

FRANCHISE AND PERSONAL INCOME TAX APPEALS

If you disagree with a Franchise Tax Board decision about your liability for franchise or personal income taxes, or about your eligibility for a refund, you can usually appeal that decision to the Board of Equalization (the Board). The five elected Board Members serve as the appellate body in final actions of the Franchise Tax Board, issuing opinions and rendering decisions interpreting and defining California's income tax laws. This publication describes the main steps to follow in the appeal process. If you need additional help, please contact the Board of Equalization (please see page 8).

Basic Considerations for Filing an Appeal

To have your appeal considered, you must:

- File the appeal within the specified time limits and in the proper manner
- Provide written information about your case, the points at issue, and your analysis as to the proper application of the law

Once the Board receives your information and the Franchise Tax Board's reply, the Board Members will evaluate your case and render an impartial decision. If you disagree with the Board's decision, you can seek further consideration by filing an action in superior court.

Points to Remember

If you choose to file an appeal, it is important to remember that:

- You may reverse your decision to appeal. At any time during the appeals process, you may agree to a settlement with the Franchise Tax Board or you may submit a written request for dismissal of your appeal for other reasons.
- Any evidence previously submitted to the Franchise Tax Board will not be available to the Board of Equalization unless you also submit that evidence to the Board during the appeal process.
- Any information you submit to the Board must be in writing. With the exception of oral testimony given at a public hearing, the Board of Equalization cannot accept any information presented orally, such as during a telephone call.
- All information in the appeal you file is available to the public.
- If a Franchise Tax Board decision affects more than one person, each person affected must file an appeal on his or her own behalf. For example, if your appeal involves a joint assessment on a joint return, both you and your spouse must sign the appeal. The fact that you filed an appeal does not protect your spouse's rights with the Board. Your spouse must also sign the appeal, or file a separate one.
- At any time, you may pay the full assessment of tax, penalty and interest to stop the accrual of interest, which compounds daily during the appeal process. The Franchise Tax Board will refund your payment, plus interest, if your appeal is successful. Please contact the

Contents . . .

| | |
|--|----------|
| <i>Basic Considerations for Filing an Appeal</i> | 1 |
| <i>Filing the Appeal</i> | 2 |
| <i>Form of the Appeal</i> | 2 |
| <i>Processing the Appeal</i> | 3 |
| <i>The Briefing Process</i> | 3 |
| <i>Deferring an Appeal</i> | 5 |
| <i>The Board Hearing</i> | 6 |
| <i>The Board Determination</i> | 7 |
| <i>Further Appeal Rights</i> | 7 |
| <i>Agency Addresses</i> | 8 |

January 1999
Publication 81
LDA

BOARD MEMBERS

E. L. SORENSEN, JR.
Executive Director

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

You may file an appeal with the Board of Equalization only after you have exhausted your review rights with the Franchise Tax Board.

Franchise Tax Board if you wish to make a full payment (see address on page 8).

The following sections discuss the Board of Equalization appeals process in more detail.

Filing the Appeal

When You Can Appeal

You or your representative may file an appeal with the Board of Equalization only after you have exhausted all of your review rights with the Franchise Tax Board. You will know that you have exhausted these rights when the Franchise Tax Board issues you a:

- *Notice of Action on Taxpayer's Protest* against a tax assessment
- *Notice of Action on Cancellation, Credit, or Refund*, or a denial letter, on a claim for a tax refund
- *Notice of Action Not To Abate Interest*

You may also file an appeal if you have filed a claim for refund with the Franchise Tax Board and it has not acted on your claim within 6 months of the date you filed that claim.

Time Limits for Filing an Appeal

You must file your appeal within 30 days from the date of the *Notice of Action on Taxpayers's Protest* and within 90 days from the date of the *Notice of Action on Cancellation, Credit, or Refund*, or the letter denying your claim for refund.

The law does not specify a time limit for filing an appeal following the Franchise Tax Board's failure to act on your claim for refund. However, if you receive a *Notice of Action on Cancellation, Credit, or Refund* on your claim before you file such an appeal, the 90-day limit would then apply.

These time limits are defined by law and no extensions can be granted. If you

miss the due date for filing an appeal of a tax assessment, your only recourse would be to pay the assessment and file a claim for refund with the Franchise Tax Board. If you were already appealing a denial of a claim for refund, your only recourse would be to file an action against the Franchise Tax Board in superior court. For more information on filing such an action, see page 8.

Generally, the *postmark* date on your appeal is considered to be the filing date. If the last day to file an appeal falls on a Saturday, Sunday, or holiday, the filing deadline is extended to the next business day.

Appealing More Than One Notice

If you receive *Notices* for several tax years, your appeal must refer to each *Notice* with which you disagree. If the issues that form the basis for your disagreement are the same for more than one appeal, your separate appeals may be consolidated into one appeal.

Form of the Appeal

Information Required

To file an appeal, you must write to the Board of Equalization and provide the following information:

- Your name and address, or, if you are filing for a corporation, the corporation's name and address.
- Your Social Security number, or, if you are filing for a corporation, the corporation identification number.
- The amount of tax and the tax year(s) involved in the appeal. (If you agree that you owe any portion of the tax, please include specific information.)
- The date of the *Notice* you are appealing.
- A statement of the facts involved in the case.

- The legal points and authorities, including statutes and regulations, supporting your position.
- Your daytime telephone number or that of your authorized representative.

Your appeal must be signed by you or your authorized representative.

You should also enclose a copy of the *Notice* you are appealing and any documents that support your position.

Please note: Filing a complete appeal letter can expedite the appeal process.

Submitting Your Appeal

You must mail or hand-deliver two copies of the letter, the *Notice*, and any supporting documents, to:

Board Proceedings Division
State Board of Equalization
450 N Street, MIC:81
PO Box 942879
Sacramento CA 94279-0081

One copy of your appeal letter and supporting documents will be forwarded to the Franchise Tax Board.

Processing the Appeal

The Board of Equalization will send you a letter confirming its receipt of your appeal letter. Meanwhile, the Board will determine whether it has the authority to consider your case.

Once the Board of Equalization has verified its jurisdiction, it will send you an acknowledgment letter confirming your status as an appellant. A copy of the letter will also be sent to the Franchise Tax Board.

If the Board does not have jurisdiction, it will send you a letter explaining why and informing you of possible alternatives. The Board will not have jurisdiction if you filed after the time limits stated on the *Notice of Action* you received from the Franchise Tax Board.

The Board may also lack jurisdiction if the only disputed issue is unpaid interest (exemption: The Board may have authority to hear an appeal of a Notice of Action Not To Abate Interest if the claim was filed with the Franchise Tax Board on or after January 1, 1998).

In addition, the Board will lack jurisdiction in situations where your appeal is considered to be premature. Your appeal is premature if:

- Your protest is still pending at the Franchise Tax Board; or
- Your claim for refund is still pending and less than six months have elapsed since it was filed.

The Briefing Process

Information Gathering

After it has acknowledged you as an appellant, the Board of Equalization begins its information-gathering (“briefing”) process. This process is a crucial step in your appeal since it is the *only* method by which the Board of Equalization can obtain information about your case. Consequently, any briefs you file must be as complete as possible. However, they may not exceed 30 (typed/handwritten) double-spaced, one-sided, 8½-inch by 11-inch pages, excluding exhibits.

You may submit briefs in a form as simple as a letter. The briefs must address the facts and the points at issue in your case and state your position as to the correct application of the law. If possible, they should also cite those sections of the law or those judicial decisions that support your position. You or your authorized representative must sign them.

In addition to the briefs, the Board of Equalization may require you and the Franchise Tax Board to stipulate to those facts about which both parties agree, those facts that are in dispute, and the reasons for the dispute.

Filing a complete appeal letter can expedite the appeal process.

Except for your original appeal letter, you must provide a copy of any briefs, correspondence, evidence, and supplemental documentation to the Franchise Tax Board. Similarly, you will be sent copies of any briefs or correspondence the Franchise Tax Board submits to the Board of Equalization.

You may reverse your decision to appeal at any time during the appeal process.

The Briefing Process

To limit the time it takes to complete this information-gathering step, Board of Equalization regulations define a specific briefing process. Under this process, there is a set amount of time for the filing of briefs and responses to them. Normal briefing involves giving you, when necessary, 90 days to supplement your appeal. The Franchise Tax Board then has 90 days to file an initial brief. Finally, you have an additional 30 days to file a reply brief. These steps are discussed in more detail below and shown in the table on the opposite page. You will receive specific deadline information at each step in the briefing process.

Required Sequence

The initial briefing sequence will depend on the completeness of your appeal letter. If the information contained in your original letter is adequate, the Franchise Tax Board will be asked to submit an initial brief within 90 days (see table). If your appeal is incomplete, you will be given 90 days to provide supplemental information. When the Board determines that your appeal is complete, the Franchise Tax Board will be given 90 days to submit an initial brief.

Please Note: *If you fail to supplement your original appeal with additional information when asked to do so, your appeal may be dismissed. If you or the Franchise Tax Board miss any other response deadline without obtaining an*

extension, the briefing process will stop. Your appeal will then enter the next stage of the appeal process.

After the Franchise Tax Board files its initial brief, the Board of Equalization will send you a letter informing you that you have 30 days to file a reply (see table).

This letter will also ask you to indicate whether you wish to:

- Have your case decided by the Members without an appearance;
- Appear before the Members of the Board of Equalization and present your case; or
- Have your appeal dismissed.

Your written reply should address only those points of disagreement you have with the Franchise Tax Board's brief. You must send your reply brief to the Board of Equalization and provide a copy to the Franchise Tax Board.

It is important that you file this brief within the 30-day deadline. Failure to meet the deadline will bring the briefing process to an end.

Filing of your reply brief normally ends the briefing process.

Steps Allowed at Board Discretion

In extraordinary situations, the Franchise Tax Board may be given 30 days to file a supplemental brief in response to your reply brief. The Franchise Tax Board will send a copy to you.

If the Franchise Tax Board files a supplemental brief, you will have the option to file a response brief within 30 days. Your response will be the final brief in the briefing process.

Schedule Changes and Extensions

At the Board's discretion, changes to the briefing schedule can be made in two situations:

BRIEFING STEPS AND RESPONSE DEADLINES

| <i>Typical steps after you file your appeal¹</i> | <i>Response deadline</i> |
|--|--|
| When your appeal is considered complete, the Board notifies you and FTB in writing. If necessary, the Board asks you to submit supplemental information before this determination is made. | <i>If supplemental information is required</i> — 90 days from the date of the Board's letter requesting supplemental information. ² |
| FTB submits initial brief responding to your appeal. | 90 days from the date of the Board's letter acknowledging that your appeal is complete. |
| You file reply brief responding to FTB's initial brief. | 30 days from the date of the Board's letter to the FTB acknowledging receipt of FTB initial brief. |
| Briefing process normally ends. | |
| <i>Steps allowed at Board's discretion</i> | <i>Response deadline</i> |
| With the Board's permission, FTB files a supplemental brief responding to your reply brief. | 30 days from the Board's letter to FTB granting permission to file. |
| You file response brief (optional). | 30 days from the Board's letter acknowledging receipt of FTB supplemental brief. |
| Briefing process ends. | |
| <p>¹ If you or the Franchise Tax Board miss a response deadline without first obtaining an extension, the briefing process will generally stop (<i>see note below</i>). Your appeal will then enter the next stage of the appeal process.</p> <p>² If you are asked to provide supplemental information and do not provide it within the time period allowed, <i>your appeal may be dismissed</i>.</p> | |

- If there is a showing of extreme hardship; or
- If both you and the Franchise Tax Board agree to extend a filing deadline.

To seek the Franchise Tax Board's agreement for an extension prior to the due date, you should write to the attorney whose name and address appear on the Franchise Tax Board brief, and send a copy of your letter to the Board. You should contact the Franchise Tax Board attorney as early as possible before the due date you wish to extend.

All requests for changes or extensions must be in writing and must be filed with the Board of Equalization *before* the due date of the brief.

Deferring an Appeal

You or the Franchise Tax Board can request a deferral of the appeal process if there is sufficient cause and if both parties agree. (Under certain circumstances, the Board may grant a deferral requested by only one party.) Deferrals may be granted because:

All Board of Equalization determinations in Franchise and Income Tax hearings are made during public meetings by a voice vote.

- You are negotiating with the Franchise Tax Board for the purpose of reaching a settlement.
- You or the Franchise Tax Board are waiting for a pending court, Board of Equalization, or Internal Revenue Service decision that is based on the same points of law at issue in your case.
- You are filing for bankruptcy.

The party or parties seeking the deferral must submit a written request to the Board of Equalization.

The Board Hearing Your Options

If you still want the Board of Equalization to decide your case after finishing the briefing process, you have the option of:

- Having the Board Members decide your case based solely on the information submitted during the briefing process.
- Requesting a hearing where you or your representative will be given an opportunity to present your case before the Board Members. Hearings are usually held in Sacramento and in the Los Angeles area. You will be notified of the hearing location approximately 60 days before the hearing date.

You Have the Burden of Proof

It is important to remember that you generally have the burden of offering sufficient evidence such as statements, photographs, or records, to prove your case. The Board hearing gives you an opportunity to summarize and emphasize those points you feel support your position. You should make every effort to ensure that your presentation is clear and concise and, supported by sufficient evidence.

If there are facts in dispute in your case, you may wish to have witnesses testify or present written statements on your behalf. Witnesses should not be used to simply restate information contained in the briefs you submitted in the briefing process. If you plan to have witnesses testify, you should inform the Board, so that adequate time can be scheduled for your hearing (see **Note**, next column). You should also indicate the nature of the testimony that will be given. The rules of evidence that apply to tax appeal hearings are detailed in section 5079 of Title 18 of the California Code of Regulations. You may request a copy of this section from the Board.

Note: Prior to the hearing, the Board will allocate a specific amount of hearing time for each party, including time for response and questions by the Board Members. You and the Franchise Tax Board will be sent advance written notice of the time allocations, and will be expected to adhere to them during the hearing.

The Hearing

A hearing generally progresses as follows:

- At the start of a hearing, a member of the Board of Equalization legal staff will introduce the parties and summarize the issues.
- You or your representative will then be given an opportunity to state your position and present your evidence.
- After your presentation, the Franchise Tax Board will state its position and present its evidence.
- You will then be given an opportunity to reply to the Franchise Tax Board's presentation.
- Finally, the Board Members may ask each party questions about the appeal.

The Board Determination

All Board of Equalization determinations in Franchise and Income Tax cases are made during public meetings. The point at which the Board Members may decide a case will vary.

Unless you request a hearing, all related briefs received by the Board of Equalization are forwarded to its Legal Division, which prepares a suggested opinion or summary decision for consideration and adoption by the Board Members.

When a Board hearing is held, Members may do one or more of the following:

- Order that the matter to be taken under submission;
- Decide your case at the conclusion of the hearing day; or
- Order that the matter to be taken under submission, but postpone the decision, so that you or the Franchise Tax Board can present more information for consideration.

If the matter is taken under submission, the case is forwarded to the Legal Division, which prepares a suggested opinion or summary decision for consideration and adoption by the Board Members.

Generally, cases that are taken under submission by the Board Members, and those for which you have waived a hearing, are put on a nonappearance agenda and voted on during a regularly scheduled public meeting. If your case is on the nonappearance agenda, you normally will *not* be informed of the date it is being considered by the Board Members.

Once the Board Members make their determination, you will be immediately informed by mail. The Board will send you a copy of the adopted opinion or

decision and a cover letter stating the date on which the Board Members decided your case. This information will also be sent to the Franchise Tax Board.

Unless a petition for rehearing is filed, the Board Members' decision will become final after 30 days. When a determination becomes final, the Franchise Tax Board will issue an adjustment billing or refund.

Please Note: An *opinion*, if adopted by the Board Members, can be used as a precedent for other tax cases. In contrast, a *summary decision* is applicable only to the case under consideration and may not be cited as precedent.

Further Appeal Rights

If you agree with the decision made by the Members of the Board of Equalization, no further action is required on your part.

If either you or the Franchise Tax Board disagree with the decision by the Board Members and wish to continue your appeal, either of you may file a petition for rehearing with the Board. You also may file an action in superior court, as explained in the following sections.

Petition for Rehearing

If you disagree with the Board's decision, you may file a petition for a rehearing within 30 days of the date of the Board decision. The Franchise Tax Board has the same right to file a petition for rehearing. In your petition for rehearing, you should state any new facts or points of law applicable to your case, and indicate how they would affect the outcome of your appeal. You should mail a copy of your petition to the Franchise Tax Board, which will be given an opportunity to reply.

Please Note: A rehearing is normally granted only in those cases where:

Unless a petition for rehearing is filed, Board of Equalization decisions become final after 30 days.

- An irregularity in the Board's proceedings prevented fair consideration of the case;
- An accident or surprise, which ordinary caution could not have prevented, occurs;
- There is newly discovered, related evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or
- There is insufficient evidence to justify the decision or the decision is contrary to law.

The Board Members will decide on your petition during a regularly scheduled meeting. If they grant a rehearing, you will be informed and given an opportunity to appear before the Board Members. If the Members deny your petition, the decision becomes final.

Filing An Action in the Superior Court

If you disagree with the Board's determination, you may pursue further consideration of your case by filing an action against the Franchise Tax Board in the superior court. For more information about such actions and how to file them, you should refer to the Revenue and Taxation Code or contact your private attorney or the legal staff of the Franchise Tax Board.

NOTE: The statements in this publication are general and are current as of the date on the cover. The Revenue and Taxation Code and applicable regulations are complex and subject to change. If there is a conflict between the law and this publication, any decisions will be based on the law and not this publication.

Addresses for Franchise and Personal Income Tax Appeals

Please file your appeal and briefs with

State Board of Equalization

Board Proceedings Division
State Board of Equalization
450 N Street, MIC: 81
P.O. Box 942879
Sacramento, CA 94279-0081
916-322-2270

Send copies of your briefs to

Franchise Tax Board

Franchise Tax Board
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741-1720
916-845-3364

Send brief filing deadline extension requests to the attorney whose name, address, and telephone number are on the FTB briefs.



Your Taxpayers' Rights Advocates

The Franchise Tax Board and the Board of Equalization have appointed Taxpayers' Rights Advocates to help you with problems you cannot resolve through normal procedures.

You can contact the Advocates at

Taxpayer Advocate Bureau
Franchise Tax Board
P.O. Box 1468
Sacramento, CA 95812-1468
fax 916-845-6614

Taxpayers' Rights Advocate's Office

State Board of Equalization
450 N Street, MIC: 70
P.O. Box 942879
Sacramento, CA 94279-0070
phone 916-324-2798
toll-free phone 888-324-2798
fax 916-323-3319