

Text of Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. State Board of Equalization – Business Taxes

(The Changes to the Text of Division 2 are Illustrated in Strikeout and Underline)

Division 2. California Department of Tax and Fee Administration – Business Taxes (State Board of Equalization – Business Taxes, see chapters 6 and 9.9)

1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections ~~7657.5 and 8101-8131~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections ~~50112.6 and 50139-50142.2~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections ~~8880 and 9151-9156~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

1705.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for sales and use tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 35055 are met. ~~(a) In General. A spouse may request innocent spouse relief from liability for any sales or use tax, interest, penalties, and other amounts. A requesting spouse shall be relieved from such liability where all of the following requirements are met:~~

~~(1) A liability is incurred under the Sales and Use Tax Law;~~

~~(2) The liability is attributable to the non-requesting spouse;~~

~~(3) The spouse requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting spouse's circumstances would not have had reason to know of, the liability; and~~

~~(4) It would be inequitable to hold the requesting spouse liable for the liability, taking into account whether the requesting spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.~~

~~(b) "Benefited." Whether a requesting spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.~~

~~(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.~~

~~(1) A request for innocent spouse relief may be filed if, at the time relief is requested, the requesting spouse is no longer married to or is legally separated from the non-requesting~~

~~spouse, or the requesting spouse is no longer a member of the same household as the non-requesting spouse.~~

~~(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.~~

~~(d) Written Request for Relief. To seek relief under subdivision (a), a requesting spouse must file a written request for innocent spouse relief setting forth the seller's permit number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.~~

~~(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse has filed a written request for innocent spouse relief under subdivision (d).~~

~~(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:~~

~~(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.~~

~~(B) The requesting spouse would suffer economic hardship if relief is not granted.~~

~~(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~

~~(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~

~~(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)~~

~~(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.~~

~~(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:~~

~~(A) The requesting spouse will not suffer economic hardship if relief is not granted.~~

~~(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.~~

~~(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.~~

~~(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.~~

~~(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~(F) The tax for which relief is being requested is attributable to the requesting spouse.~~

~~(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denial of such relief be reconsidered by the Board.~~

~~(g) Statute of Limitations. The provisions for innocent spouse relief and other equitable relief shall apply to all calendar quarters for requests filed no later than one year after the Board's first contact with the spouse making the request. Requests filed after one year from the Board's first contact with the spouse making the request shall not apply to any calendar quarter that is~~

~~more than five years from the return due date for nonpayment on a return, or~~

~~more than five years from the finality date on the Board-issued determination,~~

~~whichever is later.~~

~~No calendar quarters shall be eligible for relief under this regulation that have been closed by res judicata.~~

~~(h) Refunds. A refund of any amounts under this regulation shall be subject to the requirements as set forth in Revenue and Taxation Code sections 6901 through 6908, inclusive.~~

~~(i) This regulation shall apply retroactively to liabilities arising prior to January 1, 1994.~~

~~(j) The Board shall send notification by mail of the request for innocent spouse relief from liability and the basis for that request to the non-requesting spouse.~~

~~(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, on and after January 1, 2005, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, on and after January 1, 2005, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections ~~6066, 6067, 6456 and 6901-6908~~, Revenue and Taxation Code; and Sections 297 and 297.5, Family Code.

1807. Petitions for Reallocation of Local Tax.

~~(a) Definitions.~~

~~(1) Local Tax. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.~~

~~(2) Jurisdiction. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.~~

~~(3) Petition. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:~~

~~(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.~~

~~(B) Taxpayer's permit number or a notation stating "No Permit Number."~~

~~(C) Complete business address of the taxpayer.~~

~~(D) Complete description of taxpayer's business activity or activities.~~

~~(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state~~

~~location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.~~

~~(F) Name, title, and telephone number of the contact person.~~

~~(G) The tax reporting periods involved.~~

~~“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.~~

~~The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.~~

~~(4) Petitioner. “Petitioner” is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).~~

~~(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, “date of knowledge” is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.~~

~~(6) Substantially Affected Jurisdiction. “Substantially affected jurisdiction” is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.~~

~~(7) Notified Jurisdiction. “Notified jurisdiction” is a jurisdiction that has been notified as a substantially affected jurisdiction.~~

~~(b) Review by Sales and Use Tax Department.~~

~~(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.~~

~~(2) The Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.~~

~~(3) If the Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Sales and Use Tax Department will issue its decision based on the information in its possession.~~

~~(4) If the decision of the Sales and Use Tax Department is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).~~

~~(5) If the decision of the Sales and Use Tax Department is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).~~

~~(6) The petitioner or any notified jurisdiction may appeal the decision of the Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(10). If no such timely objection is submitted, the decision of the Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.~~

~~(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Sales and Use Tax Department, the Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.~~

~~(8) If the Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Sales and Use Tax Department, the petitioner or any notified jurisdiction may request that the Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.~~

~~(9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(10). If no such timely objection is submitted, the supplemental decision of the Sales and Use Tax Department is final as to the petitioner and all notified jurisdictions.~~

~~(10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the Sales and Use Tax Department will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.~~

~~(c) Review by Appeals Division.~~

~~(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Sales and Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.~~

~~(2) If a timely objection to Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.~~

~~(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.~~

~~(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.~~

~~(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.~~

~~(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.~~

~~(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and~~

~~other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.~~

~~(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.~~

~~(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.~~

~~(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

~~(d) Review by Board.~~

~~(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.~~

~~(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.~~

~~(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.~~

~~(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.~~

~~(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.~~

~~(e) Limitation Period for Redistributions. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.~~

~~(f) Application to Section 6066.3 Inquiries. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.~~

~~(g) Operative Date and Transition Rules. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that were governed by prior Regulation 1807 (effective February 22, 2003).~~

~~(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date under Section 11343.4 of the Government Code (thirty days after approval by the Office of Administrative Law and forwarding to the Secretary of State) and there shall be no retroactive effect.~~

~~(2) Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after its operative date or that of any amendments thereto.~~

~~(3) All petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 7209 and 7223, Revenue and Taxation Code.

~~1828. Petitions for Distribution or Redistribution of Transactions and Use Tax.~~

~~(a) Definitions.~~

~~(1) District Tax. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.~~

~~(2) District. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.~~

~~(3) Petition. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient~~

factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

- (A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.
- (B) Taxpayer's permit number or a notation stating "No Permit Number."
- (C) Complete business address of the taxpayer.
- (D) Complete description of taxpayer's business activity or activities.
- (E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).
- (F) Name, title, and telephone number of the contact person.
- (G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

~~(4) Petitioner. “Petitioner” is a district that has filed a valid petition pursuant to subdivision (a)(3).~~

~~(5) Date of Knowledge. Unless an earlier date is operationally documented by the Board, “date of knowledge” is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.~~

~~(6) Substantially Affected District. “Substantially affected district” is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.~~

~~(7) Notified District. “Notified district” is a district that has been notified as a substantially affected district.~~

~~(b) Review by Sales and Use Tax Department.~~

~~(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.~~

~~(2) The Sales and Use Tax Department will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.~~

~~(3) If the Sales and Use Tax Department does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Sales and Use Tax Department issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Sales and Use Tax Department will issue its decision based on the information in its possession.~~

~~(4) If the decision of the Sales and Use Tax Department is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the~~

petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

~~(5) If the decision of the Sales and Use Tax Department is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).~~

~~(6) The petitioner or any notified district may appeal the decision of the Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Sales and Use Tax Department's decision, or within a period of extension authorized by subdivision (b)(10). If no such timely objection is submitted, the decision of the Sales and Use Tax Department is final as to the petitioner and all notified districts.~~

~~(7) If the petitioner or a notified district submits a timely written objection to the decision of the Sales and Use Tax Department, the Sales and Use Tax Department will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.~~

~~(8) If the Sales and Use Tax Department does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Sales and Use Tax Department, the petitioner or any notified district may request that the Sales and Use Tax Department issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Sales and Use Tax Department will issue its supplemental decision based on the information in its possession.~~

~~(9) The petitioner or any notified district may appeal the supplemental decision of the Sales and Use Tax Department by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(10). If no such timely objection is submitted, the supplemental decision of the Sales and Use Tax Department is final as to the petitioner and all notified districts.~~

~~(10) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(9), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Sales and Use Tax Department mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of the Sales and Use Tax Department's decision or supplemental decision. Within five days of receipt of the request, the Sales and Use Tax Department will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any~~

~~notified district to file a written objection to the decision or supplemental decision of the Sales and Use Tax Department is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Sales and Use Tax Department is further extended to the 60th day after the date of mailing of the decision or supplemental decision.~~

~~(c) Review by Appeals Division.~~

~~(1) The petitioner or any notified district may appeal the supplemental decision of the Sales and Use Tax Department by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Sales and Use Tax Department's supplemental decision, or within a period of extension authorized by subdivision (b)(10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.~~

~~(2) If a timely objection to the Sales and Use Tax Department's supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.~~

~~(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.~~

~~(B) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Sales and Use Tax Department. The Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.~~

~~(C) If the Sales and Use Tax Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Sales and Use Tax Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Sales and Use Tax Department, the Sales and Use Tax Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.~~

(D) Where the Sales and Use Tax Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for

reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Sales and Use Tax Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) Review by Board.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

~~(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.~~

~~(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.~~

~~(e) Limitation Period for Redistributions. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.~~

~~(f) Operative Date and Transition Rules. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that were governed by prior Regulation 1828 (effective June 17, 2004).~~

~~(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date under Section 11343.4 of the Government Code (thirty days after approval by the Office of Administrative Law and forwarding to the Secretary of State) and there shall be no retroactive effect.~~

~~(2) Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after its operative date or that of any amendments thereto.~~

~~(3) All petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.~~

~~Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 7270, Revenue and Taxation Code.~~

2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 350554903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and ~~46501-46507~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and ~~40111-40117~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and ~~41100-41106~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

Chapter 6 State Board of Equalization – Alcoholic Beverage Tax

[Sections 2500–2571 – no change to text]

3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1 and ~~43159.2 and 43451-43456~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section ~~350554903~~ are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and ~~45651-45656~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 350554903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and ~~55221-55226~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 350554903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and ~~30361-30384~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.

4508. Appeal – Denial of License.

~~(a) If the Special Taxes and Fees Division determines that a new license should not be issued pursuant to Regulation 4503, then it shall notify the applicant of such determination and deny the application for issuance of a new license for the applicant's business. The applicant may petition for a redetermination within 30 days from the date notice of the denial is mailed or personally delivered to the applicant. The denial of the application shall become final if a petition for redetermination is not filed before the expiration of the 30-day period.~~

~~(b) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded.~~

~~(c) The Board shall reconsider the determination of the Special Taxes and Fees Division pursuant to its administrative appeals process set forth in article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the applicant. Any Board hearing will be governed by the rules set forth in Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576.~~

~~(d) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the applicant, except as provided in Regulation 5560, subdivision (b).~~

~~(e) Any notice required by this section shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the applicant's last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, mailbox, sub post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, notice may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.~~

~~Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973.1, 22977.2 and 22979, Business and Professions Code.~~

Article 5. Appeal Procedures

4609. Right to Appeal.

~~(a) Every licensee or unlicensed person has the right to appeal any alleged violation of the Act, and may appeal a Warning Notice or Notice of Violation issued by the Special Taxes and Fees Division, as specified below:~~

~~(1) If the Notice of Violation contains a penalty of revocation and/or a fine of more than \$2,500, the Notice of Violation may be appealed as follows:~~

~~(A) The first appeal shall be to the Special Taxes and Fees Division;~~

~~(B) If the licensee or unlicensed person disagrees with the Notice of First Decision, as specified in Regulation 4700, subdivision (h), issued by the Special Taxes and Fees Division, the licensee or unlicensed person may make a second appeal to the Appeals Division; and~~

~~(C) If the licensee or unlicensed person disagrees with the Notice of Second Decision, as specified in Regulation 4701, subdivision (e), issued by the Appeals Division, the licensee or unlicensed person may make a third appeal to the Board for a final decision.~~

~~(2) If the Notice of Violation or Warning Notice does not contain a penalty of revocation or a fine of more than \$2,500, the Notice of Violation or Warning Notice may be appealed as follows:~~

~~(A) The first appeal shall be to the Special Taxes and Fees Division; and~~

~~(B) If the licensee or unlicensed person disagrees with the Notice of First Decision issued by the Special Taxes and Fees Division, the licensee or unlicensed person may make a second appeal to the Appeals Division for a final decision.~~

~~(b) If a timely appeal is made, a conference and/or hearing will be scheduled to allow the licensee or unlicensed person requesting an appeal an opportunity to contest the violation(s) and show cause why the penalties should not apply or should be reduced.~~

~~(c) Burden of Proof. The licensee or unlicensed person shall have the burden of proof as to the grounds for dismissal of any violations or for the reduction of penalties.~~

~~Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.~~

~~4700. Appeal – Special Taxes and Fees Division.~~

~~(a) Time For Filing. A written Request for Appeal, as defined in subdivision (c), below, must be filed within 10 days of the date the Warning Notice or Notice of Violation was mailed to or personally delivered to the licensee or unlicensed person.~~

~~(b) Failure to File a Timely Appeal. If a written Request for Appeal is not filed within the 10-day period, the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Warning Notice or Notice of Violation, and the penalty or penalties stated therein, shall become final.~~

~~(c) Request for a Special Taxes and Fees Division Appeal. The Request for Appeal shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice or Notice of Violation and shall be accompanied by any and all documentation and written argument to be considered in support of the appeal. The Request for Appeal shall be signed by the licensee or unlicensed person or by an authorized representative.~~

~~(d) Notice of Conference. After receiving a timely Request for Appeal the Special Taxes and Fees Division will schedule a conference and send a Notice of Conference stating the date and time of the scheduled conference to the licensee or unlicensed person. The Notice of Conference shall be sent to the licensee or unlicensed person at least 15 days prior to the date of the scheduled conference.~~

~~(e) Conference. The conference is intended to be an informal, non-adversarial proceeding with a discussion of the relevant facts and applicable laws and regulations. Written statements made under penalty of perjury may be submitted, but subpoenas are not issued for conferences, nor is sworn testimony required. The conference will be conducted by telephone and shall not be recorded and/or transcribed by the Special Taxes and Fees Division. The conference may be recorded and/or transcribed by the licensee or unlicensed person, but only if the licensee or~~

~~unlicensed person agrees to provide a copy of the recording or transcript to the Special Taxes and Fees Division.~~

~~(f) The Special Taxes and Fees Division may grant one request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief of the Special Taxes and Fees Division or his or her designee approves of a later date.~~

~~(g) During a conference, the Special Taxes and Fees Division may grant a request for additional time to submit additional evidence. If additional time is granted, the evidence shall be submitted to the Special Taxes and Fees Division no later than 7 days after the conference date.~~

~~(h) Decision. Following the conference, the Special Taxes and Fees Division shall issue a Notice of First Decision. The Notice of First Decision will set forth the Special Taxes and Fees Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights.~~

~~(i) A licensee or unlicensed person who receives a Notice of First Decision may appeal the decision within 10 days of the date the Notice of First Decision was mailed or personally delivered to the licensee or unlicensed person by timely filing a Request for Appeals Conference, as specified in Regulation 4701, subdivision (a), with the Board Proceedings Division.~~

~~(j) Failure to File a Timely Appeal. If a Request for Appeals Conference is not filed within the 10-day period provided in subdivision (i), then the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Notice of First Decision, and the penalty or penalties stated therein shall become final.~~

~~Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.~~

~~4701. Appeal – Appeals Division.~~

~~(a) Request for Appeals Conference. The Request for Appeals Conference shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice, Notice of Violation, or Notice of First Decision, and shall be accompanied by any and all documentation and written argument to be considered in the appeal. The Request for Appeals Conference shall be signed by the licensee or unlicensed person or by an authorized representative.~~

~~(b) Conference. Upon receipt of a Request for Appeals Conference, a conference will be scheduled and held as set forth in article 6 (commencing with Regulation 5260) of chapter 2 of division 2.1 of title 18 of the California Code of Regulations, unless otherwise provided herein. The conference shall allow a licensee or unlicensed person an opportunity to show cause why the Warning Notice, Notice of Violation, or Notice of First Decision, and the penalty or penalties imposed therein, should not be upheld.~~

~~(1) The conference will be held by telephone and shall be recorded by the Appeals Division. A licensee or unlicensed person may request a copy or transcript of the recording, at his or her expense.~~

~~(2) The Appeals Division may grant a request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief Counsel or his or her designee approves of a later date.~~

~~(3) During a conference, the Appeals Division may grant a request for additional time to submit additional evidence. If such additional time is granted, the evidence shall be submitted to the Appeals Division no later than 7 days after the conference date.~~

~~(e) Decision. The Appeals Division shall issue a Notice of Second Decision following the conference. The Notice of Second Decision will set forth the Appeals Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights, if any, as set forth in subdivisions (e) and (f) below.~~

~~(d) No later than 35 days after the Notice of Second Decision is issued, the Appeals Division may, in its sole discretion, issue a Notice of Second Decision—Reconsideration to correct any mistakes of law and/or facts.~~

~~(e) A Notice of Second Decision or Notice of Second Decision—Reconsideration that upholds a penalty of revocation and/or a fine of more than \$2,500 may be appealed by timely filing a Request for Board Hearing. A Notice of Second Decision or Notice of Second Decision—Reconsideration that upholds a penalty of suspension and/or a fine of \$2,500 or less is final and may not be appealed further.~~

~~(f) Failure to File. When applicable, a Request for Board Hearing must be filed within 10 days of the date the Notice of Second Decision is mailed or personally delivered to the licensee or unlicensed person. If a Request for a Board Hearing is not filed within the 10-day period, then the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Notice of Second Decision, and the penalty or penalties stated therein, shall become final. If a hearing is not requested or is waived, then official notice of the Board's action on the appeal will be mailed to the licensee or unlicensed person.~~

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.

~~4702. Appeal—Board Hearing.~~

~~(a) Request for Board Hearing. The Request for Board Hearing shall:~~

~~(1) State the specific grounds upon which the licensee or unlicensed person is contesting the Notice of Violation or Notice of Second Decision;~~

~~(2) State whether an oral hearing is requested;~~

~~(3) Be accompanied by any and all documentation and written argument to be considered in support of the licensee's or unlicensed person's contentions; and~~

~~(4) Be signed by the licensee or unlicensed person or by an authorized representative.~~

~~(b) When applicable, upon receipt of the Request for Board Hearing, a Board hearing shall be scheduled and conducted in accordance with the procedures as set forth in Regulations 5270, 5271, 5522.4 through 5523.1, 5523.4 through 5523.7, 5541 through 5551, 5563, subdivisions (a) and (b), 5561 through 5563, 5571, 5572, and 5576, to allow the licensee or unlicensed person an opportunity to show cause why the Notice of Violation or Notice of Second Decision, and the penalty or penalties imposed therein, should not be upheld. Following the Board hearing, a Notice of Board Decision will be mailed to the licensee or unlicensed person.~~

~~Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7 and 22979.7, Business and Professions Code.~~

4703. Seizures and Forfeitures.

(a) Seizures. The seizure of cigarette and tobacco products is authorized under the Cigarette and Tobacco Products Licensing Act Law and the Cigarette and Tobacco Products Tax Law.

(b) Seizure of Untaxed Products.

(1) In the absence of an applicable exemption from tax or other lawful possession of unstamped product under Revenue and Taxation Code (e.g., Revenue and Taxation Code sections 30102 through 30106 or 30431), the Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products that cannot be sold legally in California, including, but not limited to the following:

(A) Cigarette packages without any cigarette tax stamp that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(B) Cigarette packages with another state's tax stamp or the stamp of another taxing jurisdiction that are possessed, stored, owned or for sale by a retailer, wholesaler, or any other person except when possessed by a licensed distributor.

(C) Cigarette packages with a California tax stamp affixed and marked "Not for sale in the United States," "For Export Only" or similar wording indicating the manufacturer did

not intend the product to be sold in the United States, that are possessed, stored, owned by a retailer, wholesaler, distributor, manufacturer importer, or any other person.

(D) Tobacco products for which the California excise tax is due but has not been paid that are possessed, stored, owned, or for sale by a retailer, wholesaler or any other person except when possessed by a licensed distributor.

(2) Forfeiture. Cigarettes or tobacco products as described in subsection (b) for which the California excise tax has not been paid that are seized by the Board or seized and delivered to the Board by a law enforcement agency shall be forfeited to the state.

(3) Petition Procedure. The Board's seizure of such products as described under subsection (b) shall comply with the procedures set forth in Revenue and Taxation Code, Division 2, Part 13, Chapter 7.5, commencing with section 30435.

(A) An owner or any person owning an interest in the seized property may file a petition with the Board to request recovery of the seized property as permitted by Revenue and Taxation Code section 30438.

(B) The petitioner has the burden of proving in the petition that the seized cigarettes and/or tobacco products are legal to possess, store, own or sell and that taxes have been paid to obtain the recovery of the seized product(s).

(c) Seizure of Product From Persons Without a Valid License. The Board or a law enforcement agency shall be authorized to seize cigarettes and tobacco products, whether or not the California excise taxes have been paid, when the owner does not have a valid license under the Cigarette and Tobacco Products Licensing Act Law. Seizures shall include, but are not limited to the following:

(1) Unlicensed Persons.

(A) Stamped cigarettes that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, manufacturer, importer, or any other person after notice by the Board or a law enforcement agency.

(B) Tobacco products for which the California excise tax has been paid, that are possessed, stored, owned or for sale by an unlicensed retailer, distributor, wholesaler, or any other person after notice by the Board or a law enforcement agency.

(2) Persons with Suspended or Revoked Licenses.

(A) Stamped or unstamped cigarettes offered for sale at the time of seizure by a retailer, distributor, wholesaler, manufacturer or importer with a suspended or revoked license after notice by the Board of the suspension or revocation.

(B) Tobacco products, regardless of whether the California excise taxes have been paid, that are offered for sale at the time of seizure by a retailer, distributor or wholesaler with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) Forfeiture. Any cigarettes and tobacco products seized by the Board or a law enforcement agency as described under subsection (c) shall be deemed forfeited to the state.

(4) Petition Procedure. The petitioner may file a petition to contest the citation(s) resulting in the suspension or revocation of the license issued under the Cigarette and Tobacco Products Licensing Act Law pursuant to Article 6 of Chapter 1 of Division 5 of these regulations.

(d) Evidence Relevant to Recovery of Product. Depending on the circumstances, evidence that may be relevant to the issue of whether or not the cigarettes or tobacco products were erroneously or illegally seized, includes, but is not limited to the following:

(1) The cigarette packages had valid California tax stamps affixed and the petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(2) The cigarette packages had valid California tax stamps affixed and the petitioner was not operating at the time of seizure with a suspended or revoked license after notice by the Board of the suspension or revocation.

(3) The cigarette packages without California tax stamps affixed were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(4) Cigarette packages that bear another state's tax stamp or the stamp of another taxing jurisdiction were in the possession of a cigarette distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(5) Cigarette packages without a California tax stamp affixed and marked "Not for sale in the United States" or similar wording indicating that the manufacturer did not intend the product to be sold in the United States were in the possession of a distributor, manufacturer or importer with a valid license under the Cigarette and Tobacco Products Licensing Act Law and intended for sale outside of California at the time of seizure.

(6) The petitioner held a valid license under the Cigarette and Tobacco Products Licensing Act Law and the tax was paid for the seized tobacco products at the time of seizure.

(7) The petitioner was not operating with a suspended or revoked license after notice by the Board of the suspension or revocation and the tax was paid for the seized tobacco products at the time of seizure.

(8) The untaxed tobacco products were in the possession of a tobacco products distributor with a valid license under the Cigarette and Tobacco Products Licensing Act Law at the time of seizure.

(e) Counterfeit Products. Counterfeit cigarette and tobacco products are defined as those with false manufacturing labels or false or fraudulent stamps, or both false labels and false stamps.

(1) The Board shall be authorized to seize counterfeit cigarette and tobacco products that are possessed, stored, owned or for sale by a retailer, distributor, wholesaler, manufacturer, importer, or any other person.

(2) The Board is not authorized to return seized counterfeit cigarettes and tobacco products as defined in this part as such products are illegal under California law.

(f) Additional grounds for seizure. The California Cigarette and Tobacco Products Tax Law at Revenue and Taxation Code section 30436 sets forth additional circumstances under which cigarettes or tobacco products may be seized by the Board and forfeited to the state.

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22971(l) and (m), 22974.3(a) and (b), 22978.2(a) and (b) and 22980.2(c), Business and Professions Code; and Sections 30102, 30102.5, 30103, 30103.5, 30104, 30105, 30105.5, 30106, 30109, 30163, 30431, 30435, 30436, 30438, 30473 and 30474.1, Revenue and Taxation Code.

Chapter 9.9. California Department of Tax and Fee Administration and State Board of Equalization – Special Taxes Administration – Miscellaneous

4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.

(a) In General.

(1) A spouse requesting innocent spouse relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is incurred under the Alcoholic Beverage Tax Law or Private Railroad Car Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the non-requesting spouse;

(C) The spouse requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the requesting spouse liable for the liability, taking into account whether the requesting spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word “tax” shall mean “tax, fee, or surcharge.”

(b) **Benefited.** Whether a requesting spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) **Attribution.** The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A request for innocent spouse relief may be filed if, at the time relief is requested, the requesting spouse is no longer married to or is legally separated from the non-requesting spouse, or the requesting spouse is no longer a member of the same household as the non-requesting spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) **Written Request for Relief.** To seek relief under subdivision (a), a requesting spouse must file a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) **Other Equitable Relief.** A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate “duress,” the requesting spouse must provide objective evidence. “Objective evidence” can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(g) Statute of Limitations. The provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed no later than one year after the Board's first contact with the spouse making the request.

Requests filed after one year from the Board's first contact with the spouse making the request shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(h) Refunds. A refund of any amounts under this regulation shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(i) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

(j) The Board shall send notification by mail of the request for innocent spouse relief from liability and the basis for that request to the non-requesting spouse.

(k) Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the

same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections ~~8251, 9251, 11651, 30451, 11651 and 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601~~, Revenue and Taxation Code. Reference: Sections ~~7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 11408.5, 11551-11555, 32258, and 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5 and 60501-60512~~, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.