deconsolidated shall not be considered good cause to deconsolidate appeals.
- (d) **Special eligibility rules.** A taxpayer may not elect to participate in the Small Case Program if any of the following applies:
- (1) Any of the tax years or reporting periods specified in the action of FTB or CDTFA, as applicable, has a total amount in dispute which exceeds the applicable dollar limitations specified in Government Code section 15676.2;
  - (2) The FTB or CDTFA action is a denial of a claim for refund (including, in the case of an action by FTB, a deemed denial within the meaning of subdivision (a)(4) of regulation 30103) for an amount identified as "\$1 or more," or other unspecified amount;
  - (3) The parties do not agree as to the total amount in dispute for any tax year or reporting 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 making this determination, OTA may consider the amount stated on the action of FTB or CDTFA (as defined in regulation 30103), as applicable, as the total amount in dispute for purposes of this regulation;
  - (4) The appeal involves an issue of law with potential for precedential consideration pursuant to those factors listed in subdivision (c) of regulation 30502, as determined by OTA;
  - (5) The appeal involves complex or novel issues of fact or procedure, as determined by OTA;
  - (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; or
  - (7) The appellant is an Agency, the respondent is an Agency other than FTB or CDTFA, or the appeal involves a petition for reallocation of local taxes.
- (e) **Irrevocable election to participate in the Small Case Program.** An election to participate in the Small Case Program shall be irrevocable by the party making the election 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 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 OTA. Such election shall include a specific waiver with respect to any amounts (except for any Agency conceded amount specified in paragraph (3) of subdivision (b)) that reduce the total amount in dispute.

After submission of all evidence, OTA may remove a case from the Small Case Program if it determines that the appeal is not eligible for the Small Case Program pursuant to subdivision (d), or the appeal was otherwise improperly accepted into the Small Case Program.

(f) **Examples.** The following examples illustrate the eligibility rules for the Small Case Program:

- (1) **Example 1 (FTB).** Assume a taxpayer subject to the Personal Income Tax Law receives final Notices of Action from 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 FTB with OTA. Would the amount in dispute of the taxpayer's appeals qualify the taxpayer 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 subdivision (a), and none of the individual tax years has a total amount in dispute that is \$5,000 or more, the taxpayer 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, the taxpayer 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 (FTB).** 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 subdivision (b), the taxpayer would not be eligible to make the election to have the appeal for tax year 2019 determined under the Small Case Program.

- (3) **Example 3 (CDTFA).** Assume a taxpayer receives a Notice of Determination from CDTFA for the period July 1, 2017, through December 31, 2018, for a total deficiency of tax of \$75,000. The audit workpapers indicate that the tax for the third quarter 2017 is \$25,000, the tax for the fourth quarter 2017 is \$10,000, and the tax for each quarter of 2018 is \$10,000. CDTFA denies the taxpayer's appeal of the Notice of Determination, and the taxpayer files a timely appeal of the action of CDTFA with OTA. Further assume that the taxpayer files income tax returns on a calendar year

basis and reported gross receipts of \$11,000,000 for 2017, and \$15,000,000 for 2018. Would the taxpayer qualify to make an election to have the appeal determined under the Small Case Program?

First, the total amount on appeal for all years is \$75,000. However, the amount in dispute for each calendar year (or fraction thereof) is treated separately for purposes of applying the \$50,000 total amount in dispute limitation. Here, the total amount in dispute for the six-months (i.e., fraction) of calendar year 2017 at issue is \$35,000, and the total amount in dispute for calendar year 2018 is \$40,000. Neither of the individual calendar years (or fractions thereof) have a total amount in dispute that is \$50,000 or more. This appeal does not exceed the total amount in dispute limitation.

Second, the income tax years covered by the audit are 2017 and 2018. The annual gross receipts are under the \$20 million gross receipts limitation during each income tax year.

Therefore, the taxpayer may elect to participate in the Small Case Program.

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

Assuming the total amount in dispute is not reduced below \$50,000 under the reduction rules in subdivision (b), the taxpayer would not be eligible to participate in the Small Case Program since the total amount in dispute for 2018 is \$55,000, and this exceeds the \$50,000 total amount in dispute per calendar year limitation.

- (5) **Example 5 (CDTFA).** A taxpayer receives a Notice of Determination from 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. CDTFA denies the taxpayer's petition of the Notice of Determination, and the taxpayer files a timely appeal of such action of CDTFA with OTA. Further assume that the taxpayer files income tax returns on a fiscal year basis and has annual gross receipts of \$15,000,000 for the 2016/2017 fiscal year, and \$15,000,000 for the 2017/2018 fiscal year. Would the taxpayer qualify to make an election to have the appeal determined under the Small Case Program?

First, the CDTFA liability period (January 1, 2017, through December 31, 2017) overlaps two federal income tax reporting periods: fiscal years 2016/2017 and 2017/2018. The taxpayer had less than \$20 million in gross receipts for every federal income tax year falling within the audit period. This appeal does not exceed the gross receipts limitation.

Second, assuming the total amount in dispute is not reduced under the reduction rules in subdivision (b), the taxpayer would not be eligible to participate in the Small Case Program because the total amount in dispute for the four quarterly reporting periods in calendar year 2017 was \$60,000, which exceeds the \$50,000 threshold.

- (6) **Example 6 (CDTFA).** Assume a taxpayer receives a Notice of Determination from 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. CDTFA denies the taxpayer's petition, and the taxpayer files a timely appeal of such action of CDTFA with OTA. Further assume that the taxpayer 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 the taxpayer qualify to make an election to have the appeal determined under the Small Case Program?

The taxpayer is not eligible to participate in the Small Case Program because the taxpayer had gross receipts for calendar year 2018 in the amount of \$21,000,000, which exceeds the gross receipts limitation.

- (7) **Example 7 (FTB).** Assume an individual taxpayer receives a final Notice of Action from 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 FTB with OTA. Further assume in the appeal that the taxpayer does not separately request abatement or suspension of interest. What is the total amount in dispute?

Assuming the taxpayer 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 the taxpayer did not separately request abatement or suspension of interest, and the total amount in dispute would be \$4,950.

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

Since the taxpayer 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.

- (9) **Example 9 (FTB).** Assume an individual taxpayer appealing an action of FTB receives a final Notice of Action from 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 FTB with OTA. What is the total amount in dispute?

If the taxpayer 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.

Further assume in its appeal that the taxpayer 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 the taxpayer 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.

- (10) **Example 10 (FTB).** Same facts as Example 9, except the taxpayer 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 the taxpayer agrees to concede \$1,500 in additional tax, the total amount in dispute is \$5,500 since the taxpayer 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.

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

Although the final Notice of Action denying the taxpayer's claim for refund was in the amount of \$5,750, the total amount in dispute is \$4,750 because FTB conceded \$1,000 of the total claim amount in its opening brief filed with OTA.

- (12) **Example 12 (FTB).** Assume an individual taxpayer appealing an action of FTB receives a final Notice of Action from 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 FTB with OTA. Further assume 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 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 OTA.

- (13) **Example 13 (FTB).** Assume an individual taxpayer appealing an action of FTB receives a final denial from FTB of a protective claim for refund in which the taxpayer claimed a refund of "\$1 or more," and files a timely appeal of such action of FTB with OTA. Would the taxpayer qualify to make the election to have the appeal

determined under the Small Case Program?

Although an appeal with OTA may result in a finding the taxpayer is owed a refund that is under the total amount in dispute limitation, the taxpayer 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.

- (g) **Petitions for rehearing.** The provisions of Chapter 7 (commencing with regulation 30601) of OTA’s Rules for Tax Appeals shall apply to proceedings under this regulation, except that:
- (1) Any petition for rehearing shall be assigned to a three member Panel, with the Lead Panel Member on that three member Panel being the Panel Member who issued the Opinion in the original proceeding. An Opinion issued by a Panel on a petition for rehearing under the Small Case Program shall not have precedential effect.
  - (2) If a petition for rehearing is granted, any new hearing shall be assigned to a different single Lead Panel Member under the provisions of the Small Case Program.
- (h) **Incorporation.** Except as otherwise provided in this Article, the provisions of OTA’s Rules for Tax Appeals shall apply to proceedings under the Small Case Program.
- (i) **Effective date.** The provisions of this Article shall be effective with respect to any appeal of an action of FTB or CDTFA, as applicable, which is originally filed on or after January 1, 2021.

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

## **Article 2. Appeal Procedures**

### **30210. Conferences**

- (a) **Application.** The provisions of this article shall apply to all proceedings before OTA, including oral hearing appeals, and appeals where an oral hearing is not requested.
- (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 a 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 one of OTA’s permanent hearing facilities. 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 written notice to the parties of the time and location of a conference. OTA will consult with the parties regarding the scheduling of a conference other than a prehearing conference and will provide written notice to the parties of the time and location of the conference. Notice of the time and location for a prehearing conference will be included with the notice of oral hearing that is mailed to the parties pursuant to regulation 30402. Nothing in this subdivision precludes OTA from rescheduling the date and time of any conference, including a prehearing conference, for good cause.
- (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) **New 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 regulation, "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 6015, 7056, and 19523.5, Revenue and Taxation Code.

### 30211.5. **Privileges and Confidentiality**

The rules pertaining to privileges shall apply to the extent that they are required by law to be recognized by OTA. 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 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. Unless otherwise provided in this division or by OTA, if separate appeals before OTA are later consolidated, there will typically be one Opinion issued on the consolidated appeal, and, if a hearing is requested, the cases may also be consolidated for purposes of the oral hearing. In cases where issuing a single Opinion on all consolidated appeals is not feasible, OTA may consolidate the appeals for purposes of the oral hearing, and thereafter issue a separate Opinion for each appeal, or for any one or more of the consolidated appeals. OTA may also link the appeals for purposes of oral hearing, which means that OTA will hear the items consecutively on the same oral hearing calendar and issue a separate Opinion for each appeal.
- (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 if OTA determines there is good cause and no adverse effect on a substantial right of any party. If an oral hearing is requested, OTA may hold separate hearings for each issue. 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 a 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) **Reversal of 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 any action specified above. Any such objection must be submitted within 15 days from the date on the notice to bifurcate, sever, or reverse bifurcate or sever, 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 Panel Members**

- (a) To the extent not otherwise provided by law, in any proceeding where a Panel has been assigned to conduct an appeal, or otherwise consider a motion in an appeal before OTA, the Lead Panel Member, 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 in which 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 orders for the submission of additional evidence or briefing; and
- (10) Take any other action deemed necessary for the fair, efficient, 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, efficient, 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.** Except as otherwise provided by law, the provisions of OTA's Rules for Tax Appeals govern the right to and method of discovery as to any proceeding governed by OTA's 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 to issue a subpoena or compel discovery, a party must show that it has attempted informal discovery.
- (b) **Witness declarations and affidavits.** Regardless of whether an oral hearing is requested, the parties may submit declarations and affidavits of persons for consideration as evidence.
  - (1) **Procedure.** The opposing party will have 30 days after receipt of a witness declaration or affidavit, or 30 days from the date OTA acknowledges receipt of a party's submission to OTA which contains a declaration or affidavit, 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 subdivision (b)(3) of this regulation. 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) **Oral hearing is not requested.** For appeals to be decided on the written record, declarations and affidavits must be filed with the party's brief in accordance with regulation 30303, unless otherwise allowed by OTA.
  - (3) **Oral hearing is requested.** For appeals where an oral hearing is requested, 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 a 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. If the declarant or affiant testifies at the oral hearing, the opposing party shall have the right to question such a witness during the hearing. Notwithstanding subdivision (b)(1), unless previously exercised and completed prior to the date of the oral hearing, the procedure set forth in subdivision (b)(1) to request any further questions or documentation from the witness is waived once the opposing party is provided a meaningful opportunity to question the witness at the oral hearing.
  - (4) **Format.** Declarations and affidavits shall be signed under penalty of perjury by the person making it and shall contain the following statement, or substantially similar statement, above the declarant's or affiant's signature: "I declare under penalty of perjury under the laws of the State of California [or the jurisdiction where executed] that the foregoing is true and correct, and this declaration was executed at [insert city, state] on [insert date]."
- (c) **Disclosure of witnesses and evidence.** OTA may issue an order regarding the disclosure of witnesses and evidence.
  - (d) **Privilege.** Nothing in this regulation 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.
- Any party seeking a subpoena pursuant to this subdivision must file a written motion with OTA specifying why good cause exists for OTA to authorize the use of the subpoena process set forth in Government Code sections 11450.05 through 11450.50.
- (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 Panel Member 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.
  - (5) After weighing the evidence, the Panel will make any necessary factual findings in any Opinion issued by OTA. A factual finding on any material disputed fact shall not be based solely on unsworn statements made by a party during the appeal proceeding before OTA, such as statements contained in a party's brief, or arguments made by an unsworn representative during an OTA oral hearing.
- (g) **Additional discovery.** A request for discovery beyond what is outlined in this regulation 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, and 15679.5, Government Code.

#### 30214.5. **Noncompliance with Discovery Requests**

- (a) **Generally.** 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 compel 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 regulation 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 with or 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 or any applicable response.

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. **Application of Ethical Standards**

Every Panel Member shall follow ethical standards, including rules governing conflicts of interest and ex parte communications, as prescribed by OTA.

- (a) **Incorporation of the Administrative Adjudication Code of Ethics:** Unless otherwise provided, Panel Members are subject to article 16 of chapter 4.5 of part 1 of division 3 of Title 2 of the Government Code. The term "Panel Member" shall be substituted for "administrative law judge" in each instance. For purposes of this section, subdivision (c) of Government Code section 11475.30 shall be interpreted to include any "Panel Member."
- (b) **Ex Parte Communications.** Panel Members are subject to article 7 of chapter 4.5 of part 1 of division 3 of Title 2 of the Government Code. For purposes of this subdivision, section 11430.10 of the Government Code, which prohibits certain ex parte communications with parties to a pending appeal proceeding, shall apply to all OTA employees, including support staff. Nevertheless, nothing in that article shall be interpreted to prohibit or otherwise restrict ex parte communications regarding purely administrative or procedural matters, or communications of a general nature that do not relate to a particular appeal before OTA.
- (c) **Disqualification for cause.** Any party may file a motion to disqualify for cause any Panel Member or any other staff member of OTA who is assigned to work on an appeal, based upon the grounds set forth in Government Code sections 11425.30 to 11425.40, or upon any other basis required by law. There is no right to peremptory challenges.
- (d) **Non-applicability.** Sections 11430.30, subdivision (c)(2), 11430.70, subdivisions (b) and (c), and 11430.80 of the Government Code shall not apply. Notwithstanding section 11475.40 of the Government Code, Canon 3B(12) of Code of Judicial Ethics, discussing authority to settle disputes, Panel Members shall not engage in any settlement negotiations or offer in compromise discussions with the parties to an appeal and Canon 3B(12) shall not apply to OTA.
- (e) **Conflicts.** To the extent any requirements of this section conflict with other sections of OTA's Rules for Tax Appeals, this section shall prevail. To the extent of any conflict with part 9.5 of division 3 of Title 2 of the Government Code, Part 9.5 of the Government Code shall apply.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. References: Sections 11425.30 through 11430.80, 11475 through 11475.70, 15670, 15672, 15674, 15679.2, and 15679.5, Government Code.

### 30216. Incorporation of the Administrative Procedure Act

- (a) **Accessibility of hearings.** Except as otherwise provided in OTA's 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 and OTA will use hearing procedures that are accessible to all representatives, including those who are not lawyers, and to self-represented parties. OTA has the ability to take or allow such actions as are permitted by the Administrative Procedure Act.
- (b) **Nonappearance appeals.** 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 part 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 appeals.** 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 ability 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 appeal; (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 appeal. 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 OTA's Rules for Tax Appeals, 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 Procedure 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 (b) of 11425.20, 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 Panel Member.** Where the Administrative Procedure Act uses the term "Presiding Officer," that term shall have the meaning of "Lead Panel Member" or "Panel" as context and utilization require, or a Presiding ALJ if no Panel Member is 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, OTA's 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 a Franchise or Income Tax 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 in a franchise or income tax appeal. 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.

### 30219. **Application of Burden of Proof**

- (a) **Burden of Proof.** Except as otherwise specifically provided by law, the burden of proof is on the appellant as to all issues of fact, except that, in respect of any new matter first raised by the respondent during an appeal before OTA, the burden with respect to the new matter shall be on the respondent.
- (b) **Standard of proof.** Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.
- (c) **Fraud or evasion.** In any proceeding involving the issue of fraud or intent to evade tax, the burden of proof as to that issue is upon the Agency by clear and convincing 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,

### **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. For purposes of this article, a postponement means removing an appeal from a scheduled or pending oral hearing calendar for purposes of rescheduling to the next available oral hearing calendar. A deferral means placing the appeal proceedings in a temporary inactive status until specified matters are resolved and the appeal may proceed through the normal appeals process.
- (b) For purposes of subdivision (a), good cause 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 appeal;
  - (4) 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
  - (5) 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) Notwithstanding subdivision (a), OTA will not postpone or defer proceedings where the 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 do not resolve 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 a Panel Member or Presiding ALJ. The appeal shall be dismissed when the conditional dismissal becomes final. A conditional dismissal shall become final after expiration of a set amount of time set forth in the order directing the conditional dismissal, or upon notification from the parties that the terms of the conditional dismissal agreement have been satisfied. For purposes of this subdivision, a conditional dismissal means an agreement by all parties to dismiss the appeal subject to certain terms as agreed upon by the parties. The Panel may resolve any disputes between the parties as to whether the terms required for dismissal have been met.
- (e) OTA becomes aware that a party is a suspended or forfeited entity. OTA shall allow the suspended or forfeited entity a minimum of 30 days to reinstate prior to dismissing the appeal. 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 extend the 30-day deadline.
- (f) If OTA determines that all issues on appeal have become moot, are conceded by the parties, or OTA otherwise lacks authority to provide the relief requested.
- (g) If any party, whether a taxpayer or an Agency, fails to respond, ceases to participate, or otherwise is non-responsive during the appeals process then OTA may dismiss the party's appeal pursuant to this subdivision. OTA may consider the failure to reasonably comply with the briefing schedule, or an Agency concession or withdrawal from an appeal without timely notifying OTA, as a failure to participate. There must be at least three instances of a failure to meaningfully respond or participate before OTA will proceed with dismissing an appeal. If OTA determines there has been a failure to participate, which prevents the appeal



from moving forward, OTA will send notice to the parties of its intent to dismiss the appeal. The parties will have 30 days to respond to such notice. OTA may dismiss an appeal in the event of a failure to respond to the notice, or if the party who did not participate fails to establish good cause for the failure to participate.

Upon dismissal, OTA will notify the parties that the appeal has been dismissed. Any dismissal notice will state the reason for the dismissal (e.g., Agency concession or withdrawal).

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 an Appeals Bureau decision**

- (a) **Requests for reconsideration.** The parties shall notify OTA in writing if CDTFA accepts a request for reconsideration of an Appeals Bureau decision or supplemental decision, or if the Appeals Bureau elects to issue a revised or supplemental decision on its own discretion and, upon such notification, the appeal before OTA will be closed.
- (b) **Revised or supplemental Appeals Bureau decision.** When the Appeals Bureau issues a revised or supplemental decision, whether on its own discretion or in response to a request for reconsideration, or notifies the party filing a request for reconsideration 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 an action of FTB or CDTFA, unless the appeal involves an innocent spouse determination. However, OTA may modify the briefing schedule or request additional briefing or evidence pursuant to OTA's Rules for Tax Appeals. In the case of a petition for redistribution of local or district tax, OTA will also 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. 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, with a copy to 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 legible, no longer than 30 double-spaced pages, or 15 single-spaced 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, or at most 12, or the equivalent. OTA may grant an exception to these requirements for good cause. For purposes of this regulation, a page should be 8 ½ inches by 11 inches.
- (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. If, however, the brief is in substantial compliance with these requirements, OTA may accept the brief. Otherwise, the 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 of this regulation, within the period of the applicable briefing schedule, including any applicable deadlines or extensions, is a waiver of the right to submit that brief. However, nothing in this subdivision shall preclude OTA from requesting additional briefing.
- (g) **Non-party briefing.** At the discretion of OTA, non-party (amicus) briefs may be submitted to OTA for consideration. 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 Panel Member. A motion should clearly and concisely state the relief requested and the facts and any applicable authorities 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 or appeal form, 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 appeals, the record will be closed at the end of the briefing process. For oral hearing appeals, 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, 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 to file additional briefing or evidence. 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. OTA will determine the order, deadlines, and conditions under which any additional briefing or evidence may be permitted. Unless otherwise provided by OTA, 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 Panel Member 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. 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. 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 Agency actions that grant or deny, in whole or in part, innocent spouse relief pursuant to regulation 30103. The provisions of regulation 30302 shall apply to any briefing submitted pursuant to this article.

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 during the appeal.
- (b) A **“non-appealing spouse”** is an individual who filed a joint return(s) for the year(s) at issue with the appealing spouse but did not file a timely appeal from the Agency action granting or denying innocent spouse relief. 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) **Consolidation.** 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.
- (b) **Rights of non-appealing spouse.** 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.
- (c) **Contacting a non-appealing spouse.** OTA shall use the best information available to OTA to contact the non-appealing spouse.
- (d) **Jurisdiction.** 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.
- (e) **Affirmative defense.** 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.

- (f) **Hearing location.** Innocent spouse hearings will be held in accordance with regulation 30401. In the event the parties disagree as to the hearing location, OTA will determine the location.
- (g) **Separate hearings.** Either spouse participating in an innocent spouse appeal may request a separate oral hearing, or to appear remotely, when requesting an oral hearing.
  - (1) **Requests for separate oral hearings.** Requests for a separate oral hearing may be made no later than 15 days from the date of the notice of oral hearing. A spouse who wishes to request a separate oral hearing should submit a written request for a separate hearing by the deadline provided by OTA for responding to the notice of 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 evaluate a request for a separate oral hearing based on good cause. For purposes of this subdivision, good cause includes, but is not limited to, any of the following:
    - (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) **Deciding the appeal.** If a Panel conducts separate oral hearings, the Panel will not decide the appeal until both hearings have concluded.
- (h) **Request for a closed hearing or to seal the record.** A party in an innocent spouse appeal may request, under regulation 30432, that items in the administrative record be sealed or that an oral hearing or a portion of the oral hearing be closed to the public.
  - (1) **Grounds.** Grounds for requesting the closure of an oral hearing or the sealing of an item may include that the appeal involves information the disclosure of which would cause unwarranted annoyance, embarrassment, oppression, or any other ground set forth in regulation 30432.
  - (2) **Procedures.** A request to close a hearing or seal the record must state the grounds upon which it is based. The contents of the request will only be used in determining whether to grant the request. OTA will notify the other parties that such a request has been made. OTA may identify parts of the administrative record that should be sealed. In the event OTA determines that the administrative record should be sealed in whole or in part, OTA will notify the parties of its intention to do so.
- (i) **Request for innocent spouse relief during appeal.**
  - (1) **Request submitted to an Agency.** If, prior to a Panel's decision on an appeal, the Agency receives a request for innocent spouse relief that is relevant to the appeal, the Agency must confirm that it has provided, or has 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 defer appeal proceedings, 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.
- (2) **Request submitted to OTA.** If, prior to a Panel's decision on an appeal, an appellant seeks innocent spouse relief from OTA without first seeking such relief from the Agency, OTA will notify the parties of the request for innocent spouse relief and may defer appeal proceedings, 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.
- (j) **Grant or denial of relief during an 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, if the Agency grants relief based on a determination under Internal Revenue Code section 6015, regulation 30316 will apply, rather than this regulation.

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 supplemental opening brief. The appeal letter and any

supplemental opening brief cannot exceed a total of 30 pages, formatted pursuant to regulation 30302, unless otherwise permitted by OTA.

- (b) **Agency'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 timely submitted; or
  - (3) The date 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.

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.

- (b) **Non-appealing spouse's reply brief.** The non-appealing spouse may file a reply brief within 30 days from the date OTA acknowledges the appealing spouse's reply brief or notifies the parties that the time for the appealing spouse to file a reply brief has expired. A non-appealing spouse's reply brief may only address points of disagreement with briefs previously submitted.
- (c) **Agency's reply brief.** If the non-appealing spouse files an opening brief or a reply brief, OTA will notify the Agency that it has 15 days to request to file a reply brief if the Agency wishes to do so. OTA will notify the Agency that it may file such a request once briefing has otherwise concluded (other than any additional briefing that may be requested under regulation 30304). Grounds for an Agency request to file a reply brief may include the grounds set forth in regulation 30304. If OTA grants the Agency's request to file a reply brief, the Agency's brief must be filed within 30 days of the date OTA grants the Agency's



request to file a reply brief, and the Agency's reply brief may only address points of disagreement with the appealing spouse's reply brief or the non-appealing spouse's opening brief or reply brief.

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), 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). Any brief or evidence or submitted pursuant to this subdivision may only address points of disagreement with the information submitted pursuant to subdivision (b). If this regulation becomes applicable after the briefing schedule has concluded, then briefing will be reopened for the purpose of complying with this regulation, 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 an Oral Hearing**

- (a) **Persons who may request an oral hearing.** The following persons may request an oral hearing: an appellant, a taxpayer, or a local entity. For purposes of this regulation, a person who may request an oral hearing is referred to as an “appellant.”
- (b) **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, on a form provided by OTA, or with the appellant’s briefing. OTA will provide the appellant with a form to request an oral hearing and the form will state the available oral hearing locations. The appellant’s request should indicate the requested location of the oral hearing. The appellant may request that an oral hearing be conducted electronically, or at one of OTA’s oral hearing facilities. The oral hearing will be held in person, unless the appellant timely requests an electronic oral hearing. In addition, subject to approval by OTA, a party may request electronic witness testimony for a portion of the hearing pursuant to regulation 30420.
  - (1) **Confirmation.** OTA may send an appellant confirmation notices 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.
- (c) **Innocent spouse appeals.** Either or 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 regulation. However, 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. Nevertheless, a Panel may conduct separate oral hearings if requested in accordance with regulation 30312, subdivision (g).
- (d) **Forfeiture of an oral hearing.** An appellant forfeits the right to an oral hearing if OTA determines that the appellant’s presence at an oral hearing may threaten the health or safety of any other person present.

(e) **Forfeiture due to unreasonable delay.** Actions taken by a party which unreasonably and without good cause frustrate the timely processing or resolution of an appeal may be regarded as a waiver or forfeiture of that party's right to an oral hearing. Factors which OTA will consider in determining whether there has been a waiver or forfeiture shall include:

- (1) Whether the purpose of the delay is intended to harass a party or delay the resolution of the appeal; or
- (2) Whether the party has previously been granted more than three rescheduled oral hearings.

(f) **Review of a forfeiture decision.** If OTA determines that an appellant forfeited the right to an oral hearing pursuant to subdivisions (d) or (e), the appellant may request review of the forfeiture decision by OTA's Chief Counsel. The review request must be made in writing no later than 15 days from the date the forfeiture notification was mailed to the appellant. In reviewing the request, if an in-person oral hearing was forfeited, the Chief Counsel, or their designee, may for good cause convert the appellant's request for an in-person oral hearing into an electronic oral hearing and allow an electronic oral hearing to be scheduled.

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 the 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 no later than 15 days from the date the notice of oral hearing was mailed. Each appellant 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 cost to them. The response to the notice of oral hearing should set forth the party's request for an interpreter and indicate the interpretation 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, address, and phone number of all witnesses who will testify for the party. If available, a fax number and email address should also be provided for all witnesses.
- (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 who requested an oral hearing fails to respond to the notice of oral hearing by the deadline stated in the notice of oral hearing, OTA will notify the parties in writing that the appeal has been removed from the oral hearing calendar. The appeal will then be submitted to a Panel for a decision on the basis of the written record.
- (b) **Postponement or deferral.** If OTA denies a request to postpone or defer an oral hearing, and, prior to the day of the oral hearing, the party who requested the postponement or deferral informs OTA that the party will not appear at the oral hearing, or the party fails to respond to a request to confirm attendance, OTA may remove the appeal from the oral

hearing calendar and the appeal will be decided based on the written record.

- (c) **Failure to appear.** Except as provided in subdivision (b), if only one party appears for a duly noticed oral hearing and wishes to proceed, OTA may conduct the oral hearing in the absence of the party who failed to appear. OTA may also submit the appeal for decision based on the written record and remove it from the hearing calendar. If all parties fail to appear for the oral hearing, the appeal will be submitted to a Panel for decision based on the written record.
- (d) **Good cause exception.** If an appeal is removed from the oral hearing calendar or an oral hearing is held in absence of a party pursuant to this regulation, and the Panel has not yet issued a written Opinion, OTA may, in its discretion, return the appeal to the oral hearing calendar upon a showing of 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 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**

An appeal 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: (1) to call and question witnesses; (2) to introduce exhibits; and (3) 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 Panel to control proceedings as otherwise provided in OTA's 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.

#### **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 accepted from the parties. For good cause, the Panel may defer its determination of the submission date, reopen the oral hearing record, or take any other action consistent with regulation 30213.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 11425.10, 11425.50, 15672, and 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 correct the substance of an oral hearing transcript. OTA shall give notice to the parties when such a request has been filed with OTA. Any such request must be made in writing in accordance with any instructions or form provided on OTA's website ([www.ota.ca.gov](http://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; and
- (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, and 15679.5, Government Code.

## **Article 3. Presentation of Evidence at an Oral Hearing; Motions**

### **30420. Presentation of Evidence 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. Either party 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 the party's 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 during an in-person oral hearing.** Upon written request by either party, or upon determination by the Lead Panel Member, the Panel may, subject to availability of electronic resources, conduct part of an in-person 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 Panel Member shall consider:
  - (A) whether attending the hearing in person 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.
- (2) Any request for electronic witness testimony for a portion of an oral hearing shall be made no later than upon the due date to respond to the notice of oral hearing pursuant to regulation 30403. The Lead Panel Member may consider an untimely request for electronic witness testimony for a portion of an oral hearing upon a showing of good cause for the late filing of the request.
- (3) The Lead Panel Member may grant a request for electronic witness testimony upon a showing of good cause and technological availability.

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 Panel Member 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 Panel Member 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 Panel Member or a Presiding ALJ. For example, although these rules provide for deadlines for submitting exhibits, a Lead Panel Member may require submission by an earlier date in a complex appeal, or may extend the deadline if good cause is shown to warrant a later deadline.
- (d) Except as otherwise provided by OTA's Rules for Tax Appeals, or as permitted by the Lead Panel Member 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.

## **Chapter 5.5 Public Transparency and Protection of Confidential Information**

### **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 regarding all the briefing, exhibits, communications, and other information provided to OTA by either the party or an Agency, including CDTFA or FTB. On request, OTA may disclose information pursuant to Revenue and Taxation Code section 19545, the California Public Records Act, 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 regulation, "personal information" generally means and includes the following: an individual's address, telephone number, social security number, federal identification number, driver's license number, full financial account numbers, full names of minor children, or full dates of birth. OTA will not provide an individual's personal information to the public in response to a request made pursuant to the California Public Records Act.
- (c) Nothing in OTA's Rules for Tax Appeals shall prohibit any party to an OTA hearing, Panel Member, or OTA staff from referring to personal information or otherwise using the information in the course of an appeal. Nevertheless, OTA 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 7920.000, 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.

#### **30430.5. Protection of Confidential Information**

- (a) Any documentation submitted to OTA is generally a part of the administrative record and may be subject to public disclosure when required by law, unless otherwise protected from disclosure under applicable law, including the California Public Records Act.
- (b) If OTA is made aware of confidential information in its possession, OTA may take reasonable steps to ensure that the confidential information is protected from public disclosure. Actions that OTA may take include, but are not limited to, redaction by OTA, or requiring the party to redact and resubmit the documentation to OTA.
- (c) Access to public records maintained by OTA is governed by the California Public Records Act. For purposes of this regulation, the term “public records” is defined in Government Code section 7920.530. To the extent anything in OTA’s Rules for Tax Appeals conflicts with OTA’s obligations under the California Public Records Act, the California Public Records Act shall prevail. An order granting a closed hearing or sealing the record shall not preclude disclosure where required under applicable law, including the California Public Records Act.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 7920.000, 7920.505, 7920.530, 7921.005, 7921.310, 7922.000, 7922.540, 7922.535, 7929.000, 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.
- (b) An appellant may request that items in the administrative 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. Consistent with regulation 30432 OTA may, in its discretion, order that items in the administrative record be sealed or redacted, in whole or in part.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 7920.505, 11124.1, 11425.10, 11425.20, 15619, 15674, and 15675, 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 administrative 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:
    - (A) Whether such information is not otherwise publicly available and would ordinarily be considered to be private and sensitive;
    - (B) Where a request for a closed hearing is made, whether such information is likely to be disclosed during an oral hearing;
    - (C) 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.
  - (2) Upon other grounds as necessary to ensure a fair hearing and provision of due process, in the circumstances of that particular appeal.
- (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 appeal 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.
- (1) OTA will publish an Opinion for each appeal, regardless of whether a motion to close the hearing or seal the record was granted. However, OTA may redact documents published on its website, such as the hearing agenda or Opinion, when necessary to protect confidential information from public disclosure.
  - (2) Records maintained by OTA are subject to the disclosure and exemption rules under the California Public Records Act regardless of whether a motion to close the hearing or seal the records was granted or publicly published documents were redacted.
- (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 regulation will be applied and interpreted in a manner that recognizes the public interest in transparency.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 5095, Business and Professions Code; Sections 7920.505, 11124.1, 11425.10, 11425.20, 15619, 15674, 15675, 15676, and 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 the Record, or Redact Information**

OTA shall issue a written notice granting or denying any request made pursuant to regulations 30431 and 30432.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 7920.505, 11124.1, 11425.20, 15619, and 15674, Government Code; Sections 20, 7081, 19542, 19545, and 20645, Revenue and Taxation Code.

## **Chapter 5.6. Panel Assignments**

### **30436. Panel selection process.**

- (a) **Generally.** The Director of OTA or their designee will use the following method for selecting the Panel Member(s) for a Panel, to the extent possible:
  - (1) The Panel Member(s) will be randomly selected for each Panel.
  - (2) The randomly selected Panel Member(s) will be placed on the Panel if;
    - (A) Their workload allows;
    - (B) They have sufficient background in the subject matter; and
    - (C) The work is at an appropriate level for their state classification.
- (b) **Retirement, transfer, or termination of employment.** If a Panel Member retires, transfers, or is otherwise no longer able to timely complete their work on an appeal, OTA may reassign that Panel Member's role on any Panel to a new Panel Member. Panel reassignments do not restart the appeals process or result in a reopening of the written record or oral hearing record, unless requested by OTA. OTA shall notify the parties when there has been a Panel reassignment.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Section 15670, Government Code; Sections 20 and 40, 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 Panel Member(s) and any Panel Member(s) concurring in or dissenting from the Panel's Opinion.

- (c) **Delegation of signature authority.** Any member of a Panel may authorize a designee to sign an Opinion on the Panel Member's 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 Opinion becomes final, OTA will publish the Opinion on OTA's website.
- (f) **Withdrawn appeals.** If a party withdraws from an appeal prior to the issuance of an Opinion, OTA will not publish an Opinion in the appeal. If a party withdraws from an appeal after OTA issues an Opinion, OTA will publish the Opinion pursuant to this regulation.
- (g) **Publication of Opinion on Petition for Rehearing.** If a Panel denies a petition for rehearing, an Opinion on Petition for Rehearing shall be published in addition to the Opinion subject to the petition. If a Panel grants a petition for rehearing, the Opinion on Petition for Rehearing shall be published in addition to the Opinion on Rehearing. In addition, OTA will also publish the Opinion subject to the petition. Publication shall be pursuant to this regulation. For purposes of this regulation, the terms Opinion on Petition for Rehearing, and an Opinion on Rehearing, shall have the same meaning as defined in regulation 30601.
- (h) **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.
  - (1) 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 2021 were a precedential Opinion, its Opinion number would be "2021-OTA-002P."
  - (2) Opinions which are superseded, in whole or in part, will have an "X" at the end of the sequential number of the appeal. For example, if the third Opinion published in 2021 was a superseded Opinion, its Opinion number would be "2021-OTA-003X."
  - (3) Small Case Program Opinions, which are not eligible for precedential status, will have an "S" at the end of the sequential number of the appeal. For example, if the fourth Opinion published in 2021 was a Small Case Program Opinion, its Opinion number would be "2021-OTA-004S."
- (i) **Sealing the record or redaction.** A party may request that OTA seal the record in an appeal or redact information in an Opinion pursuant to regulations 30431 and 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. **Process for designating an Opinion as Precedential**

- (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 an 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 OTA legal staff. The Director of OTA or their designee may reject a determination to make an Opinion precedential. The Director shall not be involved in deciding any appeal.
- (e) **Posting of precedential Opinions.** Precedential Opinions shall be posted on OTA's website, and when first posted will be marked as "Pending Precedential." The Pending Precedential designation serves as notice to the public that OTA is considering making the Opinion precedential and provides an opportunity for the public to submit comments before OTA makes a final determination on precedential status.
  - (1) **Public comment period.** All comments should be submitted to OTA for consideration within 30 days of an Opinion being posted as "Pending Precedential." A party may also submit to OTA notification of an intent to submit a comment within this 30-day timeframe, and thereafter must submit a comment within 30 days. No sooner than 35 days and no later than 60 days after being posted as "Pending Precedential," OTA will update the "Pending Precedential" designation of the Opinion to "Precedential" or "Nonprecedential."
  - (2) **Review of public comments.** OTA will consider all timely comments received for or against making the Opinion precedential prior to updating the status. OTA may hold the status of an Opinion in "Pending Precedential" for up to 60 days from the date of initial posting to consider comments received from the public, or in the case of

receiving a timely notice of intent to submit a comment.

- (f) **Other Opinions:** Superseded Opinions will be noted as “Superseded” on the website. Small Case Program Opinions will be noted as “Small Case Program” 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.

### **30503. Withdrawal of Precedential Status**

OTA may withdraw, in whole or in part, the precedential status of an Opinion, including a State Board of Equalization opinion on a subject over which OTA has jurisdiction, previously designated as precedential. OTA shall explain why the precedential status is being removed. Removing the precedential status of an Opinion, in whole or in part, does not nullify the holding in that Opinion, or any subsequent Opinion that cited to the formerly precedential 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, OTA 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, 45305, 46355, 50118, 55085, and 60354, Revenue and Taxation Code.

### **30505. Finality of Opinions**

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, and not the date that notice of the Panel's Opinion is received by a party.

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 an Opinion based on a non-substantive error or errors.** 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. 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).
  - (1) **Time to file.** A motion to revise an Opinion based on a non-substantive error or errors is timely if it is mailed before the Opinion becomes final. 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.
  - (2) **Objection.** The non-filing party or parties may object to the filing party's motion to revise within 30 days, unless otherwise provided by OTA.
  - (3) **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, and a party responded to the motion to revise indicating that it is not in agreement with a proposed revision, or in OTA's discretion, 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.
  - (4) **OTA revisions.** On its own initiative, OTA may revise an Opinion, consistent with this subdivision, irrespective of whether a party filed a motion to revise an Opinion. If OTA discovers non-substantive errors in a non-final Opinion that has been issued, OTA may correct such errors in the published Opinion and include in an addendum or other such notice where the Opinions are published a list identifying such corrections, so long as OTA notifies the parties that the Opinion will be revised prior to the Opinion going final, including the applicable extension of time in regulation 30204. Such corrections do not affect the date the Opinion becomes final.
  - (5) **Definitions.** For purposes of this regulation: (1) an error is "non-substantive" if it does

not change, in whole or in part, the holding or reasoning of the Opinion; and (2) the term “Opinion” includes an Opinion as defined in regulation 30102; an Opinion on Petition for Rehearing, and an Opinion on Rehearing, as those terms are defined in regulation 30601; and an Opinion on Reimbursement Claim as that term is defined in regulation 30705.5.

- (b) **Errata changes.** Notwithstanding subdivision (a), OTA may make errata changes at any point, even after Opinion becomes final, and no notice to the parties is required. For purposes of this regulation, errata changes include changes, such as typographical errors or grammatical corrections, which do not change the holding in an appeal.
- (c) **Substantive changes initiated by OTA.** OTA may, consistent with subdivision (d), propose substantive revisions within the 30-day time period to file a petition for rehearing, by mailing a letter to the parties notifying them of the proposed substantive revision or of OTA’s intent to make a proposed substantive revision. The parties must stipulate to any substantive change as provided in subdivision (d) before OTA will revise the Opinion.
- (d) **Motion for a stipulated substantive revision to an Opinion.** If a party believes an Opinion contains a substantive error or errors, the party must timely file a petition containing the essential elements of a petition for rehearing as set forth in Chapter 7 of OTA’s Rules for Tax Appeals. If it appears that the parties agree that a revision is necessary, either party may file a motion for a stipulated revision to the Opinion at any point during the briefing process, which may be concurrent with the party’s filing of a petition for rehearing.
  - (1) **Written agreement required.** Both parties must agree, in writing, to a stipulated revision to the Opinion before OTA will consider revising an Opinion based on a stipulated agreement between the parties. OTA will issue a revised Opinion if the Panel agrees that there is an error in the Opinion. If the parties stipulate to the change, there are no further issues on appeal, and the Panel accepts the parties’ stipulation, OTA will issue a revised Opinion reflecting the stipulated change. The revised Opinion will replace the previously issued Opinion, and the previously issued Opinion will not be published on OTA’s website or will be revised if it has already been published. If there are additional issues on appeal, the appeal will proceed through the normal briefing process on the remaining disputed issues. In such an appeal, OTA will follow regulation 30501 to determine whether and, if so, when to publish a revised Opinion.
  - (2) **Issue date.** If OTA issues a revised Opinion due to a stipulated agreement by the parties, the Opinion will be revised as agreed by the parties and the issuance of the revised Opinion will not change the issue date of the underlying Opinion. However, if there is still an active petition for rehearing subject to appeal before OTA, OTA will issue an Opinion on Petition for Rehearing, which will become final pursuant to regulation 30606.
  - (3) **Petitions for rehearing.** There is no right to file a petition for rehearing of an Opinion revised due to a stipulated agreement by the parties.

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**

- (a) **Definitions.** The following definitions shall apply to Chapters 7 of OTA's Rules for Tax Appeals.
- (1) **Filing Party.** A filing party is a party who files a timely petition for rehearing. There may be more than one filing party.
  - (2) **Non-filing Party.** A non-filing party is a party who does not timely file a petition for rehearing. There may be more than one non-filing party.
  - (3) **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.
  - (4) **Opinion on Rehearing.** An "Opinion on Rehearing" is an Opinion on the new rehearing appeal before OTA, and it is issued after the Panel's decision to grant a 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. 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 Rehearing**

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

to any documents submitted under this regulation.

(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, each non-filing party may file a reply brief to the petition for rehearing.
- (3) **More than one filing party.** If there is more than one filing party, then each non-filing 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 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, 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(s);
- (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 will 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, occurring during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented;
  - (3) Newly discovered evidence, material to the appeal, 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 OTA appeals hearing or proceeding.
- (b) For purposes of this regulation, 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 OTA 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 any Opinion issued by OTA, even if OTA issues more than one Opinion, such as in the case of a severed appeal. A party may not submit a petition for rehearing in response to an Opinion on 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. Nothing in this section prevents a party from arguing that the petition for rehearing was improperly granted during the rehearing proceedings in the event a rehearing is granted.

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. Opinions on Petitions for Rehearing**

- (a) **Panel on petition for rehearing.** To the extent possible, a Panel deciding upon a petition for rehearing shall consist of a Presiding ALJ, a Panel Member who was not on the original Panel, and the Lead Panel Member who authored the Opinion that is subject to the petition. A Presiding ALJ or the Chief Counsel may delegate the Presiding ALJ’s role on the Panel

to a Panel Member who was not on the original Panel. Any new members of the Panel will be assigned pursuant to regulation 30436.

- (b) **Opinion on Petition for 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 a rehearing.** A Panel may limit the scope of the rehearing.
- (d) **Minor corrections without a rehearing.** Pursuant to regulation 30505, OTA may modify the prior Opinion based on the oral hearing record or 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 regulation, errors are typographical or non-substantive if they do not change, in whole or in part, the holding of the Opinion.
- (e) **Finality of Opinions.** 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.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15672, 15674, and 15675, Government Code; Sections 19048, 19334, and 19346, Revenue and Taxation Code.

#### 30607. Briefing on a Granted Rehearing

- (a) **General application.** The general requirements of regulation 30302 apply to the administration of this regulation and to any documents submitted under this regulation.
- (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 no later than 30 days from the date on which the petition for rehearing was granted.
  - (2) **Non-filing party's opening brief.** The non-filing party may submit an opening brief not later than 30 days from the date OTA acknowledges receipt of the filing party's opening 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 opening brief. OTA will acknowledge receipt of the filing party's reply brief and the briefing period shall conclude unless additional briefing is requested.
- (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 opening brief submitted pursuant to subdivision (c)(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.
- (g) **Requesting an oral hearing.** The rules for requesting and confirming an oral hearing as provided in Chapter 5 shall apply on a granted rehearing. If an oral hearing has not been requested, or it has been waived, OTA will decide the appeal based on the written record.
- (h) **Opinion on Rehearing.** When an Opinion on Rehearing is issued, the initial Opinion in the appeal which was subject to the granted petition for rehearing may be superseded, in whole or in part.

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.

#### 30608. **Effect of Withdrawal or Failure to Participate During a Petition for Rehearing**

- (b) **Withdrawal of a petition for rehearing.** If, prior to issuance of an Opinion on Petition for Rehearing, a filing party provides written notification to OTA that it is withdrawing its petition for rehearing, then OTA may dismiss the petition for rehearing if there are no remaining issues in the appeal. When an appeal involves more than one filing party, OTA may keep the appeal active and allow the remaining filing party or parties to pursue the appeal.
- (c) **Agency concession or withdrawal from the appeal.** If, prior to issuance of an Opinion on Petition for Rehearing, an Agency that filed a petition for rehearing concedes or otherwise withdraws the underlying assessment, action, determination, or other matter subject to an appeal before OTA, then OTA may dismiss the petition for rehearing if there are no remaining matters at issue. The Agency shall timely, within 30 days, notify OTA of its concession or withdrawal from the petition for rehearing.
- (d) **Taxpayer concession or withdrawal from the appeal.** If, prior to issuance of an Opinion on Petition for Rehearing, a taxpayer concedes or otherwise accepts the underlying assessment, action, determination, or other matter subject to an appeal before OTA, and there are no remaining matters at issue, then OTA may dismiss the petition for rehearing. The taxpayer shall timely, within 30 days, notify OTA of its concession or withdrawal from the petition for rehearing.
- (e) **Failure to participate.** If any party, whether a taxpayer or an Agency, fails to respond, ceases to participate, or otherwise is non-responsive during the petition for rehearing process then OTA may dismiss the filing party's petition for rehearing pursuant to this subdivision. OTA may consider the failure to reasonably comply with the briefing schedule outlined in regulation 30607, or an Agency concession or withdrawal from an appeal without timely notifying OTA, as a failure to participate. If OTA determines there

has been a failure to participate, OTA will send notice to the parties of its intent to dismiss the filing party's petition for rehearing. The filing party will have 30 days to respond to such notice. OTA may dismiss the petition for rehearing in the event of a failure to respond to the notice, or if the filing party fails to establish good cause for the failure to participate.

- (f) **Finality, publication, and effect of dismissal.** Withdrawal of the petition for rehearing or appeal, concession by either party, or a failure to participate will not affect publication of the Opinion pursuant to regulation 30501. If OTA dismisses a petition for rehearing pursuant to this regulation, OTA shall notify the parties in writing of the dismissal, and the Opinion shall become final on the date that OTA sends notification of the dismissal. Thereafter, the Opinion will be posted on OTA's website as provided in regulation 30501 and may be considered for precedential effect pursuant to regulation 30502.

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.

## **Chapter 8. Taxpayers' Bill of Rights - Reimbursement Claims**

### **30701. Jurisdiction**

This chapter applies to reimbursement claims filed under any program that, pursuant to OTA's authorizing legislation (part 9.5 of division 3 of title 2 of the Government Code), is within OTA's jurisdiction to review such a reimbursement claim. OTA's jurisdiction includes, but is not limited to, reimbursement claims filed pursuant to the:

- (a) Administration of Franchise and Income Tax Laws (Revenue and Taxation Code sections 17001–18181, 18401–19802, and 23001–25141).
- (b) Cigarette and Tobacco Products Tax Law (part 13 of division 2 of the Revenue and Taxation Code).
- (c) Diesel Fuel Tax Law (part 31 of division 2 of the Revenue and Taxation Code).
- (d) Emergency Telephone Users Surcharge Law (part 20 of division 2 of the Revenue and Taxation Code).
- (e) Energy Resources Surcharge Law (part 19 of division 2 of the Revenue and Taxation Code).
- (f) Integrated Waste Management Fee Law (part 23 of division 2 of the Revenue and Taxation Code).
- (g) Motor Vehicle Fuel Tax Law (part 2 of division 2 of the Revenue and Taxation Code).
- (h) Oil Spill Response, Prevention, and Administration Fee Law (part 24 of division 2 of the Revenue and Taxation Code).
- (i) Sales and Use Tax Law (part 1 of division 2 of the Revenue and Taxation Code).
- (j) Transactions and Use Tax Law and Additional Local Taxes (parts 1.6 and 1.7 of division 2 of the Revenue and Taxation Code).

(k) Underground Storage Tank Maintenance Fee Law (part 26 of division 2 of the Revenue and Taxation Code).

Use Fuel Tax Law (part 3 of division 2 of the Revenue and Taxation Code).

(l) Fees collected pursuant to the Fee Collection Procedures Law (part 30 of division 2 of the Revenue and Taxation Code), including those fees specified in California Code of Regulations, title 18, section 3500.

(m) Taxes and fees collected pursuant to the Hazardous Substances Tax Law (part 22 of division 2 of the Revenue and Taxation Code), including, but not limited to, the Hazardous Substances Tax, the Childhood Lead Poisoning Prevention Fee (chapter 5 of part 5 of division 103 of the Health and Safety Code), and the Occupational Lead Poisoning Prevention Fee (chapter 2 of part 5 of division 103 of the Health and Safety Code).

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 an Action of FTB or CDTFA**

For reimbursement claims from an action of FTB or CDTFA, only those fees and expenses incurred after the date of a notice of determination, notice of proposed deficiency assessment, jeopardy assessment, or 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 FTB or CDTFA 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. Reimbursement Claim Procedure**

(a) **Time to file.** A reimbursement claim must be submitted to OTA in writing.

- (1) **Appeals from an action 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 becomes final. A claim submitted after FTB has filed an opening brief and prior to the date OTA issues an Opinion resolving the appeal shall be deferred until 30 days after the earlier of: (1) the date the appeal is withdrawn, dismissed, or otherwise resolved without an

Opinion; or (2) the date the Opinion or, if applicable, Opinion on Rehearing, becomes final.

- (2) **Appeals from an action of CDTF.** The claim must be submitted after the Opinion becomes final and no later than one year after the date the Opinion became final.

(b) **Required elements.** 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) **Extensions.** 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, 15679, and 15679.5, Government Code. Sections 20, 7091, and 21013, Revenue and Taxation Code.

#### 30705.5. **Panel on Reimbursement Claim**

- (a) **Generally.** To the extent possible, a Panel assigned to a reimbursement claim shall consist of a Presiding ALJ, a Panel Member who was not on the original Panel, and the Lead Panel Member who authored the Opinion that is subject to the reimbursement claim. A Presiding ALJ or the Chief Counsel may delegate the Presiding ALJ's role on the Panel to a Panel Member who was not on the original Panel. Any Panel Member added pursuant to this subdivision will be randomly selected as set forth in regulation 30436.
- (b) **Claim filed prior to Opinion.** If a Panel was not previously assigned to the underlying appeal subject to the reimbursement claim, then a new Panel will be assigned pursuant to regulation 30436. Nevertheless, a Panel shall not be assigned prior to expiration of any deferral periods set forth in subdivision (a)(1) of regulation 30705.
- (c) **Opinion on Petition for Rehearing.** If a Panel issued an Opinion on Petition for Rehearing in connection with the underlying appeal, that same Panel may decide the Opinion on Reimbursement Claim.
- (d) **Opinion on Reimbursement Claim.** An "Opinion on Reimbursement Claim" is an Opinion that provides the basis of a Panel's decision on a reimbursement claim submitted under this chapter.

Note: Authority cited: Sections 15676.2, 15679, and 15679.5, Government Code. Reference: Sections 15672, 15674, 15675, 15676.2, 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 regulation 30705.
- (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, OTA may grant the Agency an additional 30 days to respond to the new material.
- (d) **Oral hearing.** After the submission of documents described in this regulation, the claim will be scheduled for oral hearing, if an oral hearing is timely requested pursuant to regulation 30401. The claimant and the Agency will receive notice of the hearing at least 45 days prior to the scheduled date and time. The option to request an oral hearing may be waived by the claimant, in which case the appeal 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 on Reimbursement Claim

OTA will send written notice of the Opinion on Reimbursement Claim to the claimant and the Agency. The Opinion on Reimbursement Claim is final 30 days from the date it is mailed. OTA will not accept a petition for rehearing of an Opinion on Reimbursement Claim.

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.