

# CALIFORNIA'S NEW TAX AGENCIES

*A summary of the  
new tax appeal and  
administration structure*

**POLICY BRIEF | OCTOBER 2017**

## Introduction

California's State Board of Equalization (BOE), established by the state constitution in 1879, historically has been responsible for administration of sales/use taxes, special taxes and fees (e.g., fuel taxes, tobacco taxes, alcoholic beverage taxes, etc.), and certain property taxes; and for the adjudication of appeals of those taxes and fees, as well as appeals of income and franchise taxes administered by the Franchise Tax Board.

In 2017, amid allegations of misuse of revenue-generating staff and misallocation of

revenue among different funds, the Legislature approved Assembly Bills 102 and 131 to divest the BOE of specified functions and assign them to two new entities – the Office of Tax Appeals (OTA) and the California Department of Tax and Fee Administration (CDTFA).

The following is an overview of the three tax entities and their functions, and is intended as a guide to the new structure. Information presented is based on provisions of AB 102 (Ch. 16, St. 2017) and AB 131 (Ch. 252, St. 2017), which provide for the general construct and responsibilities of the entities, but leave many implementation details to potentially be addressed in future legislative or regulatory action.

## Office of Tax Appeals

The law establishes the OTA on January 1, 2018, and as of that date, transfers appeals of specified taxes previously adjudicated by the BOE to the OTA, where the cases will be decided by a panel of three administrative law judges in hearings conducted pursuant to the Administrative Procedures Act, as discussed below.

### ***Tax Jurisdiction***

OTA is authorized to hear appeals relating to all taxes and fees previously vested with the BOE, except for state-assessed property taxes, insurance taxes and taxes on alcoholic beverages.



*Government Operations Agency Secretary Marybel Batjer administers the oath of office to Nicolas Maduros, director of the California Department of Tax and Fee Administration.*



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Tax and fees that can be appealed to the OTA:

- Income and franchise taxes
- Sales and use taxes
- Fuel taxes
- Tobacco taxes
- Emergency telephone and prepaid mobile surcharges
- E-waste fee
- Hazardous waste fee
- Other special taxes and fees

## ***Appeal Process and Proceedings***

The appeals hearings and proceedings will be conducted pursuant to the Administrative Procedures Act, and the previous BOE rules for tax appeals (Division 2.1 of Title 18 of the California Code of Regulations) will apply, but may be amended by the OTA. Any regulations to further delineate rules and hearing procedures shall, to the extent applicable, be consistent with the Model State Administrative Tax Tribunal Act adopted by the American Bar Association.

Appeals filed with the OTA will be decided by a panel of three administrative law judges, who must be active members of the California State Bar for at least the past five years, and “have tax and fee knowledge and experience.” It is unclear how many tax panels will be established, and how the OTA will ensure that consistent decisions are rendered on similar facts across the different panels.

Hearings will take place at a hearing office in Sacramento, Fresno or Los Angeles. It is unclear if taxpayers will have an option to have their appeals decided on the merits of the briefs, without a hearing. It is also unclear whether taxpayers may request a change in the hearing location.

The OTA is required to publish a written opinion for each tax appeal, within 100 days of the final decision.

## ***Taxpayer Representation and Optional Closed Hearing***

Appellants may be represented by any person

of their choosing who is at least 18 years of age, except for a former BOE member or his/her staff within one year of separation from the elected position or employment, respectively. The law specifically enumerates persons who may represent taxpayers in an OTA appeal, including:

- Attorneys
- Appraisers
- Certified public accountants
- Public accountants
- Bookkeepers
- Employees
- Business associates

The Legislature declared that the tax appeals panels and appeals hearings shall not be construed to be, or be conducted by, a tax court. Consistent with this intent to have an informal hearing process, the OTA is required to adopt regulations for the presentation of evidence in a way that does not require application of specialized knowledge. It is unclear whether there will be limitations on the length of testimony or of briefing documents. It is also unclear whether OTA will allow the use of declarations in appeals, similar to the BOE.

Taxpayers filing an appeal may request a closed hearing, subject to approval by OTA based on criteria to be developed. It is unclear whether OTA also will develop guidelines allowing taxpayers to place under seal confidential information that is submitted to the OTA as part of the appeal that the taxpayer would not want to be made known to the public or its competitors – such as patent or trade secret information.

## ***Bringing Suit in Superior Court***

A taxpayer who disagrees with a decision rendered by an OTA tax panel may bring an action in superior court, in accordance with the law imposing the tax or fee, for a trial de novo. Taxpayers must pay the disputed tax amount prior to bringing suit in superior court (no change to existing law).

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## California Department of Tax and Fee Administration

Effective July 1, 2017, administration of sales/ use taxes, specified special taxes and fees was transferred from the BOE to the CDTFA. However, procedures for obtaining permits, filing returns, and making payments and the department personnel/ contact information remain relatively unchanged.

### Tax Administration

CDTFA is responsible for the administration of the following major taxes and fees:

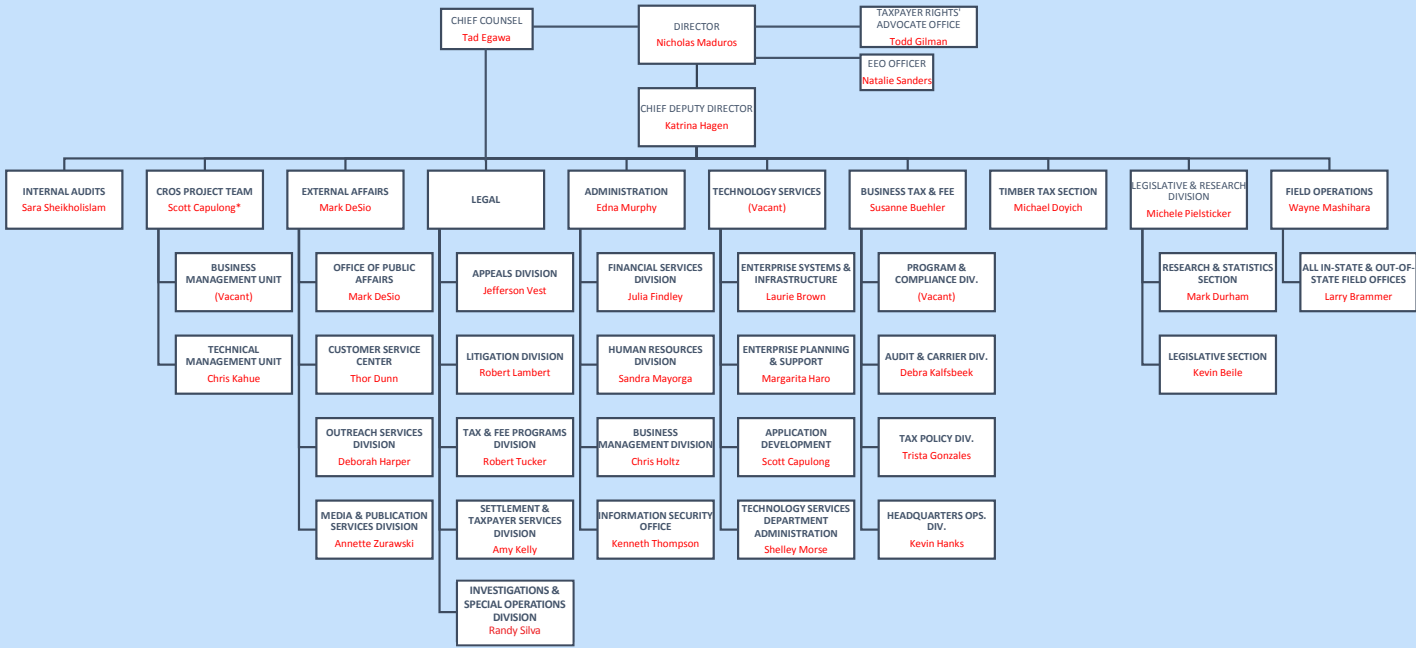
- Sales and use taxes
- Fuel taxes
- Tobacco taxes

- Oil Spill Prevention, Response and Administration Fee
- Emergency telephone and prepaid mobile surcharges
- E-waste fee
- Hazardous waste fee
- Regional Railroad Accident Preparedness and Response Fee
- Timber yield tax
- Underground Storage Tank Fee
- Other special taxes and fees

### Transfer of Duties and Powers

All laws and regulations prescribing the duties, powers, and responsibilities of the BOE related to tax administration are applicable to the CDTFA

## CDTFA ORGANIZATIONAL CHART



\*Acting personnel

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(including existing processes and remedies available to a taxpayer or feepayer such as settlement options and appeals processes), and are continued in force, unless specified.

## ***Subpoena and Examination Authority***

CDTFA may require persons having knowledge of a business subject to its jurisdiction to appear before it and provide specified books and accounts. Unauthorized disclosure of certain information pertaining to the business affairs or financial information by state employees is prohibited.

## ***Appealing a CDTFA Determination***

Taxpayers who disagree with a determination by the CDTFA may appeal to the OTA. The appeals conference process is the same for CDTFA as it was prior to the reorganization of the BOE.

The existing rules of appeals (pursuant to Division 2.1 of Title 18 of the California Code of Regulations) apply to the CDTFA, but may be amended by the department.

## **State Board of Equalization**

On and after July 1, 2017, administration and collection of all taxes and fees that are not vested with the BOE by the state constitution were reassigned to CDTFA. However, appeals of both constitutionally vested and non-vested taxes will be decided by the BOE until the OTA becomes operational on January 1, 2018. These and other BOE functions are discussed below.

## ***Tax Appeals Jurisdiction***

Between July 1, 2017, and January 1, 2018, the BOE may decide cases related to income/franchise taxes, sales/use taxes, and specified special taxes and fees if (1) the appeal is placed on calendar for a meeting of the BOE that is held before January 1, 2018; and (2) the appeal will be heard, decided and final before January 1, 2018. This means that “30/30/30” cases that are not decided before the end of the year will be decided by the OTA.

On and after January 1, 2018, the BOE may hear and decide only appeals of state-assessed property taxes, insurance taxes and alcoholic beverage taxes.

## ***Tax Administration and Collection***

The BOE retains administration of:

- Local property tax oversight, equalization and measurement and adjustment of county assessments.
- State-assessed property tax assessments and collections.
- Insurance tax assessments.
- Alcoholic beverage tax assessment and collections.
- Inflation adjustment of the motor vehicle fuel tax for fiscal year 2018-19.

## ***Communication with BOE Members***

Taxpayers may no longer communicate ex parte with BOE members on an issue being appealed. Instead, a process has been established wherein meetings between BOE members and taxpayers are coordinated by the BOE, and notification is provided to allow attendance of the other party (i.e., Franchise Tax Board, CDTFA).

## ***Investigation of District Offices***

BOE members may no longer investigate public complaints of wrongdoing in their district offices. However, taxpayers with grievances may notify the BOE member and executive director, who would oversee investigation of the complaints.

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## **ENDNOTES**

*i Taxpayers may appeal cases involving state-assessed property taxes, insurance taxes and alcoholic beverage taxes to the BOE. See “State Board of Equalization” discussion.*