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18 CA ADC 5600, 5601, 5603

Regulations Filed with the Secretary of State

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Public Revenues

FULL TEXT OF REGULATION(S)

Definitions, Board Hearing Procedures

This filing of changes without regulatory effect by the Board of Equalization amends sections in Title 18 of the California Code of Regulations, to make non- substantive changes to each section and one attached form. The changes include deleting references to a repealed regulation, deleting provisions for which the statutory authority was repealed, and grammatical and formatting changes.

18 CA ADC 5600

**18 CA ADC 5600. Definitions, Board Hearing Procedures; Taxes Affected by This Chapter.**

(a) The definitions in section 5511 apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

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

Administration of the Franchise and Income Tax Laws -

Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes -

Alcoholic Beverage Tax

California Constitution Article XX, Section 22;

Revenue and Taxation Code Sections 32001-32557

California Tire Fee

Public Resources Code Sections 42860-42895;

Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee

Health and Safety Code Section 105310;

Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax

California Constitution Article XIIIB, Section 12;

Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax

Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge

Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge

Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax

Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee

Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law

Public Resources Code Sections 71200-71271;

Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Taxes

California Constitution Article XIX, Sections 1-9;

Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge

Public Utilities Code Sections 890-900;

Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;

Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees

Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax

California Constitution Article XIII, Section 19;

Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax (including State-administered local sales,

transactions, and use taxes)

Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax

Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax Law

Revenue and Taxation Code Sections 8601-9355

(c) To the extent that provisions in this chapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

**HISTORY**

1. Renumbering of former division 2, chapter 10 article 9 to new chapter 6 (sections 5600-5700) and renumbering of former section 5090 to new section 5600, including amendment of section and Note, filed 1-7-2008; operative 2-6-2008 (Register 2008, No. 2).

2. Change without regulatory effect amending section heading and subsections (a) and (b) filed 4-20-2016 pursuant to section 100, title 1, California Code of Regulations (Register 2016, No. 17).

18 CA ADC 5601

**18 CA ADC 5601. Eligible Claims.**

(a) Only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases are eligible for reimbursement. Fees and expenses incurred in a business tax or Timber Yield Tax case are related to a hearing before the board and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim.

(b) Only those fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund in franchise and income tax cases are eligible for reimbursement. Reimbursable fees and expenses related to an appeal before the Board do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the Board.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

**HISTORY**

1. Renumbering of former section 5091 to new section 5601, including amendment of section and Note, filed 1-7-2008; operative 2-6-2008 (Register 2008, No. 2).

2. Change without regulatory effect amending section filed 4-20-2016 pursuant to section 100, title 1, California Code of Regulations (Register 2016, No. 17).

18 CA ADC 5603

**18 CA ADC 5603. Claim Procedure.**

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (2/16), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form must be filed within one year of the date the decision of the Board becomes final. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a completed claim form upon a showing of reasonable cause, if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant will be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings must dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff and when applicable, Franchise Tax Board staff, must submit a statement in response to the claim. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a staff statement upon a showing of reasonable cause, if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.

(e) Claimant Response. The staff statement(s) must be mailed to the claimant, who must be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including but not limited to, declarations under penalty of perjury. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a response upon a showing of reasonable cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff or Franchise Tax Board Staff may be given an additional 30 days to respond to the new material.

Note: Authority cited: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

**HISTORY**

1. Renumbering of former section 5093 to new section 5603, including amendment of section and Note, filed 1-7-2008; operative 2-6-2008 (Register 2008, No. 2).

2. Change without regulatory effect amending subsection (a) filed 4-20-2016 pursuant to section 100, title 1, California Code of Regulations (Register 2016, No. 17).