

Franchise and Personal Income Tax Appeals

PUBLICATION 81 | DECEMBER 2010

BOARD MEMBERS (Names updated 2016)

SEN. GEORGE RUNNER (RET.)
First District
Lancaster

FIONA MA, CPA
Second District
San Francisco

JEROME E. HORTON
Third District
Los Angeles County

DIANE L. HARKEY
Fourth District
Orange County

BETTY T. YEE
State Controller

DAVID J. GAU
Executive Director

INTRODUCTION

If you disagree with a Franchise Tax Board (FTB) 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 (BOE). The five elected BOE Members serve as the administrative appellate body for final actions of the FTB, 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. Please note that since this is a BOE publication, the terms "we" and "us" are used in the text to mean the BOE and its staff.

If you need more help or information, please contact:

State Board of Equalization

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

Franchise Tax Board

Franchise Tax Board
Legal Department
PO Box 1720
Rancho Cordova, CA 95741-1720
916-845-3364

Your Taxpayers' Rights Advocates

Both agencies have Taxpayers' Rights Advocates to help you with problems you cannot resolve through normal procedures.

State Board of Equalization

Taxpayers' Rights Advocate, MIC:70
State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0070
toll-free phone: 888-324-2798
phone: 916-324-2798
fax: 916-323-3319
www.boe.ca.gov

Franchise Tax Board

Taxpayer Advocate Bureau
Franchise Tax Board
PO Box 157
Rancho Cordova, CA 95741-0157
toll-free phone: 800-883-5910
fax: 916-843-6022
www.ftb.ca.gov

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.

This publication summarizes procedural rules that are explained in more detail in the Board of Equalization's [Rules for Tax Appeals](#) (RTA). The RTA are contained in Division 2.1 of Title 18 of the California Code of Regulations. Chapter 4 of the RTA contains specific procedures that apply to franchise and personal income tax appeals, while Chapter 5 governs BOE meetings and oral hearings on all types of tax cases. You can request a complete copy of the RTA or find them online at www.boe.ca.gov.

To contact your Board Member, see www.boe.ca.gov/members/board.htm.

CONTENTS

<i>Chapter</i>	<i>Page</i>
Basic Considerations for Filing an Appeal	1
Filing the Appeal	2
Form of the Appeal	4
Processing the Appeal	5
The Briefing Process	6
Preparing your Appeal for Hearing and Decision	10
The Board Hearing	12
The Board Decision	14
Further Appeal Rights	15

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 form, and
- Provide written information about your appeal, including the factual background, points at issue, and your analysis of how the law should apply to your case.

After we receive information from both you and the FTB, the Board will evaluate your appeal and render an impartial decision. If you disagree with that decision, you may have further appeal rights (see [page 15](#)).

Points to Remember

If you choose to file an appeal, please remember these key points:

- At any time during the process, you may stop your appeal by agreeing to a settlement with the FTB or submitting a written request for dismissal of your appeal for any reason.
- The BOE and the FTB are separate and distinct agencies. Privacy laws prevent us from accessing the FTB's records. Therefore, evidence you previously submitted to the FTB will not be considered in your appeal unless you or the FTB submit it to us.
- All information you submit with your appeal must be in writing. Other than oral testimony given at a public hearing before the Board, or at a prehearing conference with BOE staff, we cannot accept any information presented orally, such as during a telephone call.
- All documents you submit with your appeal become a matter of public record. Any member of the public may request a copy of any documents you submit, and the law requires that we comply with that request. If we provide a copy of your appeal documents to a member of the public, we will redact personal information (for example, your home address, telephone number, and social security number) to guard against identity theft.
- If your appeal involves an assessment of tax on a joint return, then both you and your spouse should sign the appeal. If you sign the appeal and your spouse does not, then only you will be considered a party to the appeal. However, the results of the appeal will still affect your spouse's liability for the assessment.
- While your appeal is pending, you may wish to pay the full assessment of tax, penalty, and interest to stop the growth of interest due (interest compounds daily). You may do this at any time. The FTB will refund your payment, plus interest, if your appeal is successful. Please contact the FTB if you wish to make a full payment (see address on [inside front cover](#)).
- Anyone can represent you in your appeal, or you can represent yourself. Your representative does not need to be an attorney or an accountant. If you can't afford an attorney, you may be able to get free legal help (see below).

Free Legal Help

If you need help with your appeal and can't afford to hire an attorney, you may qualify for our [Tax Appeals Assistance Program](#). In that program, participating law students provide free legal assistance under the supervision of experienced tax attorneys. For more information, call 916-319-9199.

Please note: Not all people will qualify for free legal help.

The following sections discuss the appeals process in more detail.

FILING THE APPEAL

When You Can Appeal

You or your representative may file an appeal with us only after you have exhausted all of your administrative appeal rights with the FTB. You will know that you have exhausted these rights when the FTB issues you one of the following:

- *Notice of Action* on a protest against a proposed assessment of tax that may also include penalties and interest.
- *Notice of Action* on a proposed carryover adjustment.
- *Notice of Action on Cancellation, Credit, or Refund*, or any other notice, that denies all or part of a refund of tax, penalties, or interest.
- *Notice of Determination Not to Abate Interest*, or any other notice, that denies all or part of a request to abate interest.
- *Notice of Action*, or any other notice, that grants or denies a request for innocent spouse relief. The notice might not use the words “innocent spouse.” Look for phrases such as “Joint Liability” and “Non-Requesting Taxpayer” in the notice title. For more information on appeals involving innocent spouse relief, see [page 3](#).

You may also file an appeal if you have filed a claim for refund with the FTB and that agency has not acted on your claim within six months.

Time Limits for Filing an Appeal

Time limits for filing your appeal are defined by law and cannot be extended. You must file your appeal within:

- 30 days of the date of the FTB’s notice if you received:
 - √ A *Notice of Action* on a protest against a proposed assessment.
 - √ A *Notice of Action* on a proposed carryover adjustment.
 - √ A *Notice of Determination Not to Abate Interest* (for unpaid interest).
 - √ A *Notice of Action*, or any other notice, that grants or denies a request for innocent spouse relief. The notice might not use the words “innocent spouse.” Look for phrases such as “Joint Liability” and “Non-Requesting Taxpayer” in the notice title. For more information on appeals involving innocent spouse relief, see [page 3](#).
- 90 days of the date of the FTB’s notice if you received:
 - √ A *Notice of Action* on Cancellation, Credit, or Refund, or any other notice, that denies all or part of a refund of tax, penalties, or interest.
 - √ A *Notice of Determination Not to Abate Interest* (for paid interest).

The law does not specify a time limit for filing an appeal following the FTB’s failure to act on your claim for refund. However, if the FTB denies your claim in writing before you file such an appeal, the 90-day period would then apply. The 90-day period would start from the date of the denial notice.

The time limit for filing an appeal may be extended based on where the FTB mailed its notice to you. If the FTB mailed its notice to an address in California, the time limit is extended by five days. If the FTB mailed its notice to an address outside of California, but within the United States, the time limit is extended by 10 days. Finally, if the FTB mailed its notice to an address outside of the United States, the time limit is extended by 20 days.

Generally, we accept the postmark date on your appeal as 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.

These time limits are defined by law and cannot be extended except as discussed on the [previous page](#). If you miss the due date for filing an appeal of a tax assessment, your only recourse would be to pay the amount due and file a claim for refund with the FTB. If you were already appealing a denial of a claim for refund, your only recourse would be to file an action against the FTB in superior court. For more information on filing such an action, see [page 16](#).

Appealing More Than One Notice

If you receive multiple FTB 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 joined (consolidated) into one.

Special Considerations for Innocent Spouse Relief Appeals

In California, married couples and domestic partners may file joint income tax returns. Both parties to the joint return are responsible for the full amount of tax due, including any penalties and interest.

Under certain circumstances, when you are a party to a joint state income tax return, you may file a request for “innocent spouse” relief with the FTB. If the FTB grants your request, you will no longer be liable for the tax due. The FTB will notify both you and your spouse of its decision.

For ease of reference, we will use the term “spouse” to refer to your spouse, former spouse, domestic partner, or former domestic partner.

Appealing a denial of innocent spouse relief: If the FTB denies all or part of your request for innocent spouse relief, you may appeal the decision to us. The appeal must be filed within 30 days of the date the FTB mails the notice of its decision to you and your spouse. We will notify your spouse that you filed the appeal, and he or she will have 90 days to join the appeal by filing a brief explaining his or her position.

Appealing a grant of innocent spouse relief: If the FTB grants all or part of your spouse’s request for innocent spouse relief, you may appeal the decision to us. The appeal must be filed within 30 days of the date the FTB mails the notice of its decision to you and your spouse. We will notify your spouse that you filed the appeal, and he or she will have 90 days to join the appeal by filing a brief explaining his or her position.

Any information sent to your spouse will have personal information redacted (for example, your home address, telephone number, and social security number).

As with other appeals, the Board may overturn or uphold all or part of the FTB decision.

Important note: Since both parties who file a joint income tax return are responsible for the full amount of the tax due, including penalties and interest, both may participate in the appeal of the FTB’s decision. If the Board upholds or grants a person’s request for innocent spouse relief, that person is no longer liable for the relieved tax. That person’s spouse will generally be responsible for the full amount of the tax liability. To protect yourself, you need to participate in the appeal process and make your own case.

An Internal Revenue Service (IRS) grant of relief may affect the appeal

The FTB considers cases where the IRS grants Innocent Spouse Relief and may follow that determination if the IRS grant of relief is based on the same underlying facts and circumstances and both spouses were allowed to participate in the IRS proceeding. If the IRS grants relief while an appeal is pending with us, the FTB may request deferral of the appeal to consider the IRS grant of relief and give a person who opposes the IRS grant of relief 30 days to explain why the IRS determination should not be followed. In such cases, the other party to the joint return will then be allowed 30 days to file a final response.

Later sections of this publication explain how innocent spouse relief appeals differ from other franchise and personal income tax appeals.

FORM OF THE APPEAL

Information Required

Filing a complete appeal letter can expedite the appeal process. To file an appeal, you must write to us and provide the following information:

- Your name and address, or if you are filing for a business entity (such as a partnership, LLC, or corporation), the business entity's name and address.
- Your social security number, or if you are filing for a business entity, the business entity's identification number.
- The amount at issue and the tax year or years involved in the appeal (if you agree that you owe any portion of the tax, please explain and provide details).
- The date of the FTB's Notice (and a copy of the Notice) you are appealing.
- A statement of the facts involved in the case.
- The legal points and authorities, including statutes and regulations, that support your position.
- You or your representative's daytime telephone number.

Either you or your representative must sign your appeal. If you are filing an appeal jointly with another individual (such as your spouse), you both must sign the appeal.

You should also enclose any documents that support your position.

Although you are not required to give us your email address, we recommend that you include your email address along with the other contact information in your appeal. Using email will allow us to send certain correspondence to you faster, as well as save money on postage and paper. If you do not provide your email address with your appeal, we might ask you to provide it at a later date.

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

Formatting

Your appeal must be typed or handwritten on only one side of 8½-inch by 11-inch sheets of paper, in a type or font size of at least ten points or 12 characters per inch or the equivalent.

Please note: Except for any table of contents and exhibits (such as copies of supporting documents), your appeal must not exceed 30 double-spaced pages or 15 single-spaced pages.

Submitting Your Appeal

You must mail or hand-deliver one copy of your appeal letter, the FTB's Notice, and any supporting documents to:

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

Or you may fax your appeal to 916-324-3984.

As of the drafting of this publication, we cannot accept electronic filing of appeals. However, you may check our website at www.boe.ca.gov for updates and instructions on electronic filing.

Please note: Do not send your appeal to the FTB. If you mail your appeal to the FTB and the appeal is then delivered to us after the filing deadline, we will not be able to accept the appeal. We will ensure that the FTB receives a copy of your appeal and any supporting documents.

If you have any questions regarding submitting your appeal, please call 916-322-2270.

PROCESSING THE APPEAL

Determining Jurisdiction

We will send you a letter confirming receipt of your appeal letter. Then our staff will determine whether the BOE has jurisdiction to consider your case. In making that determination, we will consider:

- Whether your appeal was filed within the specified time limits, as previously discussed.
- Whether your appeal is premature.
- Whether the appeal involves a subject matter over which the BOE has authority.

Your appeal is premature if your protest is still pending at the FTB, or if your claim for refund is still pending and less than six months have passed since you filed it. In addition, the BOE's jurisdiction is limited to determining the correct amount of your liability for any taxes, penalties, and interest for the year(s) at issue. [Section 5412](#) of the RTA contains a more detailed discussion of when the BOE does, or does not, have jurisdiction to hear and decide an appeal.

If it appears to our staff that the BOE has jurisdiction over your appeal, we will send you an acknowledgment letter confirming your status as an appellant. We will also send a copy of the letter to the FTB.

If the BOE does not have jurisdiction over your appeal, we will reject your appeal. We will send you a letter explaining the reasons for the rejection.

Note on disputed jurisdiction: If there is a genuine dispute about whether the BOE has jurisdiction over your appeal, we will accept the appeal on the condition that jurisdiction remains at issue. The BOE will decide whether it has jurisdiction when it decides the other issues in your appeal.

Perfecting the Appeal

The briefing and consideration of your appeal cannot begin until the appeal is "perfected." Your appeal is perfected if it contains substantially all of the information listed in the "Information Required" section on [page 4](#). At a minimum, a perfected appeal must contain enough information to identify and contact each appellant or representative, along with the signature of each appellant or representative.

If your initial appeal letter is not perfected, we will explain what information is missing and give you 90 days to provide the missing information. If you do not provide the missing information within the 90-day period, your appeal will be dismissed.

Once the appeal is perfected, the appeal will proceed to the briefing process, which is outlined on [pages 6 through 9](#).

THE BRIEFING PROCESS

Information Gathering

After you have filed a perfected appeal, we begin an information gathering “briefing” process. This process is a crucial step in your appeal. Most of the information we collect about your case will be collected during the briefing process, so make sure that your briefs are as complete as possible.

Your briefs must be typed or handwritten on only one side of 8½ -inch by 11-inch sheets of paper, in a type or font size of at least ten points or 12 characters per inch or the equivalent.

Please note: Except for the table of contents and exhibits (copies of supporting documents), a brief may not exceed 30 double-spaced pages or 15 single-spaced pages.

Your briefs may be as simple as a letter. They must address the facts and the points at issue in your case and state how you think the law applies. If possible, they should also cite sections of law, along with any court or BOE decisions that support your position. You or your representative must sign the briefs.

In addition, we may ask you and the FTB to make an agreement that states which facts are not in dispute, which facts are in dispute, and the reasons for the dispute.

To review formal opinions of the BOE, which may be cited as precedent for other tax cases, please visit our website at www.boe.ca.gov/legal/legalopcont.htm. The website includes a list of income tax issues previously considered by the BOE. By clicking on the issues related to your appeal, you can see other cases that addressed those issues and how they were decided.

In the course of your appeal, we will ask you to send us briefs, correspondence, evidence, and supplemental documentation. We will send a copy of those items to the FTB. The FTB will send you copies of any briefs or correspondence it submits to us.

General Briefing Process for Most Appeals

To limit the time it takes to complete this information-gathering step, our regulations define a specific briefing process that applies to all appeals except innocent spouse appeals. The briefing process for innocent spouse appeals will be discussed separately. The briefing process specifies a set amount of time for the filing of briefs and responses to them.

At every step of the briefing process, we will inform you in writing of your specific deadlines. The postmark date on a brief is considered the filing date. If you or the FTB miss a briefing deadline without obtaining an extension from us, we will usually consider the briefing process concluded and your appeal will enter the next stage of the appeal process. In addition, if you file a brief out of order or after a briefing deadline, we will return your brief to you.

The briefing steps are discussed below and summarized in the table on the [next page](#).

Typical Briefing Steps

Your perfected appeal is considered to be your opening brief. As previously discussed, if your initial appeal letter is not perfected, you will have 90 days to perfect the appeal by providing any missing information. Once you have filed a perfected appeal, the FTB will have 90 days to file its opening brief. After the FTB files its opening brief, you will have 30 days to file a reply brief.

We will send you a letter informing you of the deadline to file your reply brief. That letter will also give you three options for continuing your appeal. You can choose to:

- Appear before the Board and present your case.
- Have the Board decide your case without appearing before them.
- Have your appeal dismissed.

Filing a reply brief is optional. If you choose to file a reply brief, you should address only those points of disagreement you have with the FTB's opening brief. As with your appeal letter, your reply brief must be mailed to us and not to the FTB.

It is important that you file your reply brief within the 30-day deadline. If you miss the deadline, the briefing process will end.

Unless we feel that additional information is required, the filing of your reply brief will end the briefing process.

Possible Additional Briefing Steps

In some cases, we may allow the FTB to file its own reply brief in response to your reply brief. After we acknowledge receipt of your reply brief, the FTB has 15 days to request permission to file its own reply brief. If we grant permission, the FTB will have 30 days to file its reply brief. We will grant the FTB's request to file a reply brief under these circumstances:

- Your reply brief raised new facts, arguments, or evidence that are essential to resolving the appeal;
- The briefing filed to date has not provided enough information for us to resolve the appeal; or
- The facts and issues in the appeal are so complex that additional briefing is necessary.

If the FTB files a reply brief, you will have the option to file a supplemental brief within 30 days. Your supplemental brief (should you choose to file one) generally will be the final step in the briefing process.

Summary of the Entire Briefing Process

The following table summarizes the steps of the general briefing process:

BRIEFING STEP	WHO IS RESPONSIBLE	FILING DEADLINE*
FTB's Opening Brief	FTB	90 days after we acknowledge receipt of a perfected appeal
Appellant's Reply Brief	You	30 days after we acknowledge receipt of the FTB's Opening Brief
FTB's Request for Permission to Reply	FTB	15 days after we acknowledge receipt of your Reply Brief
FTB's Reply Brief	FTB	30 days after we grant permission to reply
Appellant's Supplemental Brief	You	30 days after we acknowledge receipt of the FTB's Reply Brief

* If you or the FTB miss a deadline without first obtaining an extension, the briefing process generally will end and your appeal will enter the next stage of the appeal process.

Innocent Spouse Briefing Schedule

Our regulations set forth a special briefing schedule for innocent spouse appeals. The innocent spouse briefing schedule is similar to the briefing schedule for other types of appeals. However, it contains special definitions and allows all three parties, including both spouses and the FTB, to file briefing.

Special Definitions for Innocent Spouse Briefing

The spouse who requested innocent spouse relief from the FTB is the "Requesting Spouse." The spouse who opposes innocent spouse relief is the "Non-Requesting Spouse."

The spouse who first files the appeal from the FTB's grant or denial of innocent spouse relief is called the "Appealing Spouse." The spouse who later joins the appeal is called the "Non-Appealing Spouse."

Please note: The "Requesting Spouse" and the "Appealing Spouse" may not necessarily be the same person. The "Requesting Spouse" may be either the "Appealing Spouse" or the "Non-Appealing Spouse," depending on the circumstances of each individual appeal.

Summary of the Innocent Spouse Briefing Process

The following table summarizes the steps in the innocent spouse briefing process (assuming you are the spouse who first filed the appeal):

BRIEFING STEP	WHO IS RESPONSIBLE	FILING DEADLINE*
FTB's Opening Brief	FTB	90 days after we acknowledge receipt of a perfected appeal
Non-Appealing Spouse's Opening Brief	Your Spouse	90 days after we acknowledge receipt of a perfected appeal
Appellant's Reply Brief	You	30 days after the later of: <ul style="list-style-type: none"> • We acknowledge receipt of the FTB's Opening Brief; or • We acknowledge receipt of your spouse's Opening Brief.
Non-Appealing Spouse's Reply Brief	Your Spouse	30 days after we acknowledge receipt of your Reply Brief
FTB's Request for Permission to Reply	FTB	15 days after the later of: <ul style="list-style-type: none"> • We acknowledge receipt of your Reply Brief; or • We acknowledge receipt of your spouse's Reply Brief.
FTB's Reply Brief	FTB	30 days after we grant the FTB's request for permission to reply
Appellant's Supplemental Brief	You	30 days after the later of: <ul style="list-style-type: none"> • We acknowledge receipt of your spouse's Reply Brief; or • We acknowledge receipt of the FTB's Reply Brief.

* If you or the FTB miss a deadline without first obtaining an extension, the briefing process generally will end and your appeal will enter the next stage of the appeal process.

If you file an appeal from the FTB's grant or denial of innocent spouse relief, or if you have joined an appeal filed by your spouse, pay close attention to the letters we send you. We will explain what is required of you at each step in the briefing process, including every deadline you must meet. The innocent spouse briefing schedule is set forth in detail in [section 5432](#) of our RTA.

Extending Briefing Deadlines

At our discretion, we may extend the deadline for submitting a brief in these types of situations:

- You or your representative cannot meet a deadline due to a personal illness, an illness in your immediate family, or an unavoidable scheduling conflict;
- You have obtained a new representative who requires additional time to become familiar with your case;
- You and the FTB agree to extend a deadline; or
- Any other circumstance that we deem to be "reasonable cause" for an extension. In general, "reasonable cause" means there are circumstances that would prevent an ordinary, competent person from meeting the deadline.

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

All requests for extensions must be in writing and must be filed with us before the due date of the brief.

After one extension is granted, subsequent extension requests will be granted only if you can show *extreme hardship*. In general, extreme hardship means there are extraordinary circumstances outside of your control that prevent you from meeting the deadline.

Deferring an Appeal

You or the FTB can request a deferral of the appeal if there is enough reason and both parties agree. However, under certain circumstances, we may grant a deferral requested by only one party. We may grant a deferral for any of these reasons:

- You are negotiating with the FTB to reach a settlement.
- You or the FTB are waiting for a pending court, BOE, or Internal Revenue Service decision that is based on the same points of law as those at issue in your appeal.
- You are filing for bankruptcy.

The party or parties seeking the deferral must submit a written request to us.

A deferral is not the same as an extension. While an extension gives you more time to file a particular brief, a deferral places the appeal on hold for a definite time period.

Note on settlement: Because the BOE does not assess or collect California's income taxes, we cannot settle your income tax liability. If you want to reach a settlement, you must contact the FTB. For more information see FTB Notice 2007-2 which can be found online at www.ftb.ca.gov/law/notices.

PREPARING YOUR APPEAL FOR HEARING AND DECISION

After the briefing process is complete, you will have two options for proceeding with your appeal. You may:

- Request an oral hearing at which you or your representative will be given an opportunity to present your case before the Board; or
- Have the Board decide your appeal based solely on the information submitted during the briefing process (written record) and without an oral hearing.

More information on each option is presented below. Please note that the BOE gives the same impartial consideration to all appeals, whether decided at an oral hearing or on the basis of the written record.

Requesting and Scheduling an Oral Hearing

Our regulations give you the right to an oral hearing before the Board upon written request. You may submit your request at any time during the briefing process. Once the briefing process is concluded, you may still request a hearing up to 30 days after the conclusion of the briefing process. We may accept a late request for an oral hearing if you have reasonable cause for not submitting your request on time.

Hearing Location

You may request that the oral hearing be held in Sacramento or Culver City. Generally those are the only two places where we hold oral hearings.

Each month a meeting is held in either Sacramento or Culver City. While most meetings are held in Sacramento, Culver City meetings are held between three and four times a year. By requesting an oral hearing in Sacramento, you may get a hearing date sooner.

Innocent Spouse Hearings

Both you and your spouse have the right to request an oral hearing. In general, we will hold only one oral hearing at which both you and your spouse will have the opportunity to speak. However, we will hold separate oral hearings for you and your spouse if a court order would prohibit you from appearing together, or if we determine that a single hearing would be unsafe, disruptive, or unjust.

Reviewing the File for Completeness

If you have requested an oral hearing, we will review your file in order to determine whether the appeal is complete and ready to be presented at a hearing. In making this determination, we will look at the briefing and evidence filed by both parties to ensure that all factual and legal issues have been adequately addressed.

If we determine that the briefing and evidence on file are sufficient, we will schedule your appeal for the next available date at your chosen location.

If we determine that the appeal needs further development, we will order one or both of the following:

- Additional briefing—We may determine that additional briefing or evidence is required to fully develop all the issues in the appeal. In that case, we will send you a letter explaining what kinds of briefing and evidence are needed. Our letter may also ask specific questions, or ask for specific documentation, or both. Our letter will give you a specific deadline to reply.
- Prehearing conference—We may determine that the appeal can best be developed by holding a conference prior to the hearing. You, your representative, and the FTB's representative will be invited to attend. The conference will be conducted by one of our impartial appeals attorneys. The purpose of the conference is to obtain additional facts and evidence, with the hope of narrowing the issues prior to the Board hearing. We generally prefer to conduct the conference in-person, but it may also be done over the telephone. We will attempt to schedule the conference at a time and location that are convenient to you.

Please note: We will do our best to conduct the prehearing conference in an informal and nonadversarial manner. Although we will not record or transcribe the prehearing conference, you may have the conference recorded or transcribed at your expense. You must provide us and the FTB with a copy of any recording or transcription you have prepared.

Once the additional briefing and/or prehearing conference are completed, we will schedule your appeal for the next available date at your chosen location.

Decision on the Written Record and Without an Oral Hearing

We will submit your appeal for decision based on the written record and without an oral hearing under any of these circumstances:

- You do not request an oral hearing.
- You tell us that you want your appeal submitted for decision on the written record.
- You fail to return the Response to the Notice of Hearing.
- You waive your right to appear at a previously confirmed oral hearing.

Similarly to what happens when you request an oral hearing, when your appeal is submitted for decision based on the written record, one of our impartial appeals attorneys will review your file to ensure that it is complete. If the attorney determines that the file needs further development, the attorney may request additional briefing. In that case, we will send you a letter explaining what kind of briefing and evidence are needed. Our letter may also ask specific questions, or ask for specific documentation, or both. Our letter will give you a specific deadline to reply.

Once the additional briefing is completed, or if the appeals attorney determines that no additional briefing is necessary, we will prepare a written decision on your appeal. The written decision, also known as a "Summary Decision," usually will contain detailed findings and analysis so that you and the FTB understand why we have reached a particular conclusion.

THE BOARD HEARING

You may present your case at an oral hearing before the Board, or have your appeal decided on the basis of the written record and without an oral hearing. In either case, the Board will vote to decide your appeal at a public Board Meeting.

You Have the Burden of Proof

It is important to remember that you generally have the burden of offering enough evidence to prove your case. Evidence could include financial statements, business records, testimony of people familiar with you, or anything else that would help the Board understand why your position is correct.

Please note: This burden of proof applies regardless of whether you have requested an oral hearing.

An oral hearing gives you an opportunity to summarize and emphasize the points you feel support your position. You should make every effort to ensure that your presentation is clear, 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. If you plan to have witnesses testify at your oral hearing, please let us know. You should also indicate the nature of the testimony they will give.

The types of evidence that may be presented in tax appeal hearings are detailed in [section 5523.6](#), subdivision (a), of our RTA. You may request a copy from us or visit our website at www.boe.ca.gov.

Before the Hearing

Hearing Notices

About 75 days before the date of your hearing, we will send you and the FTB a “Notice of Hearing” and a “Response to Notice of Hearing”. The Notice of Hearing will inform you of the date, time, and location of your hearing. You will have 15 days to return the Response to Notice of Hearing. In order to keep your scheduled hearing date, you must return the Response to Notice of Hearing on time and indicate that you will attend the hearing.

If you do not return the Response to Notice of Hearing, your appeal may be scheduled for decision on the basis of the written record and without an oral hearing.

The Hearing Summary

Prior to your hearing, one of our appeals attorneys will review all of the briefing and evidence submitted during your appeal and prepare a “Hearing Summary.” The Hearing Summary is an impartial summary and analysis of the facts and law of your case.

Please note: The Hearing Summary is merely the staff attorney’s summary of the case, and does not reflect the view of the BOE or any individual Member of the Board.

The Hearing Summary might pose questions for you or the FTB to answer, and might suggest evidence for you or the FTB to submit. You will receive a copy of the Hearing Summary about two weeks before your hearing. You should carefully read the Hearing Summary and prepare to discuss any particular issues it raises.

Filing Exhibits

You and the FTB may submit written evidence as exhibits for the hearing, including items such as sworn statements or photocopies of documents. While you may submit evidence up to the time of the hearing, it is best to submit exhibits at least two weeks before the hearing date. This gives our staff and the Board time to review them. Please provide nine sets of your exhibits that should be sorted and stapled. If any part of an exhibit contains the elements of a brief—that is, an argument regarding a point of view based on the facts of the case and legal authorities—we will not accept that part of the exhibit and will return it to you. For more details, see [section 5523.6](#), subdivision (b), of the RTA.

Contribution Disclosure

Before the hearing, we will send you contribution disclosure forms. You, your representative, and anyone participating in the appeal for you must use the forms to disclose any contribution made to the Board in the 12 months before the hearing (see Government Code section 15626, subdivision [e]). You must return the completed forms to us before your hearing. The Board may choose not to hear an appeal until the forms have been filed.

The Hearing

A hearing generally progresses as follows:

- The BOE clerk will call your case and ask you and the FTB representative to come forward. One of our appeals attorneys will introduce your case and state the issues of your appeal.
- You will present your case and then the FTB will present its case. The Board may allow each of you up to ten minutes.
- You may be given an additional five minutes to reply to the FTB presentation.
- The Board may ask questions of you and the FTB representative.

Please note: The Board will be familiar with the arguments and evidence submitted before the hearing. The Board may alter the order of the hearing in order to better obtain the evidence they feel is most important. If the Board feels they have enough information to decide your appeal, they may choose to end the hearing in less time than indicated above.

THE BOARD DECISION

All BOE decisions for franchise and income tax appeals are made during public meetings. A decision is made by majority vote of the Board.

Decision After an Oral Hearing

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

- Decide the matter immediately after they hear the case.
- Decide the matter at the end of that day's hearings or at a future meeting.
- Order additional briefs from you, the FTB, or both. After the additional briefing, the Board may decide the case without another oral hearing.

Once the Board decides your case, we will issue a written decision, known as a "Letter Decision." We will usually mail the Letter Decision to you within three business days of the date on which the Board voted to decide your case. The FTB will receive the same Letter Decision.

Decision Without an Oral Hearing

If your appeal is submitted for decision on the written record and without an oral hearing, your case will be assigned to one of our impartial appeals attorneys, who will prepare a "Summary Decision" that contains a detailed explanation of the outcome of your case.

The Summary Decision does not represent the BOE's decision on your appeal until it is adopted by the Board at a public meeting. Until it is adopted by the Board, the Summary Decision is subject to the attorney-client privilege and is kept confidential.

Finality of the Board's Decision

Unless you or the FTB file a petition for rehearing, the Board's decision will become final in 30 days. If that decision modifies the original FTB determination in your favor, the FTB will issue an adjusted billing or refund after the decision becomes final.

FURTHER APPEAL RIGHTS

If you agree with the decision made by the Board, you do not need to take any further action.

If either party to the appeal disagrees with the Board's decision, that party may file a "petition for rehearing" with us. You also may file an action in superior court. Both actions are 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 decision. The petition is a request for the Board to hear your appeal a second time. The FTB has the same right to file a petition for rehearing. Please send us a copy of the petition (see [page 4](#) for our mailing address). As with other documents you file with us, the date of the postmark will be considered the filing date.

Please note: You must file your petition for rehearing within 30 days of the date of the Board's decision. That deadline cannot be extended for any reason. Even if you have reasonable cause for missing that deadline, your petition will be rejected and the Board's decision will become final.

Required Information

Your petition for rehearing should include the following information:

- Your name and address, or if you are filing for a business entity (such as a partnership, LLC, or corporation), the business entity's name and address.
- Your or your representative's daytime telephone number.
- Any portion of the amount at issue that you concede.
- The facts and legal authorities that identify a reason for holding a new hearing.

Reasons for holding a new hearing include:

- √ There was an irregularity in the Board's proceedings that prevented you from having a fair consideration of your case.
- √ There was an accident or surprise, which ordinary caution could not have prevented.
- √ You have discovered new evidence that (1) is relevant to the outcome of your case and (2) you could not have discovered or provided prior to the Board's decision.
- √ The Board's decision was not supported by the evidence or was contrary to the law.

Either you or your representative must sign your petition for rehearing.

Just as with your initial appeal, your petition for rehearing must be "perfected" before it can move through the decision process. The petition is perfected if it contains substantially all of the required information listed on the previous page. In some cases, it may be difficult to obtain all the information and documentation you need to support your petition for rehearing by the strict filing deadline. In such cases, you must submit a timely petition for rehearing, even if it is incomplete. However, you may request an additional 30 days in which to perfect your petition for rehearing by submitting the missing information or documentation. Any request to perfect your petition for rehearing should be made clearly and prominently on the timely filed petition.

After you file a perfected petition for rehearing, the FTB will have 30 days to respond to your petition. One of our impartial appeals attorneys will then prepare a "Decision on Petition for Rehearing". The Decision on Petition for Rehearing does not represent the BOE's decision until it is adopted by the Board at a public meeting. Until it is adopted by the Board, the Decision on Petition for Rehearing is subject to the attorney-client privilege and is kept confidential.

Deciding the Petition for Rehearing

The Board will decide on the petition for rehearing during a public meeting, but they will not hold an oral hearing to discuss your petition.

If the Board grants your petition for rehearing, you will be given an opportunity to file additional briefing in support of your case. If you wish, you may have another oral hearing before the Board. The Board's decision on your rehearing will be their final decision on your case.

If the Board denies your petition for rehearing, the original decision on your case becomes final.

Filing an Action in the Superior Court

If you disagree with the decision, you may pursue further consideration of your case by paying the tax due (if any) and filing an action against the FTB in superior court. For more information about such actions and how to file them, you should refer to the Revenue and Taxation Code or contact a private attorney or the FTB's legal staff.

