

**FRANCHISE TAX BOARD**

**CALIFORNIA CODE OF REGULATIONS, TITLE 18, DIVISION 3, CHAPTER 2.6,  
SUBCHAPTER 5**

**ADD ARTICLE 6.1 (COMMENCING WITH SECTION 19285) THE REFERRAL AND  
HEARINGS ON APPEALS OF PENALTIES IMPOSED BY THE CALSAVERS  
RETIREMENT SAVINGS BOARD**

**SECTION 19285 IS ADOPTED TO READ:**

§ 19285. Definitions

For the purposes of this article:

- (a) "Appeal" means an appeal, under Section 19288 of the Revenue and Taxation Code, of the imposition of a Penalty.
- (b) "CalSavers Retirement Savings Program" has the same meaning as defined in Section 19285 of the Revenue and Taxation Code.
- (c) "Eligible Employee" has the same meaning as defined in Section 100000 of the Government Code.
- (d) "Eligible Employer" has the same meaning as defined in Section 19285 of the Revenue and Taxation Code.
- (e) "Noncompliance with the Requirements of Title 21 (commencing with Section 100000) of the Government Code" means the failure of an Eligible Employer to allow an Eligible Employee to participate in the CalSavers Retirement Savings Program.
- (f) "Penalty" means a penalty imposed under Title 21 (commencing with Section 100000) of the Government Code by the CalSavers Retirement Savings Board for Noncompliance with the Requirements of Title 21 (commencing with Section 100000) of the Government Code.

Authority cited: Section 19290.1, Revenue and Taxation Code.

Reference: Section 19285, Revenue and Taxation Code.

**SECTION 19286 IS ADOPTED TO READ:**

§ 19286. Referral of the Penalty Imposed by the CalSavers Retirement Savings Board

A Penalty may only be referred by the CalSavers Retirement Savings Board to the Franchise Tax Board for collection if both of the following occur:

- (a) The CalSavers Retirement Savings Board has imposed a Penalty in the amount of two hundred fifty dollars (\$250) or more on the Eligible Employer.

(b) The CalSavers Retirement Savings Board has issued a final notice of Penalty application, pursuant to Section 100033 of the Government Code, to the Eligible Employer.

Authority cited: Section 19290.1, Revenue and Taxation Code.

Reference: Section 100033, Government Code; Sections 19286, Revenue and Taxation Code.

**SECTION 19288 IS ADOPTED TO READ:**

§ 19288. Hearings on Appeals of Penalties Imposed by the CalSavers Retirement Savings Board

(a) Applicability of Regulation. This regulation applies to hearings provided by the Franchise Tax Board in connection with an Appeal of the imposition of a Penalty.

(b) Right to Request Hearing, Notification of Right, and Limitation on Scope and Effect of Hearing.

(1) An Eligible Employer shall have the right to one hearing before a Franchise Tax Board hearing officer, related solely to the determination of whether a Penalty was properly imposed by the CalSavers Retirement Savings Board on the Eligible Employer, if both of the following occur:

(A) The Franchise Tax Board has issued a first notice of the imposition of a Penalty to the Eligible Employer.

(B) The Eligible Employer has submitted a written request for a hearing on an Appeal pursuant to subsection (c).

(2) The determination of whether a Penalty was properly imposed shall be based on whether the Eligible Employer complied with Title 21 (commencing with Section 100000) of the Government Code.

(3) The determination of the hearing officer under this regulation shall be binding on the Eligible Employer and the Franchise Tax Board only in connection with the Appeal that was the subject of the hearing, and not in connection with any other appeal or any other matter.

(c) Written Request for a Hearing on an Appeal.

(1) To submit a written request for a hearing on an Appeal, an Eligible Employer shall submit a Request for Hearing form to the Franchise Tax Board.

(2) The Franchise Tax Board shall create the Request for Hearing form.

(d) Time, Date, Place, and Manner of Hearing.

(1) The Franchise Tax Board shall use reasonable diligence to hold a hearing in accordance with this regulation within sixty (60) calendar days of the Franchise Tax Board's receipt of the Request for Hearing form. The failure of the Franchise Tax Board to hold a hearing within sixty (60) calendar days shall not require the Franchise Tax Board to determine that the Penalty was improperly imposed nor does it waive the ability of the Franchise Tax Board to schedule a hearing.

(2) The time, date, and place of the hearing authorized under this regulation shall, when possible, be determined by mutual agreement of an Eligible Employer and the Franchise Tax Board. If a mutual agreement cannot be reached as to the time, date, and place of the hearing, the Franchise Tax Board shall determine the time, date, and place of the hearing and send written notification to the Eligible Employer of that determination at least thirty (30) days prior to the hearing date.

(3) Unless otherwise provided in paragraph (4), a hearing shall be held at a Franchise Tax Board office and scheduled Monday through Friday during normal business hours for the office where the hearing is to be held (generally between 8:00 a.m. and 4:30 p.m., local time).

(4) A hearing may be conducted by telephone, videoconferencing, or similar means if the Eligible Employer and the Franchise Tax Board mutually consent to such an arrangement.

(5) An Eligible Employer may request that the hearing be rescheduled; however, the determination of whether to reschedule the hearing shall be made by the Franchise Tax Board.

(6) An Eligible Employer that does not appear at the scheduled hearing shall be deemed to have waived the right to a hearing under this regulation unless good cause, not within the Eligible Employer's control, exists for the failure to appear. The hearing officer will determine whether good cause exists. If good cause exists, the hearing shall be rescheduled in accordance with paragraph (2).

(e) Hearing.

(1) Hearing Officer.

(A) The Franchise Tax Board shall designate a member of its staff as the hearing officer for the hearing in connection with an Appeal. The Franchise Tax Board shall not appoint any member of its staff as the hearing officer if that staff member had any prior involvement with respect to the Eligible Employer.

(B) The hearing officer shall have the authority to conduct the hearing and make the determination as to whether a Penalty was properly imposed.

(2) Representative.

(A) An Eligible Employer shall have the right to have one representative at the hearing, provided such representative is designated by the Eligible Employer in a written notice signed by the Eligible Employer that is received by the Franchise Tax Board at, or prior to, the commencement of the hearing.

(B) The representative may be any person of an Eligible Employer's choosing, including, but not limited to, an attorney, accountant, bookkeeper, employee, consultant, or business associate.

(3) Conduct of Hearing.

(A) Purpose of Hearing. The purpose of the hearing is to allow the hearing officer and an Eligible Employer to address the relevant issues raised by the Appeal and to develop the factual basis for the determination of the Appeal.

(B) Reasonable Accommodations. The Franchise Tax Board shall provide reasonable accommodations to any Eligible Employer, representative, or witness who has a disability and requires such accommodations to facilitate the hearing process. An Eligible Employer shall notify the Franchise Tax Board in writing of the need for reasonable accommodations at the same time that the Eligible Employer submits a written request to the Franchise Tax Board for a hearing in accordance with this regulation. Such written notification shall specify the accommodations needed.

(C) Language Assistance.

1. An Eligible Employer who cannot speak or understand English or who can do so only with difficulty shall receive language assistance at the hearing if:

a. The Eligible Employer supplies an interpreter,

b. The Eligible Employer requests in accordance with subsection (e)(3)(C)2. that the Franchise Tax Board supply an interpreter who is a member of the Franchise Tax Board's staff, other than the hearing officer, and one is available, or

c. The Eligible Employer requests in accordance with subsection (e)(3)(C)2. a certified administrative hearing interpreter from the list of such interpreters maintained by the California State Personnel Board, and one is available.

2. An Eligible Employer requesting the Franchise Tax Board to supply language assistance services under subsection (e)(3)(C)1.b. or c. shall notify the Franchise Tax Board in writing of the request at the same time that the Eligible Employer submits a written request to the Franchise Tax Board for a hearing in accordance with this regulation. Such written notification shall specify the language assistance needed.

3. If an Eligible Employer requests a certified administrative hearing interpreter pursuant to subsection (e)(3)(C)1.c. and one is supplied, the cost of supplying the interpreter shall be paid by the Eligible Employer, unless, upon request of the Eligible Employer, the hearing officer directs the Franchise Tax Board to pay such cost. The hearing officer's decision to direct the Franchise Tax Board to pay such cost shall be based upon an equitable consideration of all the circumstances of the case, such as the ability of the Eligible Employer to pay.

4. A person providing language assistance under subsection (e)(3)(C)1.a. shall not be considered a representative for purposes of subsection (e)(2), unless so designated by the Eligible Employer.

(D) Confidentiality. A hearing under this regulation is part of the administrative process of the Franchise Tax Board and is covered by the confidentiality provisions contained in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(E) Attendance of Persons Other Than Eligible Employer, Staff of the Franchise Tax Board, and Hearing Officer. No person other than the Eligible Employer, staff of the Franchise Tax Board, and the hearing officer shall be entitled to attend the hearing unless the hearing officer receives:

1. Written notice signed by the Eligible Employer authorizing such person to attend the hearing, and

2. Such person provides the hearing officer with a signed written statement that:

a. Such person shall not record the hearing by means of an audio or video recording or any other means, and

b. Such person shall follow any instructions given by the hearing officer.

(F) Witnesses and Documentary Evidence. At a hearing, an Eligible Employer may present witnesses and/or offer documentary evidence in support of the Eligible Employer's Appeal and to rebut evidence of the Franchise Tax Board.

1. Witnesses.

a. Oral testimony will be evaluated by the hearing officer in making a determination on the Appeal.

b. Oral testimony will be under oath.

c. The Eligible Employer and the Franchise Tax Board shall exchange a list of the names of witnesses who will be present at the hearing so that such lists are received at least ten (10) business days prior to the hearing.

d. The hearing officer may limit the testimony of any witness if and when the hearing officer determines testimony to be repetitious, redundant, or irrelevant.

e. The Franchise Tax Board is not required to compel witnesses to appear at a hearing.

## 2. Documentary Evidence.

a. Documentary evidence will be evaluated by the hearing officer in making a determination on the Appeal.

b. Documentary evidence will be submitted under penalty of perjury.

c. An Eligible Employer and the Franchise Tax Board shall exchange a copy of any documentary evidence to be offered in support of their positions so that such documentary evidence is received at least ten (10) business days prior to the hearing.

d. The Franchise Tax Board is not required to compel production of documents at a hearing.

(G) The CalSavers Retirement Savings Board, upon the request of the Franchise Tax Board, shall provide to the Franchise Tax Board any information necessary for the Franchise Tax Board to make a determination on the Appeal.

(H) Termination of Hearing. The hearing officer shall have the authority to terminate a hearing. Grounds for terminating a hearing include, but are not limited to:

1. An Eligible Employer, that Eligible Employer's representative, or any other individual permitted to be at the hearing persists in making repetitious or irrelevant statements, or

2. An Eligible Employer, that Eligible Employer's representative, or any other individual permitted to be at the hearing by that Eligible Employer behaves in a disruptive manner or does not follow the hearing officer's instructions.

(I) Recording Transcript and Records of Hearing.

1. The Franchise Tax Board is not required to record the hearing by means of an audio or video recording, or any other means, or to prepare a transcript of a hearing under this regulation.

2. The Franchise Tax Board is not required to maintain a record of the documents submitted or statements made during the course of a hearing after an Eligible Employer's Appeal has been decided.

3. No one other than the Franchise Tax Board shall have the right to record the hearing by means of an audio or video recording or any other means.

(f) Determination.

(1) In reaching a determination on an Appeal, the hearing officer shall consider the following:

(A) Any documents or other evidence submitted by or on behalf of the Franchise Tax Board in accordance with this regulation,

(B) Any documents or other evidence submitted by or on behalf of the CalSavers Retirement Savings Board in accordance with this regulation,

(C) Any documents or other evidence submitted by or on behalf of an Eligible Employer in accordance with this regulation,

(D) Whether an Eligible Employer has submitted the information and documentation requested by the Franchise Tax Board,

(E) Whether an Eligible Employer has acted with diligence in responding to notices issued by the CalSavers Retirement Savings Board and the Franchise Tax Board as required by Title 21 (commencing with Section 100000) of the Government Code and Article 6 (commencing with Section 19285) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code,

(F) Any argument made by an Eligible Employer, that Eligible Employer's representative, or the Franchise Tax Board, related to the Appeal, and

(G) The hearing officer's experience, technical competence, and specialized knowledge.

(2) Within thirty (30) calendar days of the completion of the hearing, the hearing officer shall determine whether an Eligible Employer is subject to the Penalty.

(A) If the hearing officer determines that the Penalty shall not be imposed on an Eligible Employer, the Franchise Tax Board shall, within thirty (30) calendar days of the completion of

the hearing, send a written notification to the Eligible Employer and the CalSavers Retirement Savings Board of such determination.

(B) If the hearing officer determines that the Penalty was properly imposed on an Eligible Employer, the Franchise Tax Board shall, within thirty (30) business days of the completion of the hearing, send a written notification to the Eligible Employer and the CalSavers Retirement Savings Board that:

1. Informs the Eligible Employer that the hearing officer determined that the Penalty was properly imposed and that the Eligible Employer remains liable for the Penalty, and

2. Provides the Eligible Employer with the hearing officer's written determination that the Penalty was properly imposed on the Eligible Employer. The determination shall be based on the consideration of items described in subsection (f)(1) of this regulation, and shall include a statement of the factual and legal basis of the determination related to whether the Penalty was properly imposed on the Eligible Employer, and the names of all persons in attendance at the hearing. If the determination is based substantially on the credibility of one or more witnesses, the determination shall identify any specific evidence of the observed demeanor, manner, or attitude of the witnesses that supports the determination.

(g) Resolution Outside Hearing Process.

(1) At any time, an Appeal may be resolved by any of the following:

(A) An Eligible Employer paying the Penalty.

(B) An Eligible Employer withdrawing the Appeal.

(C) CalSavers Retirement Savings Board informing the Franchise Tax Board that the Penalty shall not be imposed due to the Eligible Employer's compliance with the requirements of Title 21 (commencing with Section 100000) of the Government Code.

(2) To withdraw an Appeal, an Eligible Employer shall provide written notice to the Franchise Tax Board declaring the Appeal withdrawn and signed under penalty of perjury.

(h) Notifications, Notices, and Requests.

(1) Notifications and Notices to Eligible Employers. All notifications and notices to the Eligible Employer under this regulation shall be mailed by first-class mail to the address of the Eligible Employer on the written request for a hearing on an Appeal, or in the absence of such address, to the last known address of the Eligible Employer pursuant to Section 18416 of the Revenue and



Taxation Code, unless the Eligible Employer notifies the Franchise Tax Board in a writing signed by the Eligible Employer, of an alternative address. If the Eligible Employer notifies the Franchise Tax Board in a writing signed by the Eligible Employer of an alternative address, all future notices to the Eligible Employer under this regulation shall be mailed by first-class mail to that address, until the Eligible Employer notifies the Franchise Tax Board of another alternative address. In addition to sending notices and notifications by first-class mail, all notifications and notices to the Eligible Employer under this regulation may be sent by facsimile or encrypted email, if the Eligible Employer requests in writing that the Franchise Tax Board send notifications and notices to the Eligible Employer by facsimile or encrypted email and provides sufficient instructions to do so.

(2) Notifications, Notices, and Requests to Franchise Tax Board. All notifications, notices, and requests to the Franchise Tax Board under this regulation shall be mailed by first-class mail to the Franchise Tax Board at an address designated by the Franchise Tax Board.

(i) Applicable Date of Regulation. This regulation shall apply to any Appeal received by the Franchise Tax Board on or after the effective date of this regulation.

Authority cited: Section 19290.1, Revenue and Taxation Code.

Reference: Section 19288, Revenue and Taxation Code