

CALIFORNIA'S NEW TAX AGENCIES

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

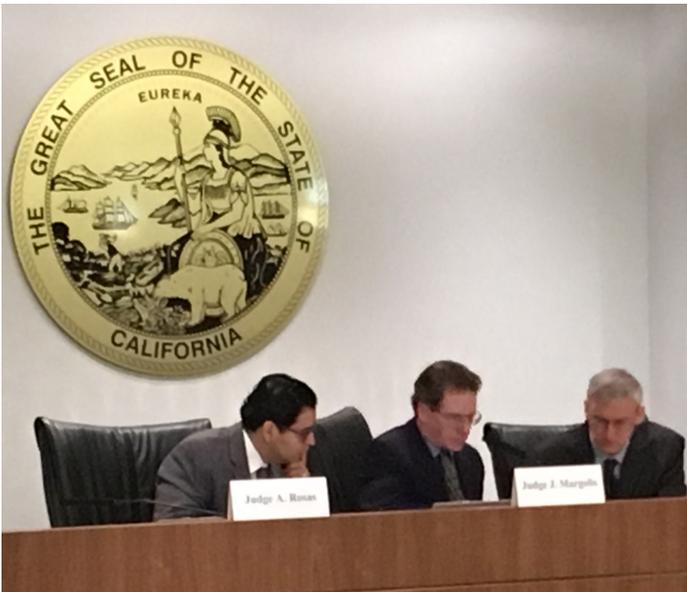
POLICY BRIEF | MARCH 2018

Overview

California's State Board of Equalization (BOE), established by the state constitution in 1879, historically was responsible for the 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 (FTB).

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), and emergency regulations¹ (California Code of Regulations, Title 18, Division 4 beginning with Section 30100) that went into effect January 2018.



A panel of three administrative law judges with the Office of Tax Appeals confers during a hearing in January.

Note: As this publication went to print, proposed emergency regulations amending California Code of Regulations Title 18, Divisions 1, 2, 2.1 and 5, to transfer administrative jurisdiction of specified taxes and fees from BOE to CDTFA were pending, but generally were reflective of the rules as they existed under the BOE.

¹Unlike permanent regulations, emergency regulations are effective for 180 days, but can be extended for 90 days twice (for a maximum of 360 days). Emergency regulations can become permanent if they subsequently are adopted through the normal rulemaking process.



CALIFORNIA TAXPAYERS ASSOCIATION

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Office of Tax Appeals

The law established the OTA on January 1, 2018, and as of that date, transferred appeals of specified taxes previously adjudicated by the BOE to the OTA, where the cases are being decided by panels 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.

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

Filing Appeals

To file an appeal with the OTA, taxpayers must submit a written request and include enumerated information by specified deadlines. Filing requirements differ depending on whether the appeal relates to taxes administered by the FTB or the CDTFA, as shown on page 4.

Appeal Process and Proceedings

Appeals may be submitted for decision based upon the written record, without an oral hearing. Taxpayers requesting an oral hearing must notify the OTA in writing either in the appeal letter or brief, or must respond to the OTA's inquiry letter, within specified deadlines.

The appeals hearings and proceedings will be conducted pursuant to the Administrative Procedures

Act. 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 future 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 (ALJs), who must be active members of the California State Bar (and must have been for at least the past five years) and must have "tax and fee knowledge and experience." It is unclear what criteria is used for assigning ALJs to specific panels, as some have been assigned to hear appeals involving subject matter related to their experience, while others have been assigned to unrelated subjects. Additionally, it is unclear how the OTA will ensure that consistent decisions are rendered on similar facts across the different panels.

Hearings will take place in Sacramento, Fresno and Los Angeles, and appellants may indicate their preference in the written request for an oral hearing.

Written Opinions

The OTA is required to issue a written opinion for each tax appeal, and must include findings of fact, applicable law and the reasons for granting or denying the appeal. A written opinion is deemed to be final 30 days after its issuance, unless a petition for rehearing is filed within that time period. The written decision will be published within 100 days after the opinion is final.

Precedential opinions issued by the BOE prior to January 1, 2018, may be cited as precedential authority in appeals before the OTA. However, the OTA may remove, in whole or in part, the precedential status of any BOE decision. Any such changes are to be published on the [OTA's website](#).²

A published written opinion of the OTA may be cited, but is not precedential unless it is designated as such by the OTA. For an OTA opinion to be precedential, it must meet various criteria, including whether the opinion establishes a new interpretation

²www.ota.ca.gov

of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, modifies or repeals an existing rule, etc. The OTA may withdraw the precedential designation of a previous OTA decision.

Changes to the designation of a BOE or OTA opinion may be made only in the course of an appeal before the OTA. The OTA may not arbitrarily change the designation of an opinion outside the context of deciding an appeal.

Petitions for Rehearing

Petitions for rehearing must be submitted to the OTA within 30 days of the issuance of the written opinion, and must include specified information, such as an irregularity in the proceeding, newly discovered relevant evidence, etc. The OTA will notify petitioners if their request is incomplete, and will allow 30 days to cure the deficiency.

The OTA will issue a decision to grant or deny a petition for rehearing, and if granted, will determine whether additional briefs are necessary.

Unlike the previous tax appeals process, the CDTFA may petition for rehearing of sales/use and special taxes/fees cases.

Dismissal and Postponement of Tax Appeals

The OTA will dismiss an income/franchise tax appeal for any of three reasons:

- The appellant requests dismissal.
- The FTB submits a written concession of the entire amount in dispute.
- The parties submit a written stipulation in which all parties agree to dismissal.

The OTA will dismiss a sales/use/special taxes and fees appeal if:

- The appellant requests dismissal.
- In the case where a taxpayer and another state agency both appeal to the OTA, the appeal will be dismissed if both parties request dismissal.

Note: There is no expressly stated provision authorizing dismissal if CDTFA concedes.

The OTA may postpone an appeal or defer particular proceedings (i.e., briefings, oral hearings, etc.) for reasonable cause.

Taxpayer Representation and Optional Closed Hearings

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 those 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. However, oral testimony provided by taxpayers and their representatives as evidence may be taken only under oath or affirmation.

A taxpayer filing an appeal may request a closed hearing, subject to approval by the OTA based on whether the appeal involves trade secrets and other criteria. However, there is no right to confidentiality as to information that the OTA includes in a published decision.

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 prior to bringing suit (no change to existing law).

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Filing Appeals

To file an appeal with the OTA, taxpayers must submit a written request and include enumerated information by specified deadlines. Filing requirements differ depending on whether the appeal relates to taxes administered by the FTB or the CDTFA, summarized below:

	Income and Franchise Taxes	Sales/Use/Special Taxes and Fees
When to file ...	<p>Taxpayers may file an appeal with the OTA once the FTB has issued a notice of action or determination. OTA cannot accept appeals from a notice of proposed assessment or overassessment.</p> <p>Filing deadlines depend on the subject of the appeal, and are established by statutes (i.e., 90 days after FTB's notice denying a claim for refund, 30 days after FTB's notice of action on a protest of unpaid assessment). However, deadlines are extended if the FTB's notice is mailed to an address outside the state.³</p>	<p>Taxpayers may file an appeal only after a review and decision by CDTFA's internal Appeals Bureau.</p> <p>An appeal must be filed with OTA within 30 days of the Appeals Bureau decision, as specified.</p> <p>Failure to appeal within this timeframe constitutes the taxpayer's waiver of the right to appeal to OTA.</p>
What to include ...	<p>The written request must include the appellant's name, Social Security number and contact information, along with:</p> <ul style="list-style-type: none"> • Dollar amount disputed and year(s) involved • Copy of FTB notice of action/determination • Facts involved and basis/reason for appeal • Any amount conceded by the appellant <p>If information is incomplete, the taxpayer will be notified by the OTA and will have 60 days to submit additional information. This deadline may be extended for reasonable cause. If information is not timely submitted, OTA may dismiss the appeal.</p>	<p>The written request must include the appellant's name and contact information, along with:</p> <ul style="list-style-type: none"> • Account number with CDTFA • CDTFA case ID number • Date of Appeals Bureau decision • Signed power of attorney form, if applicable <p>If information is incomplete, the taxpayer will be notified by the OTA and will have 30 days to submit additional information. If information is not timely submitted, OTA may dismiss the appeal.</p>
When to submit opening and reply briefs ...	<p>Appellants may submit opening briefs within 60 days of filing the appeal.</p> <p>The FTB must submit a reply brief within 60 days of the appellant's brief. Appellants submitting a reply to an FTB brief must do so within 30 days.</p> <p>Briefing deadlines may be extended by OTA upon request for reasonable cause.</p> <p>All briefs are limited to 30 pages of double-spaced text (or 15 pages single-spaced) with a font size of at least 10 points or 12 characters per inch, unless excepted by the OTA for reasonable cause.</p>	<p>Opening briefs must be submitted within 30 days from the date that the OTA mails a briefing schedule. Reply briefs must be submitted within 30 days of the opening brief. Responses to reply briefs must be submitted within 30 days.</p> <p>Each party submitting a brief to OTA must also mail a copy to each of the other parties to the appeal.</p> <p>Briefing deadlines may be extended upon request to the OTA.</p> <p>Similar briefing length limitations apply (see Income/Franchise Taxes).</p>

³California Code of Civil Procedure Section 1013

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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.

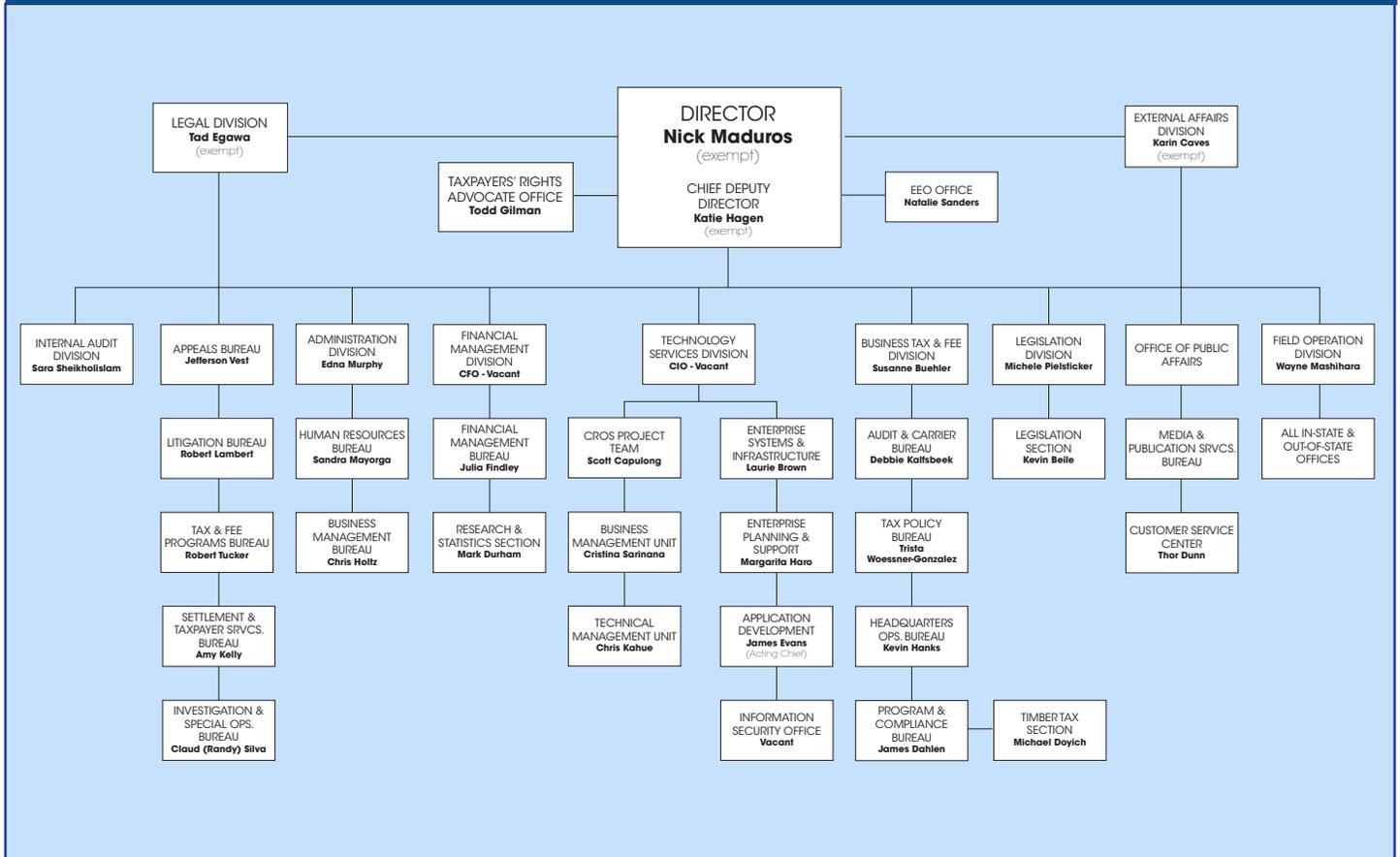
Tax Administration

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

CDTFA ORGANIZATIONAL CHART



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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 (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

The 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, once the department's internal Audits Bureau has reached a final decision. 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 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 were decided by the BOE until the OTA became operational on January 1, 2018. These and other BOE functions are discussed below.

Tax Appeals Jurisdiction

As of 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 no longer are allowed to 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.

Investigation of District Offices

The BOE members no longer are allowed to 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.