



July 3, 2018

To Interested Parties:

NOTICE OF PROPOSED REGULATORY ACTION

The Office of Tax Appeals Proposes to Adopt

California Code of Regulations, Title 18, Division 4.1,

Office of Tax Appeals – Rules for Tax Appeals;

and Proposes to Repeal California Code of Regulations,

Title 18, Division 2.1, Chapter 4, *Appeals from Actions of the Franchise Tax Board*; and

Proposes to Adopt Amendments to California Code of Regulations, Title 18, Division 2.1,

Section 5510, *General Application of Chapter 5*, and

Section 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Chapter*.

NOTICE IS HEREBY GIVEN that the Office of Tax Appeals (OTA) proposes to adopt California Code of Regulations, title 18, division 4.1, *Office of Tax Appeals – Rules for Tax Appeals*, pursuant to the authority vested in it pursuant to Government Code sections 15679 and 15679.5. The proposed Office of Tax Appeals – Rules for Tax Appeals implement, interpret, and make specific the statutory provisions of the Taxpayer Transparency and Fairness Act of 2017, (Stats. 2017, Ch. 16) regarding the rules for appeals before the Office of Tax Appeals (OTA), a new agency created by this Act. The proposed regulations provide guidance to taxpayers, state taxing authorities, and the regulated public regarding the rules governing appeals before OTA, as explained in more detail below.

OTA also proposes to repeal California Code of Regulations, title 18, Division 2.1, Chapter 4, *Appeals from Actions of the Franchise Tax Board*, pursuant to the authority vested in it pursuant to Government Code sections 15679 and 15679.5. OTA further proposes to adopt amendments to California Code of Regulations, Title 18, Sections 5510, *General Application of Chapter 5*,

and 5600, *Definitions, Board Hearing Procedures; Taxes affected by This Chapter*, pursuant to the authority vested in it pursuant to Government Code sections 15679 and 15679.5.

Previously, on or around January 1, 2018, OTA promulgated under Division 4 of Title 18 of the California Code of Regulations, as an Emergency Regulation, the *Office of Tax Appeals Rules for Tax Appeals* (hereinafter OTA's Emergency Rules for Tax Appeals). (Cal. Code Regs, tit. 18, §§ 30100 - 30832.) If the proposed regulatory action is adopted, OTA intends to let OTA's Emergency Rules for Tax Appeals expire on December 31, 2018. OTA further intends the proposed regulatory action to become effective on January 1, 2019, so that there is a seamless transition from OTA's Emergency Rules for Tax Appeals (under Division 4) to OTA's proposed permanent Rules for Tax Appeals (under Division 4.1). In summary, the proposed regulatory action would replace OTA's Emergency Rules for Tax Appeals as the governing procedure for the conduct of appeals before OTA.

A comment period has been established commencing on July 13, 2018, and closing on August 27, 2018. All inquiries should be directed to the contact person listed below.

PUBLIC HEARING

OTA has not scheduled a public hearing on this proposed action. However, OTA will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

AUTHORITIES

Office of Tax Appeals Rules for Tax Appeals

Proposed Regulations 30000, 30214, 30214.5, 30215: Government Code sections 15679, 15679.5

Proposed Regulation 30101: Government Code section 15679; Health and Safety Code section 25215.74; Revenue and Taxation Code sections 20, 7051, 8251, 9251, 13170, 30451, 32451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601.

Proposed Regulations 30102, 30103, 30104, 30105, 30106, 30201, 30202, 30203, 30204, 30205, 30206, 30207, 30208, 30209, 30210, 30211, 30211.5, 30212, 30213, 30216, 30217, 30218, 30219, 30220, 30221, 30222, 30223, 30224, 30301, 30302, 30303, 30304, 30310, 30311, 30312, 30313, 30314, 30315, 30316, 30401, 30402, 30403, 30404, 30405, 30410, 30411, 30412, 30413, 30420, 30421, 30430, 30431, 30432, 30433, 30501, 30502, 30503, 30504, 30505, 30601, 30602, 30603, 30604, 30605, 30606, 30607, 30701, 30702, 30703, 30704, 30705, 30706, and 30707: Government Code section 15679.

Board of Equalization Rules for Tax Appeals.

Repeal of Chapter 4, *Appeals From Actions of the Franchise Tax Board* (Regulations 5410 to 5465): Government Code sections 15679 and 15679.5.

Proposed Amendments to Regulations 5510 and 5600: Government Code sections 15679 and 15679.5.

REFERENCES

Office of Tax Appeals Rules for Tax Appeals

Proposed Regulation 30000: Government Code sections 15670, 15671, 15672, 15679, 15679.5.

Proposed Regulation 30101: Government Code section 15672; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 19346. 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41033, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522.

Proposed Regulation 30102: Government Code sections 11425.10, 15670-15672, 15676, and 15679.5.

Proposed Regulation 30103: Government Code sections 15570.54, 15600, 15672, 15674; Revenue and Taxation Code sections 20, 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Proposed Regulation 30104: Article III, section 3.5 of the California Constitution; Government Code sections 15570.54, 15600, 15672, and 15674; Revenue and Taxation Code section 19570.

Proposed Regulation 30105: Government Code sections 15570.54, 15600, 15672, and 15674; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645

Proposed Regulation 30106: Government Code sections 15570.54, 15600, 15672, and 15674; Revenue and Taxation Code section 20.

Proposed Regulation 30201: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections, 15672, and 15674; Revenue and Taxation Code sections 20, 6561, 6561.5, 7710.5, 8851.5, 19045, 19047, 19048, 19085, 19087, 19104, 19331, 19333, 19334, 19345, 19346, 20645, 30261.5, 38442, 40092, 41086, 41091, 43302, 45302, 46352, 50115, 55082, and 60351.

Proposed Regulation 30202: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15672, and 15674; Revenue and Taxation Code sections 20, 6561, 6561.5, 6566, 7710.5, 8851.5, 19045, 19047, 19048, 19085, 19087, 19104, 19331, 19333, 19334, 19345, 19346, 20645, 30261.5, 38442, 40092, 41086, 41091, 43302, 45302, 46352, 50115, 55082, and 60351.

Proposed Regulation 30203: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30204: Business and Professions Code sections 22973.1, 22977.2, and 22979; Civil Code of Procedure 1013; Government Code sections 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulations 30205 and 30206: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30207: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6539, 6562, 6566, 7700.5, 7707, 7711, 8828.5, 8829, 8852, 8855, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30244, 30262, 30265, 38434, 38443, 38447, 40093, 40097, 41087, 41091, 43303, 43307, 45303, 45307, 46353, 46357, 50116, 50120, 55087, 55083, 60352, and 60340.

Proposed Regulation 30208: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19335, 19343, 19345, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30209: Business and Professions Code sections 22970.2, 22973.1, 22977.2, and 22979; Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 20645, and 34013.

Proposed Regulation 30210: Government Code sections 11445.10, 11445.30, 11445.40, 11470.10, 11511.5, 15679.5.

Proposed Regulation 30211: Government Code sections 15676, 15678; Revenue and Taxation Code section 19523.5.

Proposed Regulation 30211.5: Evidence Code sections 912, 954, 980; Revenue and Taxation Code sections 7099.1, 21028.

Proposed Regulation 30212: Government Code sections 11507.3, 15679.5.

Proposed Regulation 30213: Government Code sections 11515, 11523; Evidence Code sections 451, 452.

Proposed Regulations 30214 and 30214.5: Government Code sections 11511, 11512, 11513, 11414, 11450.05 to 11450.50, and 15670.

Proposed Regulation 30215: Government Code sections 11413.10 to 11413.80, and 15670.

Proposed Regulation 30216: Government Code sections 11513, 15674 and 15679.5.

Proposed Regulation 30217: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19714, and 20645.

Proposed Regulations 30218 and 30219: California Constitution article VI, section 18, subdivision (m); Government Code sections 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15606, 15670, 15672, 15674, 15676, and 15679.

Proposed Regulation 30220: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30221: Government Code section 15672; Revenue and Taxation Code sections 7093.5, 9271, 30459.1, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332, and 60636.

Proposed Regulations 30222, 30223, 30224: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30301: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Proposed Regulations 30302, 30303, 30304: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Proposed Regulation 30310: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 18533, 19006, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1 and 60210.5.

Proposed Regulations 30311, 30312, 30313, 30314, and 30315: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 19346.

Proposed Regulation 30316: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19006, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 19346.

Proposed Regulation 30401: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30402: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 11445.30, 11509, 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30403: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11435.15, 11435.20, 11435.25, 11435.55, 11435.60, 11440.20, 11445.30, 11509, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30404: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 11440.20, 11445.30, 11509, 15570.54, 15672,

15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 3303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30405: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 11445.30, 11509, 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30410: Government Code sections 11513 and 11528.

Proposed Regulation 30411: California Constitution article VI, section 18, subdivision (m); Government Code sections 11425.30, 11425.40, 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15670, 15672, 15674, and 15679.5.

Proposed Regulation 30412: California Constitution article VI, section 18, subdivision (m); Government Code sections 11425.50, 11425.60, 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15670, 15672, 15674, 15679, and 15679.5; Revenue and Taxation Code sections 20, 19047, 19087, 19331, 19333, 19335, and 19345.

Proposed Regulation 30413: Government Code sections 11425.10, 11425.50, and 15672; Revenue and Taxation Code sections 20, 19047, 19333, and 19345.

Proposed Regulation 30420: Government Code sections 11445.30, 11509, 11511, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 19047, 19087, 19333, and 19345.

Proposed Regulation 30421: Government Code sections 11445.30, 11509, 11511.5, 11512, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 19047, 19087, 19333, and 19345.

Proposed Regulation 30430: Government Code sections 6254, 11124.1, 11425.10, 11425.20, 15619, 15674, and 15675; Revenue and Taxation Code sections 20, 7081, 19542, 19545, and 20645.

Proposed Regulations 30431 and 30432: Government Code sections 6254, 11124.1, 11425.10, 11425.20, 15619, 15674, 15675, and 15676.5; Revenue and Taxation Code sections 20, 7081, 19542, 19545, and 20645.

Proposed Regulation 30433: 15676.5, 15679. Reference: Government Code sections 6254, 11124.1, 11425.20, 15619, 15674, and 15676.5; Revenue and Taxation Code sections 20, 7081, 19542, 19545, and 20645.

Proposed Regulation 30501: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 15570.54, 15672, 15674, 15675; and 15679; Revenue and Taxation Code sections 20, 40, 8852, 8853, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30502: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 11425.60, 15570.54, 15672, 15674, 15675; and 15679; Revenue and Taxation Code sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30503: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 11425.60, 15570.54, 15672, 15674, 15675, and 15679; Reference: Revenue and Taxation Code sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30504: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 11425.60, 15570.54, 15672, 15674, 15675, and 15679; Revenue and Taxation Code sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30505: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 15570.54, 15672, 15674, 15675, and 15679; Reference: Revenue and Taxation Code sections 20, 40, 8852, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulations 30601, 30602, 30603, 30604, 30605, 30606, and 30607: Government Code section 15672; Revenue and Taxation Code sections 19048, 19334, and 19346.

Proposed Regulation 30701: Government Code sections 15670, 15674, and 15676; Revenue and Taxation Code sections 20, 7091, 7156, 8269, 9269, 18533, 19043.5, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30702: Government Code sections 15670, 15674, 15676; Revenue and Taxation Code sections 20, 7156, 18533, 19043.5, 19047, 19085, 19104, 19324, 19331, 19333, 19334, 19343, 19345, 19346, 20645, and 21013.

Proposed Regulation 30703: Government Code sections 15670, 15674, 15676; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30704: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 19717, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30705: Government Code sections, 11440.20, 15670, 15674, and 15676; Revenue and Taxation Code sections 20, 7091, 7156, 8269, 9269, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30706: Reference: Government Code sections, 11440.20, 15670, 15674, and 15676; Revenue and Taxation Code sections 20, 7091, 7156, 8269, 9269, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30707: Government Code sections 11440.20, and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Board of Equalization Rules for Tax Appeals

Repeal of Chapter 4, *Appeals from Actions of the Franchise Tax Board*: Government Code sections 15600, 15672 and 15674; Revenue and Taxation Code sections 20 and 20.5.

Proposed Amendments to Regulations 5510 and 5600: Government Code sections 15600, 15672 and 15674; Revenue and Taxation Code sections 20 and 20.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5(a)(3)

Summary of Existing Laws and Regulations

The Taxpayer Transparency and Fairness Act of 2017 (Stats. 2017, Ch. 16), as amended by Assembly Bill 131 (Stats. 2017, Ch. 252), collectively referred to hereinafter as “the Act,” created OTA on July 1, 2017. The Act further transferred to OTA the various duties, powers, and responsibilities of the State Board of Equalization (hereinafter “board” or “BOE”) necessary or appropriate to conduct appeals hearings, except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution. Therefore, under the Act, BOE’s constitutional duties, powers, and responsibilities are now limited to the following five items:

- (1) The review, equalization, or adjustment of a property tax assessment pursuant to Section 11 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that review, equalization, or adjustment.
- (2) The measurement of county assessment levels and adjustment of secured local assessment rolls pursuant to Section 18 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that measurement and adjustment.
- (3) The assessment of pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity pursuant to Section 19 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (4) The assessment of taxes on insurers pursuant to Section 28 of Article XIII of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (5) The assessment and collection of excises taxes on the manufacture, importation, and sale of alcoholic beverages in this state pursuant to Section 22 of Article XX of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment and collection.

(Gov. Code, §15600, subd. (a).) Effective July 1, 2017, the newly created agency “The California Department of Tax and Fee Administration” (CDTFA) is the successor to, and is vested with, all of the duties, powers, and responsibilities of BOE with respect to the administration of taxes and fees, except those five areas of constitutional duties, powers, and responsibilities described above. (Gov. Code, §15570.22.)

Furthermore, as of January 1, 2018, OTA is the successor to, and is vested with all the duties, powers, and responsibilities of the BOE necessary or appropriate to conduct appeals hearings with respect to tax and fee programs that were previously the duties, powers, or responsibilities of BOE. (Gov. Code, § 15672.) This includes hearing appeals of tax and fee programs administered by the Franchise Tax Board (FTB) and CDTFA. For purposes of the Act, OTA has jurisdiction to hear the following appeals:

- (1) A petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, or petition for rehearing.
- (2) Administrative protest with respect to a tax or fee administered by the California Department of Tax and Fee Administration.
- (3) Claim, including a claim for refund with respect to a tax or fee administered by the California Department of Tax and Fee Administration.
- (4) Appeal from an action of the Franchise Tax Board filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code or Chapter 1

(commencing with Section 20501) and Chapter 4 (commencing with Section 20641) of Part 10.5 of Division 2 of the Revenue and Taxation Code.

(5) Application, including, but not limited to, an application for administrative hearing.

(6) Any other item that may be scheduled for a hearing, including, but not limited to, requests for relief of taxes, fees, interest, or penalties.

(Gov. Code, §15671.) The Act does not specifically list the tax and fee programs subject to appeal before OTA, but it would include all those programs administered by CDTFA.

Beginning January 1, 2018, tax appeals panels consisting of three administrative law judges (ALJs) shall conduct all appeals hearings for those duties, powers, and responsibilities transferred to OTA. (Gov. Code, §15674.) Pursuant to the Act, a person may be represented on an appeal by any authorized person or persons over the age of 18. (Gov. Code, §15676.) OTA must establish a process under which a person filing an appeal may request a closed hearing, which includes objective criteria for determining whether to grant such a request. (Gov. Code, §15676.5.) To the extent not inconsistent with the Act, OTA must conduct all appeals hearings and proceedings pursuant to the Administrative Procedure Act, which is a reference specifically to Title 2, Division 3, Part 1, Chapter 4.5, *Administrative Adjudication: General Provisions*, and/or Chapter 5, *Administrative Adjudication: Formal Hearings*, of the Government Code, which are more commonly referred to as the Administrative Procedure Act (the Administrative Procedure Act itself encompasses Chapters 3.5, 4, 4.5 and 5 under Title 2, Division 3, Part 1 of the Government Code).

Chapters 4.5 and 5 of the Administrative Procedure Act govern the procedure for administrative appeals, but are specifically written for those administrative appeals which are conducted before the Office of Administrative Hearings, and thus are not specifically applicable to OTA. (Gov. Code, §15679.5, subd. (a).)

Therefore, the Act directs OTA to adopt “regulations as necessary or appropriate to carry out the purposes” of the Act, and further specifies that OTA is responsible to amend, repeal, or add to the regulations contained in Division 2.1 of Title 18 of the California Code of Regulations, as necessary or appropriate for OTA to govern hearings and proceedings. (Gov. Code, §§ 15679, subd. (a); 15679.5, subd. (b).) Division 2.1 is the Rules for Tax Appeals of the State Board of Equalization, the predecessor to OTA.

As relevant, Chapter 4 of BOE’s Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 5410 -5465) governs Appeals from Actions of the Franchise Tax Board. These rules specifically apply to appeals before BOE, thus, for example, Regulation 5410 provides for methods of delivery of written documents and correspondence, and specifies that these be delivered to BOE at a physical address and email address belonging to BOE. Throughout, the regulations reference procedures applicable to units within BOE, such as the Board Proceedings Division, the Chief of Board Proceedings Division, the role of the Chief Counsel, the Appeals Division, the Board

Chair, and the board, which are specific to that agency. Nevertheless, effective January 1, 2018, the Act prohibits BOE from hearing or deciding any appeals from actions of FTB and provides that “on or after January 1, 2018, the [BOE] shall not conduct appeals or take any other action with respect to an appeal,” except with respect to those five constitutional duties described above. (Gov. Code, §§ 15674(b).) Considering that BOE no longer has jurisdiction and authority to hear appeals from FTB, this entire chapter needs to be deleted to avoid confusion among the regulated public considering to which agency to submit a tax appeal.

Chapter 5 of BOE’s rules for tax appeals, governs the general procedures for board action, and discusses those procedures such as the conduct of a board meeting, voting, quorums, presentation of evidence, communication with board members, etc. (Cal. Code Regs, tit. 18, §§ 5510 -5576.) Regulation 5510 specifies those tax and fee programs to which the chapter applies, and specifically includes tax and fee programs which were transferred away from the BOE and over which BOE no longer has authority and jurisdiction to hear appeals pursuant to Government Code section 15674.

Chapter 6 of BOE’s Rules for Tax Appeals governs taxpayer bill of rights reimbursement claims for actions before the board. Regulation 5600 specifically provides that the claims procedure applies to those tax and fee programs which were transferred away from the BOE and over which BOE no longer has authority and jurisdiction to hear appeals pursuant to Government Code section 15674.

Furthermore, BOE’s Rules for Tax Appeals are specifically written to apply to a five-member voting board which is exempt from complying with Chapters 4.5 and 5 of the Administrative Procedure Act (governing administrative appeals), but which is subject to the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132), which requires BOE to hold public meetings. Thus, the board’s Rules for Tax Appeals do not establish a procedure for a closed hearing. On the other hand, OTA is not subject to Bagley-Keene Open Meeting Act, but is required to follow Chapters 4.5 and 5 of the Administrative Procedure Act. Furthermore, OTA is statutorily required under the act to promulgate a process to allow for hearings which are closed to the public, which is prohibited under the Bagley-Keene Open Meeting Act. (Gov. Code, § 15676.5).

Additionally, appeals of taxes and fees previously administered by BOE resulted in an internal review to the board. Under the Act, appeals of those same taxes and fees are now administered by CDTFA, which results in an appeal to a third-party agency (OTA). Therefore, there are problems with applying the board’s Rules for Tax Appeals to appeals before OTA. Specifically, the procedures followed by BOE, which do not take into account a third-party review structure, are incompatible with requirements of the Act. As one example, under the board’s Rules for Tax Appeals, the Franchise Tax Board may file a petition for rehearing with the Chief of Board Proceedings with respect to a tax or fee administered by FTB. (Cal. Code Regs, tit. 18, § 5461.) Under the Act, the board’s duties with respect to the administration of taxes and fees previously administered by the board (except for the five areas described above) are now transferred to the jurisdiction of CDTFA, which is a separate entity from OTA. The board’s Rules for Tax

Appeals do not establish a procedure for CDTFA to file a petition for rehearing with OTA with respect to a tax or fee now administered by CDTFA, even though the board has no jurisdiction over these programs. (See Cal. Code Regs, tit. 18, § 5561.) This is inconsistent with the Act, which requires that OTA conduct appeals including petitions for rehearing from tax and fee programs administered by the CDTFA (non-constitutional functions of the board, including the administration of all tax and fee programs currently administered by CDTFA, were transferred from the board to CDTFA on July 1, 2017). (Rev. and Tax Code, § 15671.)

The Act further provides that Chapter 3.5 of Part 1 of the Government Code, *Administrative Regulations and Rulemakings* (more generally referred to as the Administrative Procedure Act) “shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the office [(OTA)].” (Gov. Code, §15679, subd. (b).)

At the time the Act was passed on July 1, 2017, there were no rules or regulations which were specifically written to apply to an appeal before OTA. Therefore, on or around January 1, 2018, OTA promulgated emergency regulations, the *Office of Tax Appeals Rules for Tax Appeals*. (Cal. Code Regs, tit. 18, §§ 30100 - 30832.) OTA’s Emergency Rules for Tax Appeals are expected to expire on or around December 31, 2018.

There are issues with the expiring Emergency Rules for Tax Appeals, which were drafted by the Office of Administrative Hearings and CDTFA, on behalf of OTA, because the emergency regulations were hastily drafted to meet a January 1, 2018, deadline and do not meet the needs of OTA to carry out the duties, powers, and responsibilities imposed by the Act. Specifically, there are issues because both the board’s Rules for Tax Appeals, and OTA’s Emergency Rules for Tax Appeals, bifurcate, separate, and apply different standards and rules of practice depending on the type of tax or fee being appealed (e.g., Franchise and Income Tax, Property Tax, or Business Taxes). The procedures set forth in the Emergency Rules for Tax Appeals, applying different standards to different taxpayers, creates confusion, uncertainty, inequality, and has generated concern among the regulated public. This disparate system was drafted based on the prior legal framework in place prior to the creation of OTA, because under prior law the board heard appeals from the Franchise Tax Board, and also determined appeals of taxes and fees administered by the board (which did not result in an appeal to a third party agency). However, this system is no longer appropriate for the neutral third party appellate system created by the Act. The proposed regulatory action proposes to distinguish and separate the applicable rules of practice for the board and OTA, respectively, by making the board’s Rules for Tax appeals only apply to appeals before the board, and making OTA’s Rules for Tax Appeals only apply to appeals to OTA. Specifically, the proposed regulatory action applies OTA’s proposed Rules for Tax Appeals to Franchise and Income Tax Appeals and Business Tax Appeals, and specifies that the board’s Rules for Tax Appeals only apply to those constitutional functions remaining with the board (mainly, appeals of Property Taxes and Alcoholic Beverage Taxes, and excluding any tax or fee program subject to appeal to OTA).

Effect, Objectives, and Benefits of the Proposed Regulatory Action

There are issues because there are currently no regulations that specifically implement, interpret, or make specific the Act's statutes regarding the rules and procedures governing appeals before OTA, aside from OTA's Emergency Rules for Tax Appeals. However, the Emergency Rules for Tax Appeals are expected to expire on December 31, 2018, and these rules cannot be extended or readopted as an emergency regulation beyond this timeframe. (Gov. Code, §§ 11346.1, subd. (h), 15679, subd. (a)(2).) The regulated public, including state tax agencies who would be appearing before OTA, will need additional guidance governing the rules applicable to appeals before OTA.

The proposed regulatory action is necessary because the existing framework, pulling pertinent provisions from the board's rules for tax appeals, the rules applicable to the Office of Administrative Hearings, and the upcoming expiration of OTA's Emergency Rules for Tax Appeals, do not apply a clear and consistent framework for the public to understand the applicable rules of practice. This is because, one, the existing organizational structures of the applicable regulations and statutes are too inconsistent and vary too widely and, two, due to the creation of OTA, OTA's procedural rules should be placed in a new, more suitable division of title 18 of the California Code of Regulations. In addition, it is necessary to clarify practices and to make those changes and establishes those processes, including a process for a closed hearing, and rules for admission of evidence and witnesses, as required under the Act.

Under the Act, OTA is further responsible for adopting regulations regarding the presentation of evidence and preparation for hearings and proceedings before OTA, which do not require application of specialized knowledge. (Gov. Code, §15679.5, subd. (b).) Aside from references to other laws, including the Administrative Procedure Act, and the BOE Rules for Tax Appeals, the Act does not itself create any specific governing procedures for OTA. OTA is left to create its own governing procedures under the Act.

The proposed regulations will allow OTA to set the policies and procedures governing appeals before OTA, including rules for admission of witnesses and evidence, procedures for closing a hearing, rules for preparation for hearings and proceedings before OTA, rules for publication of decisions, briefing schedules, etc., before OTA. These regulations are critical in order to govern the procedure for appeals before OTA. OTA is proposing these permanent regulations through the Office of Administrative Law's permanent rulemaking process, due to the expiration of the emergency regulations.

OTA anticipates that the adoption of the proposed regulatory action will benefit OTA, FTB, CDTFA, local entities, taxpayers, representatives, and the general public by:

- Creating a comprehensive set of procedural regulations which cover all of OTA's administrative review functions with regard to conducting an appeal.
- Establishing procedural regulations that are easier to understand and provide a greater degree of clarity than OTA's current Emergency Rules for Tax Appeals (Cal. Code Regs,

- tit. 18, §§ 30100- 30832), and the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs, tit. 18).
- Retaining flexibility to respond to individual circumstances and new or changed responsibilities of OTA.
 - Improving upon the current procedural framework, which includes the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs, tit. 18), to the extent relevant and applicable and not inconsistent with the Act, the administrative process set forth in the Administrative Procedure Act for appeals to the Office of Administrative Hearing (Gov. Code, §§ 11380 to 11529) to the extent not inconsistent with the Act, the California Code of Judicial Ethics, with respect to ex parte communications and the conduct of an Administrative Law Judge, and OTA's Emergency Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 30100- 30832).
 - Setting forth all of the procedures applicable to OTA's appeals process in one place, applying the same rules and standards to all tax and fee programs to the extent applicable under the law, and providing the same procedures for all taxpayers and parties to the extent allowable under the law.
 - Bifurcating and separating the applicable rules of practice by applying OTA's proposed Rules for Tax Appeals to Franchise and Income Tax Appeals and Business Tax Appeals, and specifying that the board's Rules for Tax Appeals to those constitutional functions remaining with the board (mainly, appeals of Property Taxes and Alcoholic Beverage Taxes, and excluding any tax or fee program subject to appeal to OTA).
 - Clarifying practices and to make those changes and establishing those processes, including a process for a closed hearing, and rules for admission of evidence and witnesses, as required under the Act.
 - Establishing an improved regulatory framework that consistently, clearly, and fully describe OTA's appeals processes in a structurally integrated and logical framework. In this way, the OTA intends to improve its relationship with tax and fee payers.
 - Providing taxpayers, public agencies with appeals before OTA, and tax professionals with a single, well-organized, and clear source for all of the procedural information they need to know, from the initiation of the appeals process to the final written opinion from OTA.
 - Setting forth all of OTA's procedural regulations in a logically organized structure that provides consistent and clear requirements and guidelines.
 - Clearly setting forth and clarifying the jurisdiction of OTA.
 - Defining terms applicable in an appeal before OTA.
 - Specifying the rules and procedures generally applicable to an appeal before OTA.
 - Setting for the appeal requirements, briefing schedules, and related procedures.
 - Setting forth the oral hearing procedures, including the process for a closed hearing.
 - Setting forth the procedures for publication of precedential and nonprecedential opinions of OTA, including the depublishation of opinions that have been superseded by a later precedential opinion.
 - Setting forth the process for filing a petition for rehearing for appearance and nonappearance matters.
 - Setting forth the rules applicable to a taxpayer bill of rights reimbursement claim.

All of the provisions in the proposed regulatory action are fully consistent with current law, including the provisions of the Act establishing OTA, and transferring the duties and responsibilities of the board with respect to appeals to OTA, and adding statutes to and amending statutes in the Government Code, and there is nothing in the proposed regulatory action that would significantly change how individuals and businesses would generally behave in response to current state and federal law, including the provisions of the Act, in the absence of the proposed regulatory action.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

OTA has performed an evaluation of whether the proposed regulatory action is inconsistent or incompatible with existing state regulations and determined that the proposed regulatory action is not inconsistent or incompatible with existing state regulations. This is because the proposed regulations are the only state regulations that specifically implement, interpret, and makes specific the statutes regarding the rules, process, and procedures for appeals to OTA.¹ In addition, OTA has determined that there are no comparable federal regulations or statutes to the proposed regulatory action.

SUMMARY OF PROPOSED REGULATIONS

OTA proposes this regulatory action to implement, interpret, and make specific the Act's statutes requiring OTA to adopt regulations as necessary or appropriate to carry out the purposes of the Act, including the governing rules and procedure for appeals conducted before OTA. Specifically, the proposed regulatory action proposes to adopt OTA's Rules for Tax Appeals, which does the following:

Chapter 1: Title of Division

30000. Statement of Intent; Title of Division

The Taxpayer Transparency and Fairness Act of 2017 took effect on July 1, 2017, authorizing the establishment of OTA and granting it sole jurisdiction over tax appeals arising from actions taken by FTB and CDTFB, beginning January 1, 2018. OTA issued emergency regulations pursuant to Government Code section 15679. OTA is able to carry out its duties, powers, and responsibilities under the emergency regulations until January 1, 2019.

Proposed Regulation 30000 states OTA's intent in promulgating nonemergency regulations to continue to fulfill its statutory duties, and names the proposed regulations the Rules for Tax Appeals to provide a commonly understood reference to the new regulatory provisions.

Chapter 2: Jurisdiction, Definitions, and General Applicability

¹ OTA intends to let its Emergency Rules for Tax Appeals expire on December 31, 2018, prior to the earliest anticipated effective date of the proposed regulatory action, and OTA's emergency rules cannot be extended or readopted as an emergency regulation beyond this timeframe. (Gov. Code, §§ 11346.1, subd. (h), 15679, subd. (a)(2).)

Article 1: Application of Division 4.1, Definitions, and Jurisdiction

30101. Application of Division 4.1

Proposed Regulation 30101 provides specific guidance to taxpayers as to the tax and fee programs and appeals or petitions for rehearing to which the proposed Rules for Tax Appeals will apply. Listing the tax and fee programs is necessary to eliminate the need for the regulated public to consult all of the various statutes to determine whether appeals for a particular program may be appealed to OTA. Placing this section at the beginning of chapter 2 is appropriate because it contains provisions of general applicability to all of the proposed text of the Rules for Tax Appeals. Subdivision (a) provides that OTA has jurisdiction over Franchise and Income Tax Appeals (part 10.2 of division 2 of the Revenue and Taxation Code). Subdivision (b) provides that OTA has jurisdiction over appeals submitted pursuant to part 9.5 of division 3 of title 2 of the Government Code. Subdivision (c) provides that OTA has jurisdiction over appeals from a tax or fee program administered by CDTFA. Subdivisions (c)(1) through (18) list tax and fee programs administered by CDTFA.

30102. Definitions

Proposed Regulation 30102 provides clear, uniform definitions for the meaning of the terms used in the new Rules. This section is necessary to ensure that everyone interested in OTA's appeals procedures understands the meaning of terms used in the proposed Rules for Tax Appeals without the necessity of repeating definitions in multiple sections. Specifically, proposed Regulation 30102 defines the terms: Agency, ALJ, Appeals Bureau, Appeals Bureau decision, Brief, CDTFA, Discovery, Evidence, Ex-parte communication, FTB, Lead ALJ, Local entity, Local or district tax, Mail, Motion, Oral hearing record, OTA, Panel, Relevant evidence, Representative, Submission date, Subpoena, and Written record, within the context of the proposed Rules for Tax Appeals.

30103. Jurisdiction

Proposed Regulation 30103, subdivision (a) provides clear guidance to the regulated public regarding the types of appeals from an action of the FTB that can be brought before OTA. Subdivision (b) provides clear guidance to the regulated public regarding the types of appeals from a decision of the CDTFA that can be brought before OTA. Subdivision (c) provides notice to the regulated public that other laws may expand or limit OTA's jurisdiction before OTA has time to amend this section.

30104. Limitations on Jurisdiction

Proposed Regulation 30104 provides clear guidance to the regulated public regarding the types of issues that OTA does not have jurisdiction to consider. Specifically, subdivisions (a) and (b) provide that OTA does not have jurisdiction to consider whether a statute or a provision of the California Constitution is invalid or unenforceable unless a federal or California appellate court has already made such a determination. In subdivisions (c) through (g), proposed Regulation 30104 provides that OTA does not have jurisdiction to consider (c) whether a state agency violated the Information Practices Act, the Public Records Act, or any other similar provision of the law; (d) whether a taxpayer is entitled to a remedy for an agency's actual or alleged violation of any substantive or procedural right, unless the violation affects the adequacy of a notice, or

the validity of an action, from which a timely appeal was made, or the amount at issue in the appeal; (e) an appeal from a proposed assessment or proposed overassessment; (f) an appeal that is not subject to review by FTB or CDTFA; (g) an appeal that is subject to review by CDTFA where the Appeals Bureau has not yet issued a decision on the appeal.

30105. Questions of Jurisdiction and Timeliness

Proposed Regulation 30105 describes the steps that OTA may take when issues are raised regarding whether or not an appeal was filed timely or whether or not OTA has jurisdiction over the appeal. Subdivision (a) provides that OTA may request additional briefing on an issue in appeal related to jurisdiction or timeliness. Subdivision (b) provides that if OTA does not raise an issue related to jurisdiction or timeliness, either party may raise such an issue during briefing. Subdivision (c) provides that OTA may take certain actions with respect to an appeal when there is an issue regarding timeliness or jurisdiction, including but not limited to; ruling on such issues prior to briefing; requesting additional briefing, or directing the parties to address such issues during the general briefing schedule.

30106. Jurisdiction over Transitioning Appeals

Proposed Regulation 30106 provides clear guidance to the regulated public regarding the transfer of non-final appeals from the BOE to OTA effective January 1, 2018. Specifically, subdivision (a) provides that as of January 1, 2018, OTA has jurisdiction over appeals where BOE failed to issue a decision, or issued a decision that was not final before January 1, 2018. Subdivision (b) provides that OTA has jurisdiction over a petition for rehearing filed with BOE or OTA on a decision that was not final as of January 1, 2018. Subdivision (c) provides that a briefing schedule established by BOE prior to January 1, 2018, will remain applicable to the appeal unless otherwise directed by OTA. Subdivision (d) provides that all other appeals for which the CDTFA Appeals Bureau has issued a decision, and a party has made a timely request for an oral hearing prior to January 1, 2018, are subject to the jurisdiction of OTA.

Chapter 3: Appeal Requirements and Procedures

Article 1: Filing an Appeal

30201. Appeal Filing Requirements

Proposed Regulation 30201 explains the information required in a written appeal from an action of the FTB or the CDTFA Appeals Bureau filed with OTA. Specifically, subdivisions (a) and (b) provide that the information necessary to identify and contact appealing parties and their representatives in the appeal should be included in the written appeal. Subdivisions (c), (d), and (e) require appellants to provide relevant information regarding the grounds for the appeal, the supporting facts and law, and the amount being appealed. Subdivision (f) requires appellants or their representative(s) to sign the appeal. Subdivisions (g) and (h) require appellants to provide identifying information to ensure that OTA and the tax agencies can adequately identify the records associated with the appellant(s).

30202. Methods for Delivery of Written Documents and Correspondence

Proposed Regulation 30202 directs the public on how documents related to an appeal may be delivered to OTA. Subdivision (a) provides the means for delivery of documents related to an appeal, which include paper and electronic delivery options. Subdivision (b) notifies the public that notifications and acknowledgments from OTA will be sent by mail, unless there is an agreement that notifications and acknowledgments will be sent by another method. Subdivision (c) notifies the public that unless there is an objection, OTA may deliver correspondence using electronic means.

30203. Time for Submitting an Appeal

Proposed Regulation 30203 provides the deadlines for filing tax appeals. Subdivision (a) lists the deadlines for filing when an appellant is appealing adverse actions taken by the Franchise Tax Board. Subdivision (b) lists the deadlines for filing when an appellant is appealing adverse decisions of the California Department of Tax and Fee Administration.

30204. Extensions

Proposed Regulation 30204 notifies the public of extensions of filing deadlines when documents are mailed to OTA. Subdivisions (a), (b), and (c) extend the filing deadlines for mailed appeals depending on the location where the appeal is deposited in the mail. Extensions vary depending on whether an appeal is mailed from California, from another state, or from outside of the United States.

30205. Date of Mailing

Proposed Regulation 30205 notifies the public of the date OTA considers a document to be mailed. Since appeals and related documents have deadlines for submission to OTA, this regulation explains how the date of mailing will be determined by OTA, depending on whether the document is mailed or delivered in another manner. It provides for an extension of a date of mailing if a document is submitted on a Saturday, Sunday or state holiday.

30206. Appeals Filed With Other Agencies

Proposed Regulation 30206 provides that OTA may accept an appeal that has been incorrectly filed with another agency. Although, by law, appeals from adverse actions by the FTB and the CDTFA must be filed directly with OTA, this proposed regulation acknowledges that there may be circumstances where an appellant, in good faith, incorrectly files their appeal with another tax agency or the State Board of Equalization (the former body for deciding tax appeals). OTA will deem the petition or appeal timely under those circumstances.

30207. Acknowledging an Appeal

Proposed Regulation 30207 delineates OTA's procedures for acknowledging that an appeal has been filed. Subdivision (a) instructs the public that OTA will mail an acknowledgment of receipt of an accepted appeal to each party. Subdivision (b) provides that acknowledgement of a Petition for Redistribution will be mailed to parties and also to the taxpayer whose allocations are the subject of the petition.

30208. Perfecting an Appeal

Proposed regulation 30208 explains that OTA will accept an appeal if it meets threshold requirements, and describes the steps OTA will take if the information OTA received is insufficient for a valid appeal. Specifically, subdivision (a) states that if OTA can identify the appeal and if substantially all of the information required in regulation 30201 is present, along with contact information for the party or the party's representative and required parties' signatures, OTA will accept that appeal as valid. Subdivision (b) explains the process through which OTA will give a party the opportunity to bring an appeal into compliance with threshold requirements, the timeline for which a party must do so, and how OTA will respond to timely and untimely attempts to meet those requirements.

30209. Submission for Decision Without Oral Hearing

Proposed regulation 30209 explains the circumstances under which an appellant will be considered to have waived the right to an oral hearing. Subdivision (a) further explains that such cases will be submitted for decision based on the written record. Subdivision (b) explains that in an innocent spouse appeal, if neither the appealing spouse nor the non-appealing spouse request an oral hearing, or neither responds to a notice of oral hearing, the appeal will be submitted for decision based on the written record.

Article 2: Appeal Procedures

30210. Conferences

Proposed regulation 30210 provides guidance on appeal conferences. Subdivision (a) states that the provisions of Article 2 apply to all proceedings before OTA, including nonappearance matters and oral hearing matters. Subdivision (b) provides who may request a conference and when, and explains that OTA will determine when a conference is necessary. Further, conferences can be conducted by the Lead ALJ or an OTA attorney, and will generally be informal and not recorded. Subdivision (c) explains who may request a conference and how. Subdivision (d) sets out where conferences will be physically held, and that conferences can be held by electronic means if all parties are able to participate and can understand the proceeding. Subdivision (e) sets out that OTA will set prehearing conferences and provide parties with notice of the time and location of the conferences. OTA will consult with the parties in scheduling other conferences and provide written notice of the time and location of conferences. Subdivision (f) gives examples of matters that may be discussed at a conference. Subdivision (g) explains that, unless otherwise directed by OTA, any new evidence that a party wishes to discuss at a conference should be provided to OTA and the other party no later than three business days prior to the conference.

30211. Representation

Proposed section 30211 provides guidance on representation of a taxpayer before the OTA. Subdivision (a) states that a taxpayer may be represented in an appeal by anyone at least 18 years of age of their choosing. Subdivision (b) sets out that OTA will recognize all authorized representatives and the role of such representatives. Subdivision (c) sets out how to substitute or withdraw representation. Subdivision (d) explains that someone disbarred or suspended from practice before the FTB shall promptly notify OTA of such and may not represent a party in an appeal before OTA.

30211.5 Privileges

Proposed regulation 30211.5 sets out that the rules pertaining to privileges shall apply to the extent required by law, and that, in addition, communications between a taxpayer and a federally authorized tax practitioner shall be protected as confidential as provided in Revenue and Taxation Code sections 7099.1 and 21028.

30212. Consolidation and Deconsolidation

Proposed regulation 30212 explains how appeals may be consolidated or deconsolidated. Subdivision (a) provides that OTA may consolidate appeals on a motion of a party or upon OTA's own initiative, if the facts and issues are similar and no substantial right of any party will be prejudiced. OTA will promptly notify the parties if an appeal is consolidated. Subdivision (b) sets out the standard under which OTA may decide to deconsolidate appeals. Subdivision (c) sets out how any party may submit an objection to a consolidation or deconsolidation, when to object, and the basis upon which an objection should be made.

30213. Authority of Administrative Law Judges

Proposed Regulation 30213 lists the actions that may be taken by a Panel in order to hold a fair hearing. The proposed regulation provides that the Lead ALJ or any member of the panel has full power, jurisdiction, and authority to (a) perform acts necessary for the purpose of ascertaining the facts on which a decision may be based; (b) determine the order that witnesses will testify at the hearing; (c) request that each party identify the issues to be heard, agreed-upon facts, and the evidence upon which the party wishes to rely; (d) ask relevant questions of any witness or party to clarify the record; (e) issue interlocutory and final orders, instructions, and decisions; (f) issue post-hearing orders and sections; (g) issue rulings on motions; (h) order the closure or reopening of the record; (i) issue and vacate submission orders; and (j) take any other action necessary for the orderly and fair adjudication of disputes.

30213.5. Orders

Proposed regulation 30213.5 provides authority for OTA to issue orders to, and sanctions against, the parties to facilitate the fair and orderly resolution of appeals. Proposed regulation 30213.5 explains that orders may be enforced under the provisions of Government Code sections 11455.10 through 11455.30.

30214. Evidence

Proposed Regulation 30214 provides the rules relating to evidence and witnesses that apply to proceedings, including oral hearings, before OTA. Specifically, subdivision (a) explains that parties appearing before OTA should cooperatively engage in informal discovery prior to requesting OTA involvement in the discovery process. Subdivision (b) provides time limitations for a party to obtain the names of witnesses and to inspect and make copies of statements pertaining to the subject matter of the proceeding, statements of witnesses having personal knowledge of relevant acts, omissions, or events, any other relevant writing or thing, and investigative reports. Subdivision (c) defines "statements" to include written statements signed or authenticated by the person, recordings or transcripts of oral statements, and written reports or summaries of oral statements. Subdivision (d) provides that the inspection or copying of any privileged or confidential writing or thing is not authorized. Subdivision (e) provides that OTA

may allow a subpoena upon a showing of good cause if the person requesting the subpoena bears the burden of proof or if the subpoena is to be issued to a nonparty to the appeal. Subdivision (f) provides that all relevant evidence is admissible unless it is subject to a privilege, and further provides that the Lead ALJ may exclude evidence if its admission will necessitate undue consumption of time. Additionally, subdivision (f) provides that the Panel may use the California rules of evidence when evaluating the weight to give evidence. Subdivision (g) provides that a request for discovery beyond what is outlined in this section will only be granted upon a showing of good cause.

30214.5. Noncompliance with Discovery Requests

Proposed Regulation 30214.5 provides that OTA will strive to provide an informal and efficient administrative process for the parties to cooperatively exchange requested information that is relevant to an appeal. Specifically, subdivision (a) provides that if a party claims that the opposing party has not complied with a request for discovery, OTA may request a response from the opposing party, with a deadline for the response of at least 30 days. Subdivision (b) provides that OTA may issue an order to compel discovery. Subdivision (c) provides that OTA may deny a party's motion to compel discovery if it determines that the discovery request is overly burdensome, invasive, or otherwise not in the interest of adjudication of the hearing before it.

30215. Ex Parte Communications

Proposed Regulation 30215 provides that OTA will follow the rules restricting ex parte communications contained in the Code of Judicial Ethics adopted by the Supreme Court and the rules found in Government Code sections 11430.10 through 11430.80.

30216. Incorporation of the Administrative Procedure Act

Proposed Regulation 30216 explains how provisions of the Administrative Procedure Act have been incorporated into the rules governing OTA's conduct of hearings and proceedings. Specifically, subdivision (a) provides that hearing procedures will be accessible to all representatives. Subdivision (b) provides that when an oral hearing is not requested or is waived, appeal proceedings will be conducted under Chapter 4.5 of the Administrative Procedure Act, except that OTA retains the discretion to utilize aspects of Chapter 5 and prohibit usage of portions of Chapter 4.5 of the Administrative Procedure Act. Subdivision (c) provides that when an oral hearing is requested, OTA will conduct the hearing process pursuant to Chapter 5 of the Administrative Procedure Act, except that OTA retains the discretion to utilize aspects of Chapter 4.5 and prohibit usage of portions of Chapter 5. Subdivision (d) lists provisions included in Chapters 4.5 and 5 of the Administrative Procedure Act that will not apply to proceedings before OTA. Subdivision (e) provides that OTA is exempted from provisions of the Administrative Procedure Act if required by the context or subject matter of the proceeding. Subdivision (f) defines "Presiding Officer," as used in the Administrative Procedure Act, to mean "Lead ALJ" or "Panel," or the Presiding ALJ if no Lead ALJ or Panel has been assigned to an appeal. Subdivision (g) provides that OTA always has discretion to use the informal hearing procedures found in Chapter 4.5 of the Administrative Procedure Act. Subdivision (h) provides that if any provision of the Administrative Procedure Act conflicts with these regulations, these regulations are controlling.

30217. Determination that Appeal Is Frivolous

Proposed Regulation 30217 explains that OTA may impose a frivolous appeal penalty and provides a list of the factors that OTA will consider in determining whether or not the penalty is warranted. Subdivision (a) explains that the frivolous appeal penalty may be imposed if a Panel determines that a franchise or income tax appeal is frivolous or is maintained for the purpose of delay. Subdivision (b) provides that the factors that may be relevant in determining whether a frivolous appeal penalty is warranted include (1) whether the appellant is making arguments that previously have been formally rejected; (2) whether the appellant is making the same arguments that it made in prior appeals; (3) whether the appellant submitted the appeal for the purpose of delay; (4) whether the appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether the appellant has been notified that a frivolous appeal penalty may apply.

30218. Application of Ethics Codes

Proposed Regulation 30218 provides that each ALJ will abide by the Code of Judicial Ethics adopted by the California Supreme Court.

30219. Application of Burden of Proof

Proposed Regulation 30219 explains how the burden of proof is applied. Specifically, subdivision (a) provides that the burden of proof is upon the appellant as to all issues of fact, except as otherwise provided by law. Subdivision (b) provides that the burden of proof as to an issue of fraud is upon the Agency by clear and convincing evidence. Subdivision (c) provides that proof by a preponderance of the evidence is required, except as otherwise provided by law.

Article 3: Postponements, Deferrals, and Dismissals

Section 30220. Postponement and Deferral

Proposed regulation 30220 provides rules for OTA to allow the parties to defer proceedings in an appeal. The proposed regulation directs the parties on specific situations in which a party can postpone or defer their appeal. Subdivision (a) provides that OTA may postpone or defer proceedings for good cause. Subdivision (b) provides examples of good cause, including but not limited to (1) illness of that person or a member of that person's immediate family; (2) an unavoidable scheduling conflict; (3) a new representative who requires additional time to become familiar with the case; (4) all parties desire a postponement; (5) an appellant's involvement in a bankruptcy action that may impact the appeal proceedings or be relevant to the resolution of the issues on appeal; or (6) pending court litigation, or proceedings at the agency, that may impact the appeal proceedings or be relevant to the resolution of the issues on appeal, or the resolution of other pending appeals raising similar issues.

Section 30221. Settlement or Resolution

Proposed regulation 30221 provides that OTA may defer an appeal if the parties are seeking settlement. The proposed regulation further provides that upon notification from a party that settlement negotiations have terminated without a settlement, OTA will reactivate the appeal and will advise the parties as to the next step in the appeal.

Section 30222. Written Notice

Proposed regulation 30222 provides that OTA will provide written notification to the parties if an appeal is postponed or deferred.

Section 30223. Dismissal

Proposed regulation 30223 provides rules for when an appeal will be dismissed at OTA. Specifically, the proposed regulation provides that the case will be dismissed if (a) the appellant or the representative of appellant submits a written, signed request for dismissal; (b) an Agency submits a written concession of the entire amount of the deficiency, refund or claim at issue; or (c) the parties submit a written stipulation, signed by all the parties, in which all parties agree to the dismissal.

Section 30224. Request for Reconsideration of CDTFA Appeals Bureau Decision

Proposed regulation 30224 provides rules for when a party submits a request for reconsideration of CDTFA's Appeals Bureau Decision. Subdivision (a) states that OTA will defer the appeal until CDTFA's Appeals Bureau either issues a revised or supplemental decision or notifies the party in writing that the request has not been accepted. Subdivision (b) states that the time for submitting an appeal will restart after the parties have been notified.

Chapter 4: Briefing Schedules and Procedures

Article 1: General Briefing Schedule

Section 30301. Application of Chapter

Proposed regulation 30301 provides that the general briefing schedule applies to all appeals from actions of FTB or CDTFA, unless the schedule is modified. Subdivision (a) provides that the general briefing schedule may not apply if the appeal involves an innocent spouse determination, or in the case of a petition for redistribution of local or district tax. Subdivision (b) provides that if an appeal involves a jeopardy determination, OTA will compose a suitable briefing schedule.

Section 30302. General Requirements

Proposed regulation 30302 provides the general requirements of the briefing schedules for appeals before OTA. Subdivision (a) provides that OTA will inform the parties of applicable deadlines and extensions by written notification, and will ensure that all parties receive copies of any correspondence. Subdivision (b) provides that OTA will provide written acknowledgement of receipt of any brief to all parties, and will ensure that the opposing party is provided with a copy of the brief and exhibits. Subdivision (c) provides information regarding requests for an extension of time for filing a brief. Subdivision (d) provides formatting requirements for briefs. Subdivision (e) provides that OTA may return a brief that does not conform to the form and page limits specified in subdivision (d), except that a party may request to file a nonconforming brief. Subdivision (f) provides that failure to submit a brief that conforms to the requirements stated in this proposed regulation constitutes a waiver of the right to submit that brief. Subdivision (g) provides that OTA may accept non-party (amicus) briefs at its discretion.

30303. General Briefing Schedule

Proposed Regulation 30303 provides the general briefing schedule for appeals. Subdivision (a) provides that the appellant's appeal letter will constitute the appellant's opening brief unless the appellant requests the opportunity to supplement it. If the appellant requests to supplement the opening brief, OTA will allow 60 days for the appellant to file a supplement to the opening brief. Subdivision (b) allows respondent 60 days to file its opening brief. Subdivision (c) allows 30 days for appellant to file a reply brief to respondent's opening brief and provides that the appellant's reply brief may only address new facts, issues, or arguments raised on respondent's opening brief. Subdivision (d) provides that the submission of the appellant's reply brief will generally end the briefing process, unless additional briefing is permitted.

30304. Requests for Additional Briefing

Proposed Regulation 30304 provides that OTA or parties to an appeal may request additional briefing. Subdivision (a) provides that OTA will address any request for additional briefing and coordinate the briefing process. Subdivision (b) provides that a party may request additional briefing and provides examples of potential grounds for a request for additional briefing. Subdivision (c) provides that additional briefs generally may use ordinary and informal language and may be hand-written or typed.

Article 2: General Briefing Schedule for Innocent Spouse Appeals

30310. Application

Proposed Regulation 30310 explains that Article 2 provides the briefing schedule for appeals arising from requests for innocent spouse relief. Article 2 is necessary because innocent spouse appeals raise special privacy concerns and may involve, in addition to the appealing party and the agency, the appealing party's spouse or former spouse.

30311. Definitions

Proposed Regulation 30311 provides definitions for the terms (a) "appealing spouse," (b) "requesting spouse," (c) non-requesting spouse," and "non-appealing spouse" used in Article 2.

30312. Special Rules and Procedures

Proposed Regulation 30312 provides procedures that are specific to innocent spouse appeals. Subdivision (a) provides that, if both spouses submit timely appeals, then the appeals will be consolidated. Subdivision (b) provides that, if only one spouse submits a timely appeal, then the non-appealing spouse will receive a copy of the appeal and be notified of his or her right to join the appeal. Subdivision (c) provides that OTA shall use the best available information to contact the non-appealing spouse. Subdivision (d) provides that OTA will retain jurisdiction over an innocent spouse appeal through the conclusion of the appeal, notwithstanding any withdrawal by an agency of a notice or decision. Subdivision (e) provides that either party in an innocent spouse case may request a separate hearing. Subdivision (f) explains provisions for a party in an innocent spouse case to request that an oral hearing be closed to the public, and provisions for a party in an innocent spouse case to request that items in the record be sealed.

30313. Protection of Confidential Information

Proposed Regulation 30313 provides that OTA will take reasonable steps to ensure that the personal identifying information of one spouse is not provided to the other spouse.

30314. Opening Briefs

Proposed Regulation 30314 provides a schedule for the filing of opening briefs in innocent spouse appeals. Subdivision (a) provides that the appealing spouse's perfected appeal letter constitutes the appealing spouse's opening brief, unless the appealing spouse requests to submit a separate opening brief. It further provides that, if the appealing spouse requests to submit a separate opening brief, the opening brief generally must be filed within 60 days. Subdivision (b) provides that the agency may submit its opening brief not later than 60 days from the date OTA acknowledges the appealing spouse's opening brief. Subdivision (c) provides that the non-appealing spouse may submit an opening brief not later than 60 days from the date of the notification of the non-appealing spouse's right to participate in the appeal.

30315. Reply Briefs.

Proposed regulation 30315 provides clear guidance regarding the submission of reply briefs and the conclusion of the briefing process in innocent spouse appeals. Subdivision (a) provides the deadline for the appealing spouse to file a reply brief. Subdivision (b) explains that the reply brief may only address points of disagreement with the Agency's opening brief and the non-appealing spouse's opening brief. Subdivision (c) describes the requirements for a reply brief filed by the non-appealing spouse or the Agency. Subdivision (d) provides that the briefing schedule is concluded if no reply brief is submitted. Subdivision (e) provides that additional briefing may be requested.

30316. Conformity with Federal Action

Proposed regulation 30316 provides clear guidance on the procedures that are to be followed in an innocent spouse appeal filed with respect to franchise and income taxes when relief has been granted under Internal Revenue Code section 6015. Subdivision (a) provides that the party who receives notification that relief has been granted under Internal Revenue Code section 6015 must submit proof of such notification to OTA as soon as is practical. Subdivision (b) provides that OTA will notify FTB and the non-requesting spouse of the federal grant of innocent spouse relief, and also provides that FTB and the non-requesting spouse may provide information that indicates that relief should not be granted. Subdivision (c) provides circumstances in which additional briefs may be provided. Subdivision (d) provides that if a party receives notification that relief has been granted under Internal Revenue Code section 6015 before the briefing schedule has concluded, the briefing schedule will not be concluded until the requirements of this regulation are satisfied. Subdivision (d) further provides that if a party receives notification that relief has been granted under Internal Revenue Code section 6015 after the briefing schedule has concluded, then briefing will be reopened. Subdivision (e) provides that this regulation shall only apply to appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code sections 18533 or 19006.

Chapter 5: General Oral Hearing Procedures

Article 1: Scheduling an Oral Hearing

30401. Process for Requesting an Oral Hearing

Proposed regulation 30401 provides clear guidance to taxpayers on how to request an oral hearing. Subdivision (a) provides that an appellant may request an oral hearing in writing at any time prior to the completion of briefing, and then lists the steps that OTA will take to confirm the request for an oral hearing, or to determine if the appellant has waived the right to an oral hearing. Subdivision (b) provides that, for innocent spouse appeals, both the appealing spouse and the non-appealing spouse, may request an oral hearing, and provides the circumstances under which a Panel will conduct separate oral hearings. Subdivision (c) provides that if a Panel conducts separate oral hearings, the Panel will not decide the appeal until both hearings have concluded.

30402. Notice of Oral Hearing

Proposed regulation 30402 explains OTA's responsibility to notify the parties that an oral hearing has been scheduled. Subdivision (a) provides that if an oral hearing is granted, OTA will send the parties a notice of oral hearing. Subdivision (b) provides that a notice of oral hearing will be sent to the parties at least 45 days prior to the oral hearing date, unless all parties agree to a shorter notice period. Subdivision (c) provides that the notice of oral hearing will contain the name of the taxpayer; OTA's case identification number for the appeal; the date, time, and location of the oral hearing; the due date of the response to the notice of oral hearing; and the date the notice of oral hearing was mailed.

30403. Response to Notice of Oral Hearing

Proposed regulation 30403 provides clear guidance on responding to a notice of oral hearing. This proposed regulation also informs parties to an appeal of their right to an interpreter and reasonable accommodation. Subdivision (a) provides that the response to oral hearing should include a statement indicating that the party or party's authorized representatives will appear at the hearing, or that the party requests a postponement, the party waives the opportunity to appear, or the party withdraws its appeal. Subdivision (b) provides that persons participating in oral hearings who require an interpreter are entitled to an interpreter at no charge, and that the response to the notice of oral hearing should set forth the party's request for an interpreter and state the primary language spoken by the person for whom an interpreter is requested. Subdivision (c) provides that if a person requires special accommodation for other reasons, the response should describe the person's disability and the accommodation sought. Subdivision (d) provides that the response to the notice should provide the name and address of all witnesses who will testify for the party. Subdivision (e) provides that if a witness will be testifying in an expert capacity, the response to the notice should include a summary of that person's credentials and a brief summary of the nature and purpose of the expert's testimony. Subdivision (f) provides that the response to the notice should also include any other information requested by OTA in order to facilitate a fair and orderly oral hearing.

30404. Waiver of Oral Hearing

Regulation 30404 explains provisions for removing a matter from the oral hearing calendar. Specifically, subdivision (a) provides that a matter will be removed from the oral hearing calendar if the party or parties who requested an oral hearing fail to return the response to the

notice of oral hearing by the deadline, or fail to appear at the oral hearing. Subdivision (b) provides that, OTA, in its discretion, may return the matter to the oral hearing calendar upon a showing of reasonable cause for failing to appear or return the hearing notice.

30405. Posting of the Oral Hearing Schedule on OTA's Website

Proposed Regulation 30305 provides that OTA will post hearing dates on its website at least 15 calendar days before the hearing date.

Article 2: Conducting an Oral Hearing

30410. Oral Hearing Rights

Proposed regulation 30410 explains that at an oral hearing, each party will have the right to call and question witnesses; to introduce exhibits; and to respond to the evidence against him or her. Proposed regulation 30410 also states that where a party offers oral testimony as evidence at an oral hearing, the oral evidence may be taken only on oath or affirmation.

30411. Disqualification of Administrative Law Judge for Cause

Proposed regulation 30411 provides that any party may file a motion to disqualify for cause any of the administrative law judges assigned to a Panel, and that there is no right to preemptory challenges.

30412. Concluding an Oral Hearing

Proposed regulation 30412 provides that upon concluding an oral hearing proceeding, the Panel will determine the submission date when the official oral hearing record will be closed. Proposed regulation 30413 also provides that, for good cause, the Panel may defer its determination of the submission date or it may reopen the oral hearing record.

Article 3: Motions and Presentation of Evidence at an Oral Hearing

30420. Presenting Information and Documents at Oral Hearing

Proposed regulation 30420 provides guidance on how exhibits, witness lists, and witness declarations are to be presented to OTA. Subdivision (a) states that the party providing exhibits should provide a list of the exhibits with a brief description of each document; explains how exhibits should be labeled; and explains that the Agency should include in its exhibits any jurisdictional documents including the written decision or notice of action taken by the Agency that is the subject of the appeal. Subdivision (b) provides that each party must submit a list of all witnesses who will testify on its behalf, with a copy to the other party, at least 15 calendar days before the hearing or earlier if directed to do so by OTA, and also provides that any witness who will testify as an expert must be clearly identified with a brief description of the purpose of each expert witness's testimony. Subdivision (c) provides that parties may submit declarations of persons who will not be present at the hearing, and that such declarations should be signed under penalty of perjury and filed with the filing party's brief. This subdivision also explains provisions for the opposing party to question the witness providing the declaration, or request documentation related to the declaration, and for the witness to respond to questions.

30421. Motions

Proposed regulation 30421 explains how prehearing motions are to be filed. Subdivision (a) provides that all motions made prior to the oral hearing shall be directed to the Lead ALJ or to a Presiding ALJ. Subdivision (b) provides that prehearing motions shall be made with written notice to all parties. Subdivision (c) provides that the Lead ALJ assigned to a Panel or a Presiding ALJ may decide prehearing motions, order additional briefing on the issue, or defer decision until the date of the hearing. Subdivision (d) provides that, generally, a prehearing motion shall be filed at least 15 days before the start of the oral hearing, and any response to the prehearing motion shall be filed by the due date specified by OTA.

Article 4: Observation of Oral Hearings

30430. Public Transparency

Proposed regulation 30430 explains that oral hearings are generally open to the public, and that submitting an appeal constitutes a waiver of the right to confidentiality with regard to all of the briefing and other information provided to OTA by either the party or an Agency, with certain specified exceptions. Subdivision (a) provides that oral hearings before a Panel are open to the public, unless ordered otherwise in accordance with this regulation, and that the submission of an appeal constitutes a waiver of the right to confidentiality. This subdivision also provides that OTA may disclose information pursuant to Revenue and Taxation Code section 19545, the California Public Records Act, and other applicable law. Subdivision (b) provides that the waiver of confidentiality does not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act. Subdivision (c) provides that nothing in this regulation prohibits any party to an OTA hearing, ALJ's, or OTA staff from referring to information described in this regulation in briefs, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a hearing. Subdivision (d) provides that there is no right to confidentiality as to relevant information that OTA includes in a written opinion that is required to be published pursuant to Government Code section 15675.

30431. Requests to Close an Oral Hearing from Public Observation or Seal the Record

Proposed regulation 30431 explains provisions for having an oral hearing closed and having the oral hearing record sealed. Proposed regulation 30431 provides that a request to close an oral hearing or seal the oral hearing record should be made in writing, should be made prior to the due date of the appellant's response to the notice of oral hearing, and should state the grounds upon which it is based, with copies provided to all other parties, including the Agency.

30432. Closing Hearings, Sealing the Record, and Redacting Information

Proposed regulation 30432 provides criteria for determining when a hearing will be closed to the public, when items contained in the oral hearing record or the written record will be sealed, and when information contained in the decision or other documents will be redacted. Specifically, subdivision (a) provides that OTA will consider: (1) whether the appeal involves trade secrets or other confidential research, development, or other information; (2) where a request for a closed hearing is made, to ensure the ability of the party to be represented by the person of their choice, in the circumstances of that particular case; and (3) other grounds as necessary to ensure a fair

hearing and provision of due process. Subdivision (b) provides that any request to seal records will be applied to as narrow a set of records as required under the circumstances. Subdivision (c) provides that an appellant may request to redact information in decisions no later than 15 days after the mailing of the decision. Subdivision (d) provides that this section will be applied and interpreted in a manner that recognizes the public interest in transparency.

30433. Ruling Upon a Request to Close an Oral Hearing, Seal Records, or Redact Information
Proposed Regulation 30433 provides notification that OTA will issue a written order granting or denying any request provided in regulation 30432.

Chapter 6: Decision by Written Opinion

30501. Publication of a Written Decision

Proposed Regulation 30501 prescribes the information to be included in written opinions issued by OTA, as well as the timeframe for publication of the opinions and the system for numbering decisions. Specifically, subdivision (a) provides that a written opinion will explain the reasons for granting or denying the appeal, in whole or in part. Subdivision (b) provides that a written opinion will include findings of fact, legal issues, applicable law, the holding of the Panel, and the names of the adopting or dissenting administrative law judges. Subdivision (c) explains that at least two out of three Panel members must concur in each holding, and that a concurring or dissenting member may provide a separate written opinion. Subdivision (d) provides that OTA will publish a written decision on its website within 100 days after the date upon which the decision becomes final. Subdivision (e) prescribes the format for the decision numbers assigned to posted OTA decisions. Subdivision (f) provides that an appellant may request that the record be sealed or that information be redacted in a decision.

30502. Citation of OTA Opinions and Precedential Effect

Proposed Regulation 30502 provides specific guidance to the public regarding the procedures and timeline for requesting that an opinion be given precedential effect in accordance with Government Code section 11425.60, the factors that designated staff at OTA will consider in determining whether to designate an opinion as precedential, and the posting of precedential opinions. Specifically, subdivision (a) provides that a proposal to give an opinion precedential effect may be communicated by any person to an email address listed on OTA's website. Subdivision (b) explains that a written opinion published by OTA is not precedential in any other appeal before OTA unless OTA has designated that its opinion is precedential. Subdivision (c) lists the factors that OTA will consider in determining whether to designate an opinion as precedential, including whether the opinion (1) would establish a new interpretation of law or modify or repeal an existing interpretation of law; (2) would resolve an apparent conflict in the law; (3) would involve a legal issue of continuing public interest; (4) would make a significant contribution to the law; or (5) whether there is any other basis to justify precedential status. Subdivision (d) provides that the Chief Counsel of OTA, in consultation with the Presiding ALJ's, will determine if a written opinion should be precedential, and the Director of OTA will have the authority to accept or reject the determination that a decision should be precedential. Subdivision (e) explains that there will be a delay of 30 days from the time precedential decisions first are posted on OTA's website until they become precedential.

30503. Withdrawal of Precedential OTA Opinions

Proposed Regulation 30503 notifies the public that OTA may withdraw, in whole or in part, the precedential status of an opinion that it previously designated as precedential, with an explanation, and when OTA does so, the decision will be published as an overturned decision on OTA's website.

30504. Precedential Decisions of the Board of Equalization

Proposed Regulation 30504 notifies the public that, as part of a written opinion, OTA may withdraw, in whole or in part, the precedential status of an opinion of the State Board of Equalization (BOE) that was adopted prior to January 1, 2018, and that if OTA does so, it will publish a notation of the change in precedential status on its website. Additionally, it specifies that BOE decisions that remain precedential may be cited to OTA.

30505. Finality of Written Opinions

Proposed Regulation 30505 provides the information necessary to ensure that the parties to an appeal have a clear understanding of the date a decision becomes final. Specifically, subdivision (a) explains that a decision becomes final 30 days from the date the written opinion is mailed to the parties unless a party to the appeal files a petition for rehearing during that 30-day period. Subdivision (b) explains that OTA may correct typographical or non-substantial errors in a published decision without affecting the date the decision becomes final. Subdivision (c) provides that, while a Panel may sever any issue from an appeal for separate consideration, and issue an opinion on the severed issue prior to deciding the appeal, the Panel's decision on the severed issue only becomes final when the decision resolving the entire appeal becomes final.

Chapter 7: Petitions for Rehearing

30601. Definitions

Proposed Regulation 30601 defines "filing party" and "non-filing party" for purposes of discussing submissions of petitions for rehearing.

30602. Time for Filing a Petition for Rehearing

Proposed Regulation 30602 provides information regarding timelines and procedures for filing petitions for rehearing. Specifically, the proposed regulation explains that a petition for rehearing must be filed during the 30-day period described in proposed Regulation 30505(a) to be timely. Additionally, proposed Regulation 30602 provides that if a petition for rehearing does not contain sufficient information, OTA's notification of receipt will explain the deficiency, and the petitioning party will be allowed 30 days to cure the deficiency. If the petitioning party does not cure the deficiency within 30 days, OTA will reject the petition and notify the parties of the rejection in writing, unless OTA finds good cause to accept the petition for rehearing.

30603. Form and Content of the Petition for Rehearing

Proposed Regulation 30603 specifies that every petition for rehearing must be in writing, must meet certain formatting requirements, and must contain (a) the name or names of the submitting parties; (b) the address and telephone number of the submitting party and its representative, if

applicable; (c) any portion of the amount at issue that has been conceded; (d) the signature of each submitting party or the signature of an authorized representative on behalf of each submitting party; and (e) the facts and arguments showing grounds for a rehearing.

30604. Grounds for Rehearing

Proposed Regulation 30604 describes the grounds on which a rehearing may be granted. Specifically, subdivision (a) provides that a rehearing may be granted if an irregularity in the appeal proceedings prevented fair consideration of the appeal. Subdivision (b) provides that a rehearing may be granted if an accident or surprise occurred during appeal proceedings. Subdivision (c) provides that a rehearing may be granted if newly discovered, relevant evidence has become available. Subdivision (d) provides that rehearing may be granted if there is insufficient evidence to justify the written opinion or if the opinion is contrary to law. Subdivision (e) provides that a rehearing may be granted due to an error in law. At the trial court level, the equivalent of a petition for rehearing is a motion for a new trial. California Code of Civil Procedure section 657 specifically sets forth the grounds for granting a new trial. As explained in the board's precedential decision in the *Appeal of Wilson Development, Inc.* (94-SBE-007, Oct. 5, 1994), the board has historically looked to the Code of Civil Procedure in determining whether grounds for a rehearing exist. It is the intent in drafting regulation 30604, that in determining whether to grant a rehearing of an administrative appeal before OTA, that OTA continue to apply the grounds for a new trial as set forth in Code of Civil Procedure section 657, to the extent those grounds are relevant to an administrative hearing. Subdivisions (a) through (e) of proposed regulation 30604 are specifically intended to apply paragraphs 1, 3, 4, 6, and 7, respectively, in Code of Civil Procedure section 657. Code of Civil Procedure, Paragraph 6 (subdivision (d) of proposed regulation 30604) applies in the context that the decision is against the law, and Paragraph 7 (subdivision (e) of proposed regulation 30604) applies in the context that there is an error in law that occurred during the appeal proceedings that was excepted to by party filing the application or petition. It is the intent of OTA in setting forth the grounds for rehearing in proposed regulation 30604, to summarize the underlying law as set forth in the Code of Civil Procedure, and to continue the board's precedential decision in the *Appeal of Wilson Development, Inc.* (94-SBE-007, Oct. 5, 1994) in looking to the Code of Civil Procedure in determining whether to grant a new hearing. Proposed regulation 30604 is intended merely to summarize and apply the underlying substantive law as set forth in Code of Civil Procedure, section 657, as that law is relevant to an administrative hearing. Proposed Regulation 30604 is not intended to create any new appeal rights or expand or restrict those appeal rights beyond what is contained in Code of Civil Procedure, section 657.

30605. Number of Petitions for Rehearing

Proposed Regulation 30605 makes it clear that only one petition for rehearing regarding the same appeal may be submitted, and that once a Panel has issued a decision on a petition for rehearing or issued a written opinion after a rehearing, neither party may submit another petition for rehearing.

30606. Decisions on Petitions for Rehearing

Proposed Regulation 30606 describes the potential outcomes from a petition for rehearing, whether a rehearing is granted or denied. Specifically, the proposed regulation provides that if a rehearing is granted, the initial decision will be held in abeyance pending resolution of the rehearing, and if a rehearing is denied, the initial decision becomes final 30 days from the date of the denial. Additionally, OTA may modify a prior decision without a rehearing if all parties consent.

30607. Briefing on Rehearing

Proposed Regulation 30607 prescribes the briefing schedules when a single petition for rehearing has been granted and when petitions for rehearing filed by more than one party have been granted. Specifically, subdivision (a) provides that the general requirements for briefs explained in Proposed Regulation 30302 apply to the administration of the briefing process and the documents submitted as briefs for a rehearing. Subdivision (b) provides the schedule for the filing party's opening brief, the non-filing party's reply brief, and the filing party's reply brief when a single petition for rehearing has been granted. Subdivision (c) provides the schedule for opening briefs and reply briefs when there is more than one filing party and more than one petition for rehearing has been granted. Subdivision (d) provides that OTA may permit or require additional briefs. Subdivision (e) provides that OTA may order any briefing schedule that it deems appropriate. Subdivision (f) provides that the parties may request an extension of time for filing a brief under guidelines stated in Proposed Regulation 30302(c).

Chapter 8: Taxpayer Bill of Rights Reimbursement Claims

30701. Jurisdiction

Proposed Regulation 30701 provides specific guidance to taxpayers as to the tax and fee programs for which OTA may consider claims for reimbursement. Subdivision (a) provides that OTA has jurisdiction over reimbursement claims related to Personal Income and Bank and Corporation Income Tax. Subdivision (b) provides that OTA has jurisdiction over reimbursement claims related to Business Taxes and Fees. Subdivisions (b)(1) through (13) list the business tax and fee programs for which a reimbursement claim may be considered by OTA.

30702. Appeals from FTB

Proposed Regulation 30702 provides specific guidance to taxpayers who have filed appeals from actions of the FTB with OTA regarding the types of fees and expenses that may be reimbursable, and to make it clear that fees and expenses are reimbursable only if a Panel issues a finding in writing that the action taken by the FTB was unreasonable.

30703. Appeals from CDTFA

Proposed Regulation 30703 provides specific guidance to taxpayers regarding reimbursement claims involving a tax or fee program administered by the CDTFA. Specifically, subdivision (a) provides that only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination, or claim for refund are eligible for reimbursement. Subdivision (b) provides that fees and expenses "related to a hearing before OTA" may be reimbursable only if (1) the claimant had previously submitted an appeal to OTA; (2) a Panel

granted, in whole or in part, the appeal; and (3) a Panel issues a finding in writing that the action taken by CDTFA was unreasonable.

30704. Determination of Reasonable Fees

Proposed Regulation 30704 references the statutes in the Revenue and Taxation Code that provide a limitation on the amount of fees for professional representation that may be regarded as reasonable. With respect to reimbursement claims from actions of the FTB, subdivision (a) refers to Revenue and Taxation Code section 19717(c)(1)(B)(iii). With respect to reimbursement claims in business tax and fee appeals from the CDTFA, subdivision (b) refers to Revenue and Taxation Code section 7156(c)(1)(B)(iii).

30705. Claim Procedure

Proposed Regulation 30705 provides that a reimbursement claim must be submitted to OTA not later than one year after the date the Panel's decision becomes final, except that OTA may grant extensions of time for submitting the claim upon a showing of good cause. The proposed regulation also provides that, if a claim is incomplete, the claimant will be granted 30 days to complete the claim.

30706. Dismissal; Agency Statement; Responses; Oral Hearings

Proposed Regulation 30706 provides guidance to the Agencies regarding the timeline for submitting a statement in response to a claim for reimbursement, guidance to taxpayers regarding the timeline for filing a response to an Agency's statement, and information regarding scheduling an oral hearing. Specifically, subdivision (a) provides that a claim must be dismissed if the appeal was not granted in whole or in part. Subdivision (b) provides that the Agency may submit a response within 60 days of a completed claim, except that OTA may grant extensions upon a showing of good cause. Subdivision (c) provides that a claimant may respond to an Agency statement within 60 days of the mailing of the statement, and if the claimant does so, the Agency may be given an additional 30 days to respond to the new material. Subdivision (d) provides that an oral hearing will be scheduled after the submission of all documents, the parties will receive at least 45 days' notice of the hearing date and time, and the claimant may waive an oral hearing.

30707. Notice of Decision

Proposed Regulation 30707 informs taxpayers and the Agencies that OTA will send them written notice of its decision on a claim for reimbursement, and that OTA's decision on a claim is final 30 days from the date it is mailed, with no provision for a petition for rehearing.

Furthermore, the proposed regulatory action proposes to amend sections 5510 and 5600 of the Board of Equalization – Rules for Tax Appeals, which does the following:

5510. GENERAL APPLICATION OF CHAPTER 5

The draft amendments to Regulation 5510 clarify the scope of the board and OTA's respective jurisdiction over tax appeals. First, the draft amendments add "Limitations on Authority of the Board" to the title of section 5510. In subdivision (a) (which specifies to which types of appeals

the chapter applies), the draft amendments delete references to those tax and fee programs over which the board does not have constitutional authority, as provided in Government Code section 15600, subdivision (b). Specifically, the draft amendment to subdivision (a) of section 5510 provides that Chapter 5 in the board's Rules for Tax Appeals will only apply to appeals submitted to the board for decision under the Alcoholic Beverage Tax law, the Private Railroad Car Tax, Publicly Owned Property, State-Assessed Property, Tax on Insurers Law, and the Welfare Exemption. Former subdivision (c), providing rules and procedures for appeals from actions of the Franchise Tax Board, and subdivision (d) dealing with fuel tax, were deleted because the board no longer hears appeals from the Franchise Tax Board or administers taxes on fuel. Instead, a new subdivision (c) is proposed, which specifies that on or after January 1, 2018, the board will not conduct appeals or tax any other action with respect to an appeal under any of the specified laws, because these listed programs (subdivision (c)(1) through (4), are those programs which are now subject to the jurisdiction of OTA. Specifically, pursuant to Government Code section 15600, 15672, and 15674, OTA now hears all appeals of these types of actions, and the board lacks jurisdiction to take any action with respect to such an appeal. Subdivision (d) goes on to provide that the board's Rules for Tax Appeals shall not apply to an appeal before OTA, and instead, OTA's Rules for Tax Appeals shall apply to such an appeal.

5600. DEFINITIONS, BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS CHAPTER.

The draft amendments to Regulation 5600 clarify the scope of reimbursement claims over which the board and OTA, respectively, have jurisdiction. Subdivision (b) is amended to clarify that Chapter 6 of the board's Rules for Tax Appeals applies to reimbursement claims submitted under the Alcoholic Beverage Tax, and Private Railroad Car Tax, because these programs are retained by the board pursuant to Government Code section 15600, subdivision (b). The remaining tax and fee programs were deleted from subdivision (b) of Regulation 5600, because these programs are not constitutional functions of the board as provided in subdivision (b) of Government Code section 15600. Former subdivision (c), dealing with fuel tax, was deleted because the board no longer administers taxes on fuel. Instead, a new subdivision (c) is proposed, which specifies that on or after January 1, 2018, the board will not conduct appeals or tax any other action with respect to an appeal under any of the specified laws, because these listed programs (subdivision (c)(1) through (4), are those programs which are now subject to the jurisdiction of OTA. Specifically, pursuant to Government Code sections 15600, 15672, and 15674, OTA now hears all appeals of these types of actions, and the board lacks jurisdiction to take any action with respect to such an appeal. Subdivision (d) goes on to provide that the board's Rules for Tax Appeals shall not apply to an appeal before OTA, and instead, OTA's Rules for Tax Appeals shall apply to such an appeal.

California Code of Regulations, title 18, division 2.1, Chapter 4: Appeals from Actions of the Franchise Tax Board (Regulation sections 5410 through 5465).

The proposed regulatory action also repeals Chapter 4: Appeals from Actions of the Franchise Tax Board, in its entirety from the board's Rules for Tax Appeals because, pursuant to

Government Code sections 15600, 15672, and 15674, OTA now hears all appeals from such actions, and the board lacks jurisdiction to take any action with respect to such an appeal.

CONSISTENCY AND COMPATIBILITY WITH EXISTING FEDERAL LAW OR REGULATIONS:

OTA has determined that there are no comparable federal regulations or statutes.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OTA has determined that the adoption of the proposed regulatory action, including the adoption of proposed regulations, proposed amendments to existing regulations, and proposed repeal of existing regulations, hereinafter “proposed regulatory action,” will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY OR SCHOOL DISTRICT

OTA has determined that the adoption of proposed regulatory action will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. OTA also determined that the adoption of the proposed regulatory action will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

OTA has made an initial determination that adoption of the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS

The adoption of the proposed regulatory action might affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESS

OTA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3(b)

OTA has determined that the proposed adoption of the regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, OTA has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. OTA has determined that the adoption of the proposed regulatory action will neither create nor eliminate jobs in the State of California nor result in the elimination

of existing businesses nor create or expand business in the State of California. Furthermore, OTA has determined that the adoption of the proposed regulatory action will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment. As discussed in greater detail, above, OTA anticipates that the adoption of the proposed regulatory action will benefit OTA, FTB, CDTFA, local entities, taxpayers, representatives, and the general public by creating a comprehensive set of procedural regulations which cover, clarify, and explain all of OTA's administrative review functions with regard to conducting an appeal, and thereby improving the public's understanding of the administrative review process, and ensuring transparency and fairness in the conduct of appeals before OTA.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed regulatory action will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

OTA must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed regulatory action.

OTA invites interested persons to present statements with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSONS

Written comments for OTA's consideration, requests, and any other inquiries concerning the proposed regulatory action should be directed to Ms. Myriam Bouaziz, Deputy Director Legislation, by email at regulations.ota@ota.ca.gov or Myriam.Bouaziz@ota.ca.gov ; or by telephone at (916) 926-3918; or by fax at (916) 492-2089; or by mail to Office of Tax Appeals, Attn: Myriam Bouaziz, P.O. Box 989880, West Sacramento, CA 95798-9880.

The backup contact person for these inquiries is Andrew Kwee, Administrative Law Judge III, who may be reached by email at regulations.ota@ota.ca.gov or Andrew.Kwee@ota.ca.gov ; or by telephone at (916) 292-1158; or by fax at (916) 492-2089; or by mail to Office of Tax Appeals, Attn: Andrew Kwee, P.O. Box 989880, West Sacramento, CA 95798-9880.

WRITTEN COMMENT PERIOD

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OTA. Comments may also be submitted via email to the following email address: regulations.ota@ota.ca.gov. Comments may also be submitted to Myriam Bouaziz at the postal address, email address, or fax number provided above, prior to the close of the written comment period. The written comment period closes at 5:00 p.m. on August 27, 2018. OTA will consider only comments received at OTA's offices by that time.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS, INITIAL STATEMENT OF REASONS, AND RULEMAKING FILE

OTA has prepared a copy of the text of the proposed regulatory action illustrating its express terms. The proposed Office of Tax Appeals – Rules for Tax Appeals are not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that “[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations.” OTA has also prepared an initial statement of reasons for the adoption of the proposed regulatory action, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information upon which the proposed regulatory action is based are available to the public upon request.

OTA will have the entire rulemaking file available for public inspection throughout the rulemaking process at its offices located at 400 R Street, Sacramento, CA, 95811. Copies may be obtained by contacting the contact persons identified above. Alternatively, the express terms of the proposed regulatory action and the rest of the rulemaking file are also available on the OTA’s Website at *ota.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8.

OTA may adopt the proposed regulatory action with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, OTA will make the full text of the proposed regulatory action, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulations will be mailed to those interested parties who commented on the original proposed regulations orally or in writing or who asked to be informed of such changes. The text of the resulting regulations will also be available to the public by contacting the designated contact persons identified above. OTA will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS.

If OTA adopts the proposed regulatory action, OTA will prepare a final statement of reasons, which will be made available for public inspection throughout the rulemaking process at its offices located at 400 R Street, Sacramento, CA, 95811, and will also be available on OTA’s Website at *OTA.ca.gov*.

EFFECTIVE DATE

It is anticipated that OTA’s emergency regulations will expire on December 31, 2018, and it is further anticipated that the proposed regulatory action will become effective January 1, 2019. OTA may request an early effective date pursuant to Government Code section 11343.4 to ensure that the proposed regulatory action is effective on January 1, 2019.