

# **Audit Manual**

## **Chapter 14**

### **Appeals Procedures**

Business Tax and Fee Division  
*California Department of  
Tax and Fee Administration*

*This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda. Please contact any California Department of Tax and Fee Administration office if there are concerns regarding any section of this publication.*

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## APPEALS PROCEDURES

# APPEALS PROCEDURES

**1400.00**

## INTRODUCTION

**1401.00**

Audit Manual (AM), Chapter 14, *Appeals Procedures*, outlines the procedures for California Department of Tax and Fee Administration (CDTFA or Department) team members to follow when a taxpayer files a petition for redetermination, administrative protest, administrative hearing, or claim for refund (collectively referred to as “appeals” or “appeals cases”). For Local Tax appeals procedures, refer to Compliance Policy and Procedures Manual (CPPM), Chapter 9, *Miscellaneous*.

**NOTE:** A “premature petition” or “late petition” for redetermination is not a valid petition. A “premature petition” is a petition for redetermination filed prior to the notice of determination and cannot be accepted into the appeals process. A “late petition” is a petition for redetermination filed after the 30-day period following the date the determination was mailed. The Department has the discretion to accept a late petition into the appeals process as an administrative protest (formerly referred to as a “late protest”).

California Code of Regulations, title 18, section 35001 et seq. (Appeals Regulation(s)) set forth formal appeals procedures that all parties must follow during the appeals process.

The Appeals Bureau’s responsibilities include conducting appeals conferences and issuing written Decisions on appeals of Department actions resulting from the various taxes and fees administered by CDTFA.

## TERMINOLOGY

**1401.02**

**Taxpayer** includes a taxpayer, feepayer, claimant, or petitioner, as applicable.

**Division** means the Business Tax and Fee Division (BTFD), the Field Operations Division (FOD), or the Administration Division, as applicable.

**Office** means CDTFA field offices, Headquarters offices, field team groups for special tax programs, or the Legal Division’s Collection Support Bureau (CSB), as applicable.

**Office Making Audit (OMA)** means any of the Headquarters offices, field offices, or Special Taxes and Fees offices assigned the Audit case.

**Petitions** means BTFD’s Petitions Section, Appeals and Data Analysis Branch (ADAB), or CSB, as applicable.

**Refunds** means BTFD’s Audit Determination and Refund Section (ADRS), ADAB, or CSB, as applicable.

**Bureau Chief** means the Chief of Headquarters Operations Bureau, the Chief of Audit and Carrier Bureau, or the Chief of Investigations and CSB, as applicable.

## APPEALS CASE WORKLOAD PRIORITY GUIDELINES

**1401.04**

The Department’s levels of priority for appeals cases are as follows (item 1 has the highest priority):

1. Appeals cases scheduled for a hearing, or previously heard by, the Office of Tax Appeals (OTA).
2. Appeals cases where a Decision has already been issued, but is not scheduled for a hearing at OTA.
3. Appeals cases where the appeals conference has been held but the Decision has not yet been issued.
4. Appeals cases scheduled for an appeals conference.
5. Appeals cases pending the scheduling of an appeals conference.

Appeals cases have priority over routine assignments.

**PETITIONED AUDIT DETERMINATIONS****1404.00****GENERAL****1404.02**

AM sections 1404.00 – 1406.00 cover the appeals procedures for appeals related to a petitioned audit determination. These procedures apply **after** the Notice of Determination was mailed to the taxpayer, the taxpayer has filed an appeal, and the appeal was **acknowledged by Petitions**. The petition must be in writing and state the specific grounds upon which it is founded.

**NOTE:** Reference AM Chapter 2, *Preparation of Field Audit Reports* for specific procedures regarding disputed audit findings prior to the issuance of a Notice of Determination. Additional information is available in Publication 76, *Audits*.

The appeals process is segregated into six phases that are generally categorized as follows:

1. Pre-Appeals Conference Investigation
2. Appeals Conference
3. Decision
4. OTA Hearing
5. Petition for Rehearing
6. Appeals Case Closure

The details regarding appeals can be found in the Appeals Regulations (Cal. Code Regs., tit. 18, § 35001 et seq.) and Publication 17 *Appeals Procedures*.

**PRE-APPEALS CONFERENCE PHASE****1404.04**

Generally, the taxpayer has 30 days from the date the Department/CDTFA mailed the Notice of Determination, to file a petition for redetermination. A petition for redetermination of a Notice of Determination issued under section 30173 of the Cigarette and Tobacco Products Tax Law must be filed within 10 days of the date the Notice of Determination was mailed (see Appeals Regulation 35007(b)). Instructions for filing petitions for redetermination are included on the taxpayer's copy of the Notice of Determination. The taxpayer may also file a claim for refund with respect to any payment made toward the determination.

A petition for redetermination of a Notice of Jeopardy Determination must be filed within 10 days from the date the Notice of Jeopardy Determination was mailed or personally served (see Appeals Regulation 35025). Within that 10-day period, the taxpayer must either pay the amount due or file a petition for redetermination and post a deposit with the Department in the prescribed amount for security. The petition for redetermination must be in writing and state the specific grounds upon which it is founded. Within 30 days following the date the Notice of Jeopardy Determination was mailed or personally served (whichever is earlier), the taxpayer may also apply for an administrative hearing for one or more purposes stated in Appeals Regulation section 35030. Applying for an administrative hearing does not operate as a stay of collection activities, except for the sale of property seized after issuance of the Notice of Jeopardy Determination.

**OMA Investigation**

Generally, a taxpayer may submit their appeal through CDTFA's Online Services (the system), if filed within the applicable time frame allowed by statute. The system automatically establishes a case and pre-evaluates the submission for acknowledgment. The system routes the case to Petitions or Refunds to determine if the appeal is valid and to forward the appeal to the OMA for review. If a paper appeal is received in the OMA, the original documents, including the envelope, should be date-stamped and immediately forwarded to Petitions or, in the case of a refund, to Refunds, for acknowledgment. In the case of a paper appeal, once the appeal is received in Petitions or Refunds, a case will be created and the submission will be evaluated. If the submission constitutes a valid petition for redetermination, an acknowledgement letter is sent to the taxpayer.

## APPEALS PROCEDURES

### PRE-APPEALS CONFERENCE PHASE

(CONT. 1) 1404.04

Petitions or Refunds will review and evaluate the audit findings within CDTFA-836-A, *Report of Discussion of Audit Findings* for:

- Consistency,
- Adequacy of procedures,
- Proper application of law, and
- Consideration of any recent statutory or regulatory changes or OTA precedential opinions which may affect the audit or investigation findings.

If the information provided is considered incomplete, Petitions or Refunds will contact the taxpayer or the OMA to obtain additional information. In some instances, the appeals case will be returned to the OMA for additional field work or contact with the taxpayer in an attempt to resolve the appeal.

The appeals case will also be routed to the OMA for further investigation and comments, if any of the following occur:

- If the OMA has not prepared the CDTFA-836-A, *Report of Discussion of Audit Findings*.
- The CDTFA-836-A does not fully address the taxpayer's contentions and the Department's position regarding the taxpayer's contentions.
- The taxpayer indicates that new records are available that were not previously reviewed by the OMA.

In these instances, a new or revised CDTFA-836-A should be returned to Petitions or Refunds for further processing and analysis.

### Other Investigations

While most determinations are the result of CDTFA audits, some determinations may be the result of the following:

1. Estimated returns (e.g., for failure to file returns)
2. Review of returns filed (e.g., errors on returns)
3. Dual determinations
4. Corporate officer or responsible person liability
5. Notice of successor liability
6. Field billing orders
7. Purchases of vehicles, vessels, or aircraft, where no tax was paid
8. Out-of-state purchases, where no tax was paid
9. External agency billings

An appeal of a Notice of Determination resulting from items 1 to 9, above, is treated in the same manner as an appeal of a Notice of Determination issued for a deficiency resulting from an audit (as described above). However, instead of the CDTFA-836-A, the OMA will draft a Staff Recommendation Case Paper (similar to the CDTFA-836-A) to document the following for each item and amount in dispute:

- The taxpayer's contentions,
- The Department's position and recommendations,
- Whether the taxpayer agrees or disagrees with the Department's position and recommendation;
- Whether the taxpayer requests an appeals conference, confirmed their original request for an appeals conference, or withdrew their original request for an appeals conference.

**PRE-APPEALS CONFERENCE PHASE**

The Staff Recommendation Case Paper should be reviewed and approved in the system by the appropriate supervisor before the appeals case is returned to Petitions or Refunds for further processing and analysis. If additional information from the taxpayer is necessary, Petitions or Refunds will direct the OMA to obtain such information from the taxpayer.

After Petitions or Refunds completes its analysis of the appeal, they will notify the taxpayer of their findings by letter. If Petitions or Refunds findings do not resolve the appeal, the taxpayer will be provided an opportunity to request an appeals conference, if it has not previously done so. If the taxpayer requests or has already requested an appeals conference, the case will proceed through the appeals process, except for claims for refund appeals where there is specific reason to deny an appeals conference (e.g., the taxpayer already had an appeals conference on the same issue and there are no new facts or arguments) or where Petitions or Refunds has requested the taxpayer to confirm its prior request for an appeals conference, and the taxpayer has not provided such confirmation.

**Summary Analysis**

A Summary Analysis is a written summary which contains a narrative description of:

- The audit methods and steps used to establish the Notice of Determination;
- Petitioner's contentions regarding the Notice of Determination or Notice of Deficiency Assessment;
- The position of the OMA that issued the notice; and
- The reason(s) Petitions or Refunds believes the OMA's position should be sustained in whole or in part.

Petitions will prepare the Summary Analysis when the case involves a petition for redetermination or a petition for redetermination with a related claim for refund. When the case involves only a claim for refund, the Staff Recommendation Case Paper will be prepared by Refunds.

Petitions or Refunds, as applicable, will contact the taxpayer to verify and update the taxpayer's contact information and inquire into the method which the taxpayer intends to appear at the appeals conference (by telephone, video conference, or, if in person, in which specific office the taxpayer would prefer the appeals conference be held). Unless the taxpayer indicates another preference, a request for an in-person appeals conference will generally be held in the OMA that conducted the taxpayer's audit or investigation.

The Summary Analysis is primarily prepared based on information taken from the Audit Disagreement case in the system (prepared by the auditor), the CDTFA-836-A (prepared by the Audit Principal, Section/Branch Supervisor, or Office Administrator), and/or the Staff Recommendation Case Paper (prepared by the auditor). It is imperative these reports are as complete as possible. They should clearly explain the taxpayer's contentions, the arguments supporting these contentions, and the OMA's position relating to those contentions. Once the Summary Analysis is completed, Petitions sends the CDTFA-1350-A, *Summary Analysis Cover Letter*, with a copy of the Summary Analysis to the taxpayer and the taxpayer's representative(s). The CDTFA-1350-A includes a *Verification of Appeals Conference* form for the taxpayer and/or their representative to verify and/or update their contact information and their preferences regarding the appeals conference. After the letter is issued, Petitions routes the appeals case to the Case Management Section of the Appeals Bureau to schedule an appeals conference.

Copies of written communications between Petitions, Refunds, or the Appeals Bureau and the taxpayer should be distributed to all parties and attached to the case. Written communications regarding petitions or refunds, from the OMAs to the taxpayer, should include a statement requesting the taxpayer contact the CDTFA in writing if the taxpayer believes the facts, description of its business activities, or its contentions, as set forth in the Summary Analysis, are erroneous or require further explanation.

The appeals conference is an informal discussion where the taxpayer and the OMA have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Bureau conference holder for the programs administered by the CDTFA. Prior to the scheduled date of the appeals conference, each party may make a written submission to the Appeals Bureau, providing the arguments and evidence in support of that party's position. In the event a submission is provided, the party making the submission should provide a copy to the Appeals Bureau and all parties involved in the appeal.

### **Representation at Appeals Conferences**

The following clarifies the role and responsibility of the BTFD, FOD, and the Administration Division for providing representation at appeals conferences.

### **Appeals Conferences Involving Audit Appeals**

The OMA is identified in CDTFA's system on the Audit springboard, Audit tab, Attributes sub-tab. The appeals conference will generally be held at the OMA. However, the appeals conference may be held at Headquarters or a different Office ("Host Office") to accommodate the taxpayer and/or the taxpayer's representative. Appeals conferences may also be held via teleconference or video conference. In all instances, the OMA's Audit Principal, Section/Branch Supervisor, or Office Administrator, will represent the Division and should attend the appeals conference in person. Such representation is necessary, as the Audit Principal, Section/Branch Supervisor, or Office Administrator and/or the auditor are familiar with the case, including the specific reason(s) the tax was determined to be due. This is especially important for cases involving fraud or complex audit issues. The presence and experience of the Audit Principal, Section/Branch Supervisor, or Office Administrator, provides valuable support for the auditor, lends credibility to the Division's position, and gives the Appeals Bureau conference holder an additional resource during the appeals conference. The appeals conference is intended to be an informal discussion of relevant facts and applicable law(s) so the Audit Principal, Section/Branch Supervisor, or Office Administrator should present all evidence and arguments concerning the disputed amounts.

If the Audit Principal, Section/Branch Supervisor, or Office Administrator cannot attend the appeals conference, a designee with a working title of "Technical Advisor" or classification of "Supervising Tax Auditor II" or "Business Taxes Administrator II" may be assigned to attend on their behalf. When fraud is involved, the designee must have a classification of "Supervising Tax Auditor II," "Business Taxes Administrator II," or above. Although this policy restricts who the designee may be, it is still advisable that the auditor most familiar with the case attend the appeals conference with the Audit Principal, Section/Branch Supervisor, Office Administrator, or designee.

### **Taxpayer in person conference**

If the appeals conference is scheduled to be an in-person conference (taxpayer attends in person), and if it is not feasible for the OMA's auditor and the Audit Principal, Section/Branch Supervisor, or Office Administrator to be physically present at the appeals conference, the auditor and the Audit Principal will represent the OMA by telephone. The auditor and Audit Principal should notify the Appeals Bureau, well in advance of the appeals conference, of its intent to appear by telephone. The auditor and the Audit Principal, Section/Branch Supervisor, or Office Administrator, should ensure they have equipment readily available to receive electronic copies of documents the taxpayer may present during the appeals conference.

**APPEALS CONFERENCE****(CONT.1) 1404.06**

For appeals conferences where the auditor and Audit Principal represent the OMA by telephone, it is not necessary for team members from the Host Office to attend the appeals conference, since it is the responsibility of the OMA to address all questions raised by the Appeals Bureau and the taxpayer.

However, there may be circumstances in which the Appeals Bureau requests that team members from the Host Office attend the appeals conference. Such requests will be handled on a case-by-case basis, with the ultimate discretion remaining with the Office Administrator of the Host Office or Headquarters section supervisor (Petitions, ADAB, ADRS). In the absence of such a request, team members from the Host Office may only attend the appeals conference at the discretion of the Host Office's Audit Principal, and with the consent of the Appeals Bureau conference holder.

Any exhibits, schedules or documentation which will be referenced during the appeals conference, which are **not** attached to the appeals case or included in the electronic copy of the audit file, should be provided to the Appeals Bureau's conference holder **prior** to the appeals conference. Similarly, **prior** to the appeals conference, the Appeals Bureau's conference holder should provide the OMA with any and all taxpayer exhibits, binders, schedules, etc., received by the Appeals Bureau, which were not already copied to the OMA. All of these materials will be attached in the system and an email shall be sent from the Appeals Bureau to notify the Audit Principal of the OMA.

**Appeals Conferences Involving Consumer Use Tax Appeals**

Appeals conferences involving Consumer Use Tax Appeals will generally be held at Headquarters or at an Office. In all instances, Petitions or ADRS shall represent BTFD, in person or by telephone, depending on the location of the appeals conference.

The Section Supervisor should represent Petitions or ADRS at an appeals conference. If the Section Supervisor cannot attend the appeals conference, a designee with a working title of "Technical Advisor" or classification of "Supervising Tax Auditor II" or "Business Taxes Administrator II" may be assigned to attend on their behalf. When fraud is involved, the designee must have a classification of "Supervising Tax Auditor II," "Business Taxes Administrator II," or above. Although this policy restricts who the designee may be, it is still advisable that the team member most familiar with the case attend the appeals conference with the Section Supervisor or designee.

When Petitions or ADRS represents the FOD or BTFD by telephone, it is not necessary for staff from the Host Office to attend the appeals conference. However, there may be circumstances in which the Appeals Bureau requests that team members from the Host Office attend the appeals conference. Such requests will be handled on a case-by-case basis, with the ultimate discretion remaining with the Office Administrator of the Host Office. In the absence of such a request, team members from the Host Office may only attend the appeals conference at the discretion of the Host Office's Audit Principal, and with the consent of the Appeals Bureau's conference holder.

**Appeals Conferences Involving Compliance-Related Appeals**

When BTFD team members represent Return Analysis Unit (RAU), Local Revenue Bureau (LRB), or ADAB, the BTFD representative should be an Audit Principal, Section/Branch Supervisor, or Office Administrator. If the Audit Principal, Section/Branch Supervisor, or Office Administrator cannot attend the appeals conference, a designee with a working title of "Technical Advisor" or classification of "Supervising Tax Auditor II" or "Business Taxes Administrator II" may be assigned to attend on their behalf. When fraud is involved, the designee must have a classification of "Supervising Tax Auditor II," "Business Taxes Administrator II," or above. Although this policy restricts who the designee may be, it is still advisable that the auditor most familiar with the case attend the appeals conference with the Audit Principal, Section/Branch Supervisor, Office Administrator, or designee.

## APPEALS PROCEDURES

### APPEALS CONFERENCE

(CONT.2) 1404.06

If RAU, LRB, or ADAB appear at the appeals conference by telephone, it is not necessary for a team member from the Host Office to attend the appeals conference. However, there may be circumstances whereby the Appeals Bureau requests team members from the Host Office attend the appeals conference. Such requests will be handled on a case-by-case basis, with the ultimate discretion remaining with the Administrator of the Host Office. In the absence of such a request, staff from the Host Office may only attend the appeals conference at the discretion of the Host Office's Audit Principal, and with the consent of the Appeals Bureau conference holder.

### FOD's or BTFD's Role at Appeals Conference

It is imperative that FOD or BTFD be well prepared to effectively present the Division's case at the appeals conference. The auditor is expected to take an active role in explaining the audit methodology and findings during the appeals conference. Prior to the appeals conference, the auditor should thoroughly review the audit results, audit findings, and the taxpayer's contentions, as well as the Summary Analysis prepared by the Petitions Section or ADAB. During the appeals conference, if any information presented (either by FOD, BTFD, or the other parties) conflicts or is inconsistent with information contained in the audit working papers (AWP), the auditor must point out the discrepancy to the Appeals Bureau conference holder.

### Submission of Additional Documents

Any party to an appeal may submit additional written arguments and documentary evidence to the Appeals Bureau at any time before or during the appeals conference. Any exhibits, schedules, or documentation which will be referenced during the appeals conference but are **not** attached to the appeals case or included in the electronic copy of the audit file, should be provided to the Appeals Bureau (with a copy to the other parties to the appeal) **prior** to the appeals conference. Similarly, the Appeals Bureau will attach in the system any exhibits, schedules, or documents provided to it. If the OMA was not also provided a copy of these materials, the Appeals Bureau will notify the OMA that such materials were uploaded to the system.

After the conclusion of the appeals conference, a party may only submit written arguments or documentary evidence with the consent, or at the request, of the Appeals Bureau. If a party makes a request to provide a post-conference submission, and the Appeals Bureau grants the request, the Appeals Bureau will provide that party 15 to 30 days to submit such arguments or documentation. After the submission is made, the Appeals Bureau will grant the other parties 15 to 30 days to submit a response. A party's deadline to provide a submission or response cannot be extended beyond 30 days without first obtaining the consent of the Appeals Bureau Assistant Chief Counsel (or their designee).

If the Appeals Bureau requests additional written arguments or documentary evidence from a party, it will inform the party when its submission is due. The Appeals Bureau will also determine whether the other parties should provide a response to the submission. If the Appeals Bureau determines a response should be submitted, they will advise the parties when the response is due.

The taxpayer (and any other parties to the appeal) should be copied on any written communications sent to the Appeals Bureau.

**APPEALS BUREAU DECISION****1404.08**

The Appeals Bureau will generally issue (i.e., mail or electronically transmit) its Decision no later than 90 days after the appeals conference or 90 days after the last submission provided by any party, whichever is later.

A Decision (or Supplemental Decision) can have one of four outcomes:

- Grant
- Deny
- Grant in part, deny in part (partial grant)
- Reaudit

When issuing a Decision, the Appeals Bureau includes a cover letter addressed to the taxpayer, with a copy to the other parties, including the appropriate Bureau Chief. The cover letter will explain the parties' options to appeal the Decision, except in cases where the Appeals Bureau orders a reaudit. In cases where the Appeals Bureau orders the Division to conduct a reaudit, the Appeals Bureau will not inform the parties of their options to appeal the Decision until the reaudit is complete and the Division has provided the reaudit report to the Appeals Bureau. If the Appeals Bureau agrees that the Division performed the reaudit in accordance with the Decision, then the Appeals Bureau will send the parties a letter summarizing the results of the reaudit and explaining the parties' options to appeal the Decision.

**DIVISION REQUESTS FOR RECONSIDERATION (RFR)****1404.10**

The appropriate Bureau Chief is responsible for evaluating Decisions (and Supplemental Decisions) to determine whether an RFR should be filed by the Division. If the Division team members question the conclusions reached in the Decision (or Supplemental Decision), the appropriate Division Manager or Principal Auditor shall notify the appropriate Bureau Chief immediately. If the Bureau Chief agrees, the appropriate Division will prepare the RFR providing the reasons the respective Division believes the Decision (or Supplemental Decision) is incorrect. Within 30 days of the issuance of the Decision, Supplemental Decision or Options Letter, the appropriate Bureau Chief will then submit the RFR if they agree it is appropriate to do so. If the Appeals Bureau recommended a reaudit, the RFR may only be submitted after completion of the reaudit and the issuance of the options letter.

**TAXPAYER REQUESTS FOR RECONSIDERATION (RFR)****1404.15**

When the taxpayer files an RFR, the Appeals Bureau, acknowledging the taxpayer's request for reconsideration, will copy the Chief, Headquarters Operations Bureau, Chief, Audit and Carrier Bureau, or Chief, Investigations and Collection Support Bureau, thereby notifying them of the taxpayer's filing of an RFR and allowing the Bureau an opportunity to respond within 30 days.

The Appeals Bureau's conference holder may request additional submissions and/or responses from the parties after an RFR is filed. Generally, within 90 days after the final submission, the Appeals Bureau will issue a Supplemental Decision setting forth the issues raised by the RFR and any other matters the Appeals Bureau deems warranted; the facts, law, and analysis necessary to resolve those issues; the findings and conclusions of the Appeals Bureau; whether the Appeals Bureau is making any adjustment to the decision; and whether the appeal is denied in full, granted in full, partially granted, or remanded to the appropriate Division to perform a reaudit. The CDTFA's Chief Counsel may allow additional time to prepare the Supplemental Decision upon request of the Appeals Bureau. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies must be provided to each party of the appeal. A copy of the Supplemental Decision shall be issued to each party of the appeal and any other jurisdiction that will be substantially affected by the Supplemental Decision.

## **APPEALS PROCEDURES**

### **TAXPAYER REQUESTS FOR RECONSIDERATION (RFR)**

**(CONT.) 1404.15**

Except where the Supplemental Decision remands the appeal for reaudit, the Supplemental Decision shall include a letter that explains the available options for appealing the Supplemental Decision. Where the Supplemental Decision remands the appeal for reaudit, the Appeals Bureau, upon receipt of a completed reaudit that complies with the Supplemental Decision, will issue an options letter to the parties explaining the results of the reaudit and the available options for appealing the Supplemental Decision.

### **FINALITY OF A DECISION OR SUPPLEMENTAL DECISION**

**1404.20**

If no valid RFR is submitted to the Appeals Bureau, and no valid appeal of the Decision or Supplemental Decision is submitted to the OTA within 30 days of the date of the mailing of the letter explaining the options to the parties as to the Decision or any Supplemental Decision, the Decision or Supplemental Decision (as applicable) becomes final.

## REAUDITS ORDERED BY A DECISION OR SUPPLEMENTAL DECISION

**1406.00**

After the appeals conference, the Appeals Bureau will prepare a written Decision containing its analysis and conclusion for the resolution of the case. The four types of Decisions (or Supplemental Decisions) are:

- Grant
- Deny
- Partial grant
- Reaudit

In the case of a grant, partial grant, or reaudit, the Division will perform a reaudit in accordance with directions set forth in the Decision. Reaudits are considered **priority assignments**.

If the Decision recommends that the appeal be granted, denied, or partially granted, the Appeals Bureau will issue the Decision to the parties, along with a cover letter that explains the options for further appeal by each party. If the Decision recommends the Division to conduct a reaudit, the Appeals Bureau will issue the Decision to the parties along with a cover letter advising the parties that the Appeals Bureau will write the parties again after receiving the Division's reaudit report. When the Division completes the reaudit, the Division will provide its reaudit report to the Appeals Bureau, and the Appeals Bureau will then send an options letter to the parties summarizing the results of the reaudit and explaining the options for further appeal by each party.

Reaudits requiring minimal adjustments may be completed by Petitions or, for claims for refund, by Refunds. If the reaudit requires OMA team members to review additional records provided by the taxpayer, Petitions or Refunds will contact the appropriate OMA. Within **10 days** of receiving the assignment, the auditor must contact the taxpayer by telephone to request an appointment to review the records identified in the Decision. If the taxpayer timely responds to the initial telephone call from the auditor or letter(s) from the auditor, the appropriate headquarters section will review the taxpayer's records and conduct the reaudit in a manner that will ensure the report is transmitted to Headquarters within 90 days from the date the records are provided. The 90-day time frame includes the time required to provide the taxpayer copies of the reaudit, hold an exit conference with the taxpayer, and document any remaining contentions.

If the telephone call does not result in an appointment, the auditor must send a letter to the taxpayer requesting both an appointment and that the taxpayer respond within 10 days. If the taxpayer fails to respond by the 10th day, the auditor must, within the next **seven days**, send a second letter to the taxpayer, within **seven days** after the expiration of the initial 10-day period, explaining the potential consequences of the taxpayer's failure to respond.

Both the first and second letters should explain any adjustments that may be made based on the Decision. The letter should state that some or all of the adjustments cannot be made if the taxpayer does not submit the requested records within seven days of the date of the letter.

If the taxpayer fails to respond to both letters from the auditor, the completed reaudit (based on the adjustments previously recommended by the Decision or Supplemental Decision) or a memorandum indicating that no records were provided, should be submitted to Petitions or Refunds. Petitions or Refunds will then return the case to the Appeals Bureau, and include a memorandum to the Appeals Bureau (with a copy to the taxpayer). The memorandum will state that as a result of the taxpayer's failure to provide the requested records, FOD or BTTFD is returning the case to the Appeals Bureau without the adjustments that required the examination of the requested records. The memorandum will also describe adjustments made on the basis of existing records, which would include any specific amount of reduction ordered by the Decision.

## APPEALS PROCEDURES

### REAUDITS ORDERED BY A DECISION OR SUPPLEMENTAL DECISION

(CONT.) 1406.00

If the Appeals Bureau believes additional reaudit work is required, it will return the case to FOD or BTFD with a memorandum explaining what it believes should be done. If the Appeals Bureau agrees that the reaudit has been performed in accordance with the Decision, it will send the taxpayer an options letter that explains the taxpayer's options for further appeal.

The time frames set forth above may be extended with the approval of the appropriate Chief, or their designee.

Upon completion of the reaudit, BTFD or FOD must draft a reaudit report. The reaudit report **must** specify whether the taxpayer agrees or disagrees with the reaudit results and if there are any remaining disputed matters. It is important to recognize that simply stating that the taxpayer agrees or disagrees with the reaudit is ambiguous. A taxpayer who agrees with the reaudit may agree that the remaining deficiency is the correct amount and have no further dispute. However, a taxpayer may instead agree only that the reaudit was performed in accordance with the Decision, but dispute the remaining deficiency because it does not agree with other aspects of the Decision. Similarly, a taxpayer who disagrees with the reaudit may contend that the reaudit was not performed as recommended by the Appeals Bureau, or the taxpayer may disagree with the recommendation of the Appeals Bureau, or both. That is, a taxpayer who "disagrees" with the reaudit might actually agree that the reaudit was performed correctly, or might agree with the recommendation of the Appeals Bureau. With all these possibilities, it is **imperative** that auditors specifically ask the taxpayer:

- Whether the taxpayer agrees that the reaudit has properly made the adjustments as recommended by the Appeals Bureau;
- Whether the taxpayer agrees or disagrees that the reaudit was performed as recommended by the Appeals Bureau; and
- Whether the taxpayer agrees with the Appeals Bureau's Decision.

The answers to these specific questions must be included in the reaudit report, along with a description of the reason for any disagreement, as applicable.

Where the reaudit report indicates that the taxpayer agrees the reaudit was performed correctly and agrees with the Appeals Bureau's Decision, no further action should be required. In such circumstances, the auditor must ensure, and the reaudit report must be very clear, that the taxpayer has no further dispute and accepts that they owe any remaining deficiency specified in the reaudit (including any interest and penalties).

The reaudit report and reaudit must be sent to Petitions for further processing. Whether the taxpayer agrees or disagrees with the reaudit results, the OMA must send copies of the reaudit report and AWP to the taxpayer. If the taxpayer disagrees with the reaudit results, the OMA must include a report fully explaining the taxpayer's contentions regarding each non-concurred item and the OMA's position on each item.

If the Appeals Bureau believes additional reaudit work is required, it will return the case to FOD or BTFD with a memorandum explaining what it believes should be done. Alternatively, if the Appeals Bureau agrees that the reaudit has been performed in accordance with the Decision, it will send a letter explaining the results of the reaudit and the parties' options for further appealing the Decision.

**REQUESTS FOR RECONSIDERATION (RFR) AND  
SUPPLEMENTAL DECISIONS****1406.10**

Any party may submit a request for reconsideration (RFR), but the RFR must be filed within 30 days of the date the Decision was issued. For Decisions that remand the appeal for a reaudit, the parties may file an RFR only after the Appeals Bureau has issued its letter explaining the results of the reaudit and the parties' options for further appealing the Decision; the RFR must be filed within 30 days of the date that letter was issued. The Appeals Bureau may also initiate a Supplemental Decision or revise the Decision to clarify or correct the Decision within these same timeframes.

The Bureau Chiefs are responsible for evaluating Decisions (and Supplemental Decisions) to determine whether an RFR should be filed by the Division. If the Division team members question the conclusions reached in the Decision (or Supplemental Decision), the appropriate Division Manager or Principal Auditor shall notify the appropriate Bureau Chief immediately. If the Bureau Chief agrees, the appropriate Division will prepare the RFR. The applicable Bureau Chief will then submit the RFR to the Appeals Bureau, if they agree it is appropriate to do so.

An RFR must identify the specific issue(s) for which reconsideration is sought and explain the reasons the party disagrees with the Decision, the results of the reaudit, or both.

If the Appeals Bureau receives a valid RFR from a party, the Appeals Bureau will provide the other parties to the appeal an opportunity to respond to the RFR before issuing the Supplemental Decision.

The Supplemental Decision may affirm or change the recommendation in the Decision. The timeframe to issue a Supplemental Decision is the same as the timeframe to issue a Decision. Supplemental Decisions will include a cover letter similar to those included with Decisions. However, if a party submits an RFR to a Supplemental Decision, the Appeals Bureau may, but is not required to, issue another Supplemental Decision.

**FINALITY OF A DECISION OR SUPPLEMENTAL DECISION****1406.20**

If no valid RFR is submitted to the Appeals Bureau, and no valid appeal of the Decision or Supplemental Decision is submitted to OTA within 30 days of the date of the mailing of the options letter, the Decision or Supplemental Decision (as applicable) becomes final.

## APPEALS PROCEDURES

### CLAIM FOR REFUND PROCEDURES 1410.00

#### GENERAL 1410.02

AM sections 1408.00—1408.06 provide appeals procedures for CDTFA team members to follow when granting or denying a claim for refund that is not related to a petitioned audit determination, and when granting a request for an appeals conference. These procedures are intended to ensure that all claimants who wish to have an appeals conference will be allowed such opportunity.

#### HEADQUARTERS PROCEDURES 1410.04

##### Claim for Refund Without a Request for an Appeals Conference

Once a claim for refund is received, Refunds will promptly notify the taxpayer that the claim was received by sending an acknowledgement letter to them. If the tax portion of a liability is paid in full and documentary evidence is required to verify the claim, Refunds will request documentation from the claimant to support the claim, in accordance with the directions provided below.

###### **1. No documentation provided to support the claim for refund.**

- Refunds will send a 30-day letter to the claimant, referencing the claim and requesting documentation in support of the claim. The claimant will be advised that if documentation is not provided within 30 days of the date of the letter, the claim for refund will be denied. The letter will contain a statement informing the claimant that they may request an appeals conference.
- If documentation is not provided and the claimant has not requested an appeals conference, the claim will be denied.

###### **2. Insufficient documentation provided to support a claim for refund.**

- If the documentation provided with a claim is not adequate, Refunds will send a 30-day letter to the claimant outlining Refunds' position, with a clear explanation of what documentation the claimant needs to provide, and that it is Refunds' intention to deny or partially deny the claim if such documentation is not submitted within 30 days. The letter will also inform the claimant that they can request an appeals conference.
- If the taxpayer does not respond within 30 days of the date of the letter, Refunds will send the taxpayer a denial letter.
- If the taxpayer instead responds by requesting an appeals conference or by reaffirming their position regarding the claim, Refunds will determine whether the request should be granted or denied. Requests for an appeals conference will generally be granted but may be denied if the taxpayer has already been provided with an appeals conference on the same issue, and has not submitted any additional arguments, documentation, or evidence. If the request for an appeals conference is granted, Refunds will prepare a Summary Analysis of the issues involved in the claim. Once the Summary Analysis is completed, Refunds will send the CDTFA-1350-A, *Conference Notice*, with a copy of the Summary Analysis to the taxpayer and the taxpayer's representative(s). Refunds will then route the claim to the Case Management Section of the Appeals Bureau to schedule the appeals conference.

**Claim for Refund With a Request for an Appeals Conference**

Once a claim for refund is received, Refunds will promptly notify the taxpayer that the claim was received by sending an acknowledgement letter to them. If the tax portion of a liability has been paid in full, and the taxpayer provided sufficient documentation to support the claim for refund, the claim will be granted in full or in part and a Notice of Refund will be sent to the taxpayer. If documentary evidence is required to verify the claim, Refunds will request such documentation from the claimant, in accordance with the directions provided below. Refunds will also inform the taxpayer that a decision on whether the request for an appeals conference will be granted, is being held in abeyance, or is pending submission of the requested documentation.

**1. No documentation provided to support the claim for refund.**

- Refunds will send a 30-day letter to the claimant, referencing the claim and requesting documentation. The claimant will be advised that if documentation is not provided within 30 days of the date of the letter, the claim for refund will be denied. If the claimant fails to provide documentation but reaffirms their request for an appeals conference, and Refunds grants the request, Refunds will prepare a Summary Analysis of the issues involved in the case and will forward the claim to the Case Management Section of the Appeals Bureau to process it for an appeals conference. Refunds may deny the request for an appeals conference if the claimant has already been provided with an appeals conference on the same issue and has not submitted any additional arguments, documentation, or evidence.
- If the claimant fails to provide documentation and does not reaffirm their request for an appeals conference, the claim will be denied.

**2. Insufficient documentation provided to support granting the claim for refund.**

- If adequate documentation is not provided with the claim, Refunds will send a 30-day letter to the claimant clearly explaining Refunds' position and what documentation the claimant needs to provide to support their claim, and requesting that the taxpayer reaffirm their request for an appeals conference. The letter will also state that Refunds will deny the claim if the claimant does not submit the requested documentation or reaffirm their request for an appeals conference within 30 days of the date of the letter.
- If the taxpayer does not respond within 30 days of the date of the letter, Refunds will send the taxpayer a denial letter.
- If the taxpayer does not provide the requested documentation but reaffirms their request for an appeals conference, Refunds will determine whether the request should be granted or denied. Requests for an appeals conference will generally be granted but may be denied if the taxpayer has already been provided with an appeals conference on the same issue, and has not submitted any additional arguments, documentation, or evidence. If the request for an appeals conference is granted, Refunds will prepare a Summary Analysis of the issues involved in the claim. Once the Summary Analysis is completed, Refunds will send CDTFA-1350-A, *Conference Notice*, with a copy of the Summary Analysis to the taxpayer and the taxpayer's representative(s). Refunds will then route the claim to the Case Management Section of the Appeals Bureau to schedule the appeals conference.

## APPEALS PROCEDURES

### OFFICE MAKING THE AUDIT (OMA) RESPONSIBILITIES

1410.06

When Refunds refers a claim for refund to an OMA for investigation, the office will investigate the claim and submit a report of its findings. This report may be in the form of an audit report, a Field Billing Order(FBO), a Staff Recommendation Case Paper, or a signed memorandum to Refunds, as appropriate. If the taxpayer does not concur with the report, the OMA will submit CDTFA-836-A, *Report of Discussion of Audit Findings*, to Refunds for processing.

It is important that the CDTFA-836-A include the following information:

- A detailed summary of the claimant's contentions for each disputed item and the OMA's response to the claimant's position;
- If the claimant has requested an appeals conference; and
- If pertinent, a history of the OMA's dealings with the claimant (e.g., repeated failure to provide requested information, etc.).

**ADMINISTRATIVE PROTESTS****1412.00**

Generally, the taxpayer has 30 days from the date the Division mailed the Notice of Determination to file a petition for redetermination. A petition for redetermination of a Notice of Determination issued under section 30173 of the Cigarette and Tobacco Products Tax Law must be filed within 10 days of the date the Notice of Determination was mailed (see Appeals Regulation 35007(b)). A petition for redetermination of a Notice of Jeopardy Determination must be filed within 10 days from the date the Notice of Jeopardy Determination was mailed or personally served (see Appeals Regulation 35025). Within that 10-day period, the taxpayer must either pay the amount due or file a petition for redetermination and post a deposit with CDTFA in the prescribed amount for security. Petitions filed outside of these timeframes, including those filed prior to the issuance of a Notice of Determination or Notice of Jeopardy Determination, are **invalid**. However, the Division that issued the Notice of Determination may accept an invalid petition into the appeals process as an administrative protest if the Deputy Director of the Division that issued the Notice of Determination, or their designee, determines that there is a reasonable basis to believe that there may be an error with the taxpayer's Notice of Determination. The section assigned to review the appeal is responsible for notifying the taxpayer when an appeal is accepted as a timely petition or as an administrative protest, or is not accepted into the appeals process because it was not timely filed.

The Division generally accepts a late petition as an administrative protest when the taxpayer:

- Has a known representative (power of attorney) on file but a copy of the Notice of Determination was not mailed to the representative;
- Has another pending case with similar areas of contention that is already in the appeals process;
- Received multiple Notices of Determination for different periods on the same account and a timely petition was previously filed for the first period billed;
- Is a corporate officer who received a dual determination and a timely petition was filed for the corporation's determination; or
- Was unable to timely petition the Notice of Determination (e.g., out of town, hospitalized, incarcerated) but filed an appeal within 30 days of becoming able to do so, **and** can provide documentation supporting the reason for the delay.

## APPEALS PROCEDURES

### ADMINISTRATIVE PROTESTS

(CONT.) 1412.00

If a taxpayer attempts to file a petition for redetermination in advance of the Notice of Determination being mailed, Petitions must notify the taxpayer by mail that the petition is premature and cannot be accepted, and that the taxpayer should resubmit the petition after the Notice of Determination is mailed. Petitions will also add a bookmark to the letter notifying the Audit Principal of the premature petition. If the OMA and taxpayer are in contact, the OMA will also inform the taxpayer to resubmit the petition after the Notice of Determination is mailed. Receipt of the premature petition and any communication with the taxpayer regarding the premature petition should be entered into CDTFA's system, in both CRM Attachments and CRM Notes, attaching and noting the receipt of the premature appeal. Petitions or ADAB will also attempt to phone the taxpayer to advise them to refile their petition within the timeframe required to be accepted as a timely (valid) appeal.

If a taxpayer who filed a premature petition then files a late petition, but does so within a reasonable period of time, FOD or BTFD should accept the late appeal as an administrative protest. While reasonable time is meant to be flexible to accommodate the taxpayer's circumstances, it typically does not exceed 30 days.

When the taxpayer submits new documentation or information that supports a finding that the amounts listed on the Notice of Determination are overstated, the OMA should carefully consider the new information and, if warranted, make the appropriate adjustments to the final liability. Adjustments can be made without an active appeal.

FOD or BTFD generally **will not** accept an invalid petition as an administrative protest when the taxpayer:

- Cannot document that they were unavailable to reply during the petition period (e.g., out of town, hospitalized, incarcerated) or can document that they were unavailable to reply during the petition period but nevertheless, there was a significant delay in filing an appeal once the taxpayer was able to do so. A significant delay is typically more than 30 days after becoming available;
- Claims they did not receive the Notice of Determination, but the Notice of Determination was mailed to the address of record and the Notice of Determination was not returned to CDTFA as undeliverable; or
- Claims they were not aware of their tax or fee obligation.

If an invalid petition is not accepted as an administrative protest, the taxpayer may request Petitions to reconsider the invalid petition. If upon reconsideration, Petitions continues to believe the appeal should not be accepted as an administrative protest, the taxpayer's request will be forwarded to BTFD's or FOD's Deputy Director for their review. If the Deputy Director determines the invalid petition should not be accepted as an administrative protest they will mail a letter to the taxpayer informing them of the Deputy Director's decision, and that they may file a claim for refund after paying the liability.