

NOTE: This paper is intended only for purposes of facilitating discussion at the Interested Parties Meeting scheduled for August 11, 2020.

EXPLANATION OF DRAFT LANGUAGE

The focus of this Interested Parties Meeting (IPM) for which this document is prepared, will be to discuss the proposed amended draft text at Title 18, California Code of Regulations (CCR) Section 25137(d) regarding procedural guidance for petitions and the ex-parte communication rule. In this document, numerically organized introductory statements for the subsections of the proposed amended text are followed by the applicable portion of the proposed amended text with additions for this IPM in single underline and italics, and deletions shown in ~~single strikeout and italics~~, and thereafter an explanation for the proposed amendment as appropriate. This draft has been re-organized and streamlined for better clarity and consistency. The numbering and lettering have also been modified accordingly.

To facilitate reading, please note that the following proposed changes are not discussed in this document: edits to the language regarding references to the Franchise Tax Board or Franchise Tax Board, itself; proper formatting for references to the California Revenue and Taxation Code; and nonsubstantive edits to correct and clarify changes made from prior versions of the draft language.

1. CCR Section 25137(d) was amended to provide clarity and streamline the terms.

(d) In cases deemed appropriate by the Franchise Tax Board, itself, it may elect to hear and decide petitions filed pursuant to Section 25137 instead of having this function performed by the ~~FTB Franchise Tax Board staff~~ or may elect to hear and decide a taxpayer's objection ~~appeals of denied petitions for a to a variance action determination or FTB staff impositions of alternative apportionment methodologies pursuant to regulation section 25137~~. As a condition to having such petition considered by the Board, the petitioning taxpayer shall waive in writing the confidentiality provisions of Section 19542 with respect to such petition and to any other facts which may be deemed relevant in making a determination. Consideration of said petitions by the Board shall be in open session at a regularly scheduled meeting.

This language was modified to make the subject matter clearer and to streamline the subject matter by using defined terms.

2. CCR Section 25137(d)(1) was amended to clarify three (3) definitions and add one (1) definition.

(1) Definitions. For purposes of subsection (d) the following definitions apply.

This introductory sentence was added to apply to the following revised definitions.

~~(A) "Board member staff" means staff employed by any of the three members of the Franchise Tax Board.~~

~~(B)(A) "Brief" means a written document containing an argument or arguments supporting a party's position. A brief may, but is not required to, include citations to specific laws, regulations, or other authorities. A brief may be in the form of a letter, other informal writing, or formal legal writing. Briefs are subject to the requirements identified in these regulations.~~

~~(C)(B) "Ex-parte communication" means any communication concerning a pending or impending petition to or from between one of the three members of the Franchise Tax Board, itself, and/or Franchise Tax Board member staff, outside the presence of either FTB-Franchise Tax Board staff or and the petitioner taxpayer without notice to all parties and/or his or her representative, or FTB staff.~~

Unnecessary language in the definition of "ex-parte communication" was deleted. The word "petitioner" was replaced with "taxpayer" to be consistent throughout the regulation.

~~(C) "Franchise Tax Board member staff" means staff employed by any of the three members of the Franchise Tax Board.~~

~~(D) "FTB-Franchise Tax Board staff" means staff employed by the Franchise Tax Board and does not include any Franchise Tax Board member staff.~~

~~(E) "Open session at a regularly-scheduled meeting" means the open session of a Franchise Tax Board regularly-scheduled meeting of the Franchise Tax Board.~~

~~(F) "Petition" means a request by a taxpayer for the Franchise Tax Board, itself, to consider an alternative apportionment methodology pursuant to Section 25137 at an open session at a regularly-scheduled meeting.~~

The word "petition" was defined to provide detailed clarity throughout the regulation, provide consistency within the regulation, and avoid redundancy.

~~(F) "Three-member board" means California Franchise Tax Board as defined by California Government Code section 15700.~~

~~(G) To "make a record" means to memorialize in writing the identity of who initiated the inadvertent ex-parte communication, and all parties to the appeal who were entitled to participate. The record made must reflect the general substance of what was discussed and the response of any Franchise Tax Board member and/or the Board member's staff. If any documents are provided or exchanged, they must be identified, copied and made part of the record.~~

~~(H)(F)(G) "Variance action" means a taxpayer's request for Franchise Tax Board staff to allow the taxpayer to use filed petition for an alternative apportionment~~

methodology pursuant to Section 25137 before FTB staff, or a FTB Franchise Tax Board staff imposed imposition of an alternative apportionment methodology pursuant to Section 25137, to which the taxpayer objects.

This language was modified to make the definition of "variance action" clearer and more streamlined.

3. CCR Section 25137(d)(2) was modified to simplify and streamline the introductory language for provisions applicable to petitions.

~~(2) Petitions. In the event a variance action has been filed with Franchise Tax Board staff by a taxpayer, If the taxpayer desires to petition the Franchise Tax Board, itself, to hear and decide its petition filed pursuant to Section 25137 or of an adverse variance action determination, the following procedures shall apply. The following shall apply to petitions filed pursuant to this subsection:~~

This language was modified to simplify and streamline the subject matter. Redundant language due to a new definition of the word "petition" was deleted. An introductory paragraph was also added providing that the following subparagraphs apply to petitions filed within this subsection.

4. CCR Section 25137(d)(2)(A) was added to deal specifically with the requirements pursuant to the California Public Records Act and the Bagley-Keene Act.

(A) Any records submitted to the Franchise Tax Board, itself, by either the taxpayer or the Franchise Tax Board staff, as well as the decision of the Franchise Tax Board, itself, shall be open to public inspection pursuant to the California Public Records Act, Government Code section 6253 and the Bagley-Keene Act, Government Code section 11125.1. Any records of the Franchise Tax Board staff that are not submitted to the Franchise Tax Board, itself, shall remain confidential pursuant to Revenue and Taxation Code section 19542.

This subparagraph was added to make clear that any records submitted to the Franchise Tax Board, itself, as well as the decision of the Franchise Tax Board, itself, are subject to the California Public Records Act and the Bagley-Keene Act, and are therefore subject to public inspection. Records not submitted to the Franchise Tax Board, itself, are subject to Revenue and Taxation Code section 19542 and will remain confidential.

5. CCR Section 25137(d)(2)(B) was amended to further specify and make clearer the procedures and deadlines for a petition to the Franchise Tax Board.

~~(A)(B) The taxpayer shall file its petition with the Chief Counsel of the Franchise Tax Board explaining why its requested alternative apportionment methodology pursuant to Section 25137 is warranted~~

appropriate, or why FTB's Franchise Tax Board staff's imposed alternative apportionment methodology is not warranted appropriate. Such petition shall be filed no later than either within: and/or its representative, may present facts and assertions pertaining to the variance action in person to FTB staff who will hear and decide the variance action.

1. Sixty (60) calendar days after from the date of a written adverse variance action determination by FTB Franchise Tax Board staff; to impose an alternative apportionment methodology pursuant to Section 25137

2. One hundred twenty (120) calendar days from filing the date of a claim for refund filed pursuant to Revenue and Taxation Code sSection 19301 in which the alternative apportionment methodology is relevant to the taxable years in the claim for refund;
or

3. Sixty (60) calendar days from prior to a scheduled protest hearing the date of a protest filed pursuant to Revenue and Taxation Code sSection 19041 19044 in which the alternative apportionment methodology is relevant to the taxable years being protested;

4. Five (5) calendar days from the date of an appeal filed with the Office of Tax Appeals in which the alternative apportionment methodology is relevant to the taxable years on appeal;

5. Sixty (60) calendar days from the date of a letter of rejection by the Settlement Bureau of the Franchise Tax Board in which the alternative apportionment methodology is relevant to the taxable years at settlement; or

6. Sixty (60) calendar days from the date of applicability as specified in subsection (d)(5) of this regulation.

This language was modified to make the filing deadlines of the petition clearer and more streamlined. The new language identifies three additional deadlines for filing a petition. The new language also specifies that the petition should be relevant to the taxable years of the deadline triggering event. In addition, the word "warranted" was replaced with "appropriate" as a more accurate measurement of the proposed alternative apportionment methodology.

(B) At the time the taxpayer's petition is filed, the taxpayer shall submit a waiver to the Chief Counsel of the Franchise Tax Board, waiving the confidentiality provisions of Section 19542 with respect to the taxpayer's petition. If a variance action initiated by the taxpayer pursuant to Section 25137 is not granted by FTB staff, either in whole or in part, or if the variance action was imposed by staff requiring employment of an alternative apportionment

methodology in a manner to which the taxpayer objects, the taxpayer may appeal the variance action to the Board, itself.

This language has been deleted and replaced by the new language in subsection (d)(2)(A) above.

6. CCR Section 25137(d)(2)(C) was amended to further specify the notification procedures for a petition to the Franchise Tax Board.

(C) Upon submittal Within sixty (60) calendar days from the date of the taxpayer's petition and waiver of confidentiality, the Executive Officer of the Franchise Tax Board, or the Executive Officer's designee, shall notify the Franchise Tax Board, itself, of the receipt of the taxpayer's petition.

This subparagraph was modified for clarity, and to provide a specific timeframe for when the Executive Office of the Franchise Tax Board will notify the Franchise Tax Board, itself, of the receipt of the petition.

7. CCR Section 25137(d)(2)(D) was added to further specify the notification procedures for a petition to the Franchise Tax Board.

(D) Within sixty (60) calendar days from the date of the taxpayer's petition, the Chief Counsel of the Franchise Tax Board shall notify the taxpayer of the receipt of the taxpayer's petition in writing, which shall include a briefing schedule as specified in subsection (2)(H).

This subparagraph was modified and relocated from the previously proposed subsection (d)(2)(E) and provides that the Chief Counsel of the Franchise Tax Board shall notify the taxpayer of the receipt of the petition in writing. The modified language also provides that the written notification will also include a briefing schedule.

8. CCR Section 25137(d)(2)(E) was modified to clarify the language and maintain consistency throughout this regulation.

(D)(E) If ~~FTB~~ Franchise Tax Board staff have not previously made a determination on the request to use an alternative apportionment methodology which is the subject of the taxpayer's petition on the imposition or request for an alternative apportionment methodology before the Franchise Tax Board, itself, the Chief Counsel of the Franchise Tax Board shall ensure ~~FTB~~ Franchise Tax Board staff determines whether the alternative apportionment methodology is warranted appropriate.

This subparagraph was modified to make clearer that if the petitioner has not previously sought relief from Franchise Tax Board staff, the Chief Counsel of the Franchise Tax Board shall have Franchise Tax Board staff evaluate the petition for appropriateness. In addition, the word "warranted" was replaced with "appropriate" as a more accurate measurement of the proposed alternative apportionment methodology.

9. CCR Section 25137(d)(2)(F) was added to require the parties to file a joint request to defer proceedings if an appeal has been filed with the Office of Tax Appeals.

(F) If the taxpayer files an appeal with the Office of Tax Appeals for the taxable years in which the alternative apportionment methodology is relevant to the taxable years on appeal, the taxpayer and Franchise Tax Board staff shall file a joint request to defer proceedings with the Office of Tax Appeals pending a decision by the Franchise Tax Board, itself.

This subparagraph was added to require the taxpayer and the Franchise Tax Board staff to file a joint request to defer proceedings with the Office of Tax Appeals pending a decision by the Franchise Tax Board, itself, if the taxpayer files an appeal with the Office of Tax Appeals for the same taxable years in which the alternative apportionment methodology is relevant.

10. CCR Section 25137(d)(2)(G) was modified and relocated from previously proposed subsection (d)(2)(F).

(G) If a notice of proposed deficiency assessment, within the meaning of Revenue and Taxation Code section 19057(a), has not been mailed to the taxpayer with respect to the taxable years pertaining to the petition, the taxpayer shall agree in writing to an extension of the statute of limitations for the mailing of the notice of proposed deficiency assessment, until one-hundred and eighty (180) calendar days after the Franchise Tax Board, itself, has made its decision during an open session at a regularly-scheduled meeting.

The word "determination" was replaced by "decision" to maintain consistency throughout the regulation.

11. CCR Section 25137(d)(2)(H) was amended to make clearer and more streamlined.

~~(E)(H) When FTB Franchise Tax Board staff have made a determination on whether the alternative apportionment formula methodology is appropriate, the Chief Counsel of the Franchise Tax Board shall acknowledge to the taxpayer that the petition has been received and set a briefing schedule pursuant to this subsection. Ex parte communication rules which appear in this Regulation at section 25137(d)(4) apply beginning when the Chief Counsel acknowledges taxpayer's petition and continues while the petition is pending with the Franchise Tax Board, itself, and releases when the Franchise Tax Board, itself, renders a decision. Taxpayer shall submit a its opening brief to the Chief Counsel of the Franchise Tax Board within sixty (60) calendar days of the Chief Counsel's acknowledgement from the date of the document notifying the taxpayer of the receipt of the taxpayer's petition.~~

~~(3) In the event the taxpayer desires to appeal a variance action to the Three-member board, the following procedures shall apply:~~

~~(A) The taxpayer must waive, in writing, the confidentiality provisions of Section 19542 with respect to such variance action, which waiver must be sent to the Franchise Tax Board Chief Counsel,~~

~~(B) To file an appeal under this regulation, the taxpayer must submit a brief, as provided for within this section, within sixty (60) calendar days of being notified in writing by FTB staff that a variance action initiated by the taxpayer filing a petition pursuant to Section 25137 was denied, in whole or in part, by FTB staff, or a variance action was imposed by FTB staff requiring employment of an alternative apportionment methodology. After the taxpayer has submitted its opening brief, FTB Franchise Tax Board staff has shall have thirty (30) calendar days to submit its opening brief. Thereafter, the taxpayer has shall have thirty (30) calendar days to submit a reply brief. Further briefing may be required by the Franchise Tax Board, itself. All briefs are subject to the following rules requirements:~~

1. Opening Briefs are limited to double-spaced thirty (30) pages and twelve (12) point font per inch of paper.

2. Reply briefs are limited to double-spaced fifteen (15) pages and twelve (12) point font per inch of paper.

3. All briefsing must be filed by the parties with the Chief Counsel of the Franchise Tax Board Chief Counsel.

The deleted language was modified and relocated to subsections (d)(2)(D) and (d)(4)(A). The word "opening" was added to "brief" and the word "calendar" was added to "days" to more clearly specify the document to be submitted and the amount of time taxpayer has to submit said document. Additional language was added to clarify that the sixty (60) calendar day deadline to file the opening brief begins from the date of the document notifying the taxpayer of the receipt of the taxpayer's petition. This language was further modified with some minor changes to the wording for added clarification.

~~(C) Upon submittal of the taxpayer's opening appeal brief and the written waiver of the confidentiality provisions of Section 19542 with respect to such variance action and to any other facts that may be deemed relevant by the three-member board in making a decision on the variance action, the Franchise Tax Board's Executive Officer, or the Executive Officer's designee, shall notify the Three-member board of the taxpayer's request to have the Three-member board hear and decide the appeal of the variance action.~~

This language was modified and relocated to subsection (d)(2)(A).

~~(D)(F) If a notice of proposed deficiency assessment, within the meaning of Section 19057(a), has not been mailed to the taxpayer with respect to the tax year pertaining to the petition variance action, the taxpayer must shall agree in writing if requested by the Franchise Tax Board to an extension of the statute of limitations for the mailing of the notice of proposed deficiency assessment, until 180 days after the Franchise Tax Board, itself, appeal of the variance action has made its determination during an open session at a regularly-scheduled meeting. been heard and decided by the Franchise Tax Board.~~

This language was modified and relocated to subsection (d)(2)(G).

12. CCR Section 25137(d)(2)(H) was modified to clarify the notification procedures for the hearing date.

~~(E)(G)(I) Upon completion of briefing, the Franchise Tax Board, itself, may schedule a hearing during an open session at a regularly-scheduled meeting to consider the taxpayer's petition. notification by the Executive Officer or the Executive Officer's designee, as provided above in subsection (3)(C), the Franchise Tax Board shall set a hearing in an open session at a Three-member board meeting to hear and decide the taxpayer's appeal of the variance action. The taxpayer will shall be notified in writing by Franchise Tax Board staff the Chief Counsel of the Franchise Tax Board the Franchise Tax Board of the hearing date.~~

This subparagraph was modified to provide that the Chief Counsel of the Franchise Tax Board, rather than Franchise Tax Board staff, will notify the taxpayer in writing of the hearing date.

13. CCR Section 25137(d)(3) was amended to create a new heading and introductory language to simplify and streamline the provisions applicable to hearings.

(3) Hearings. The following shall apply to hearings on petitions filed pursuant to this subsection:

This paragraph was added to separate out the rules and procedures applicable to hearings of petitions under subsection (d). An introductory paragraph was added providing that the following subparagraphs apply to hearing of petitions filed within this subsection.

14. CCR Section 25137(d)(3)(A) was modified with minor changes to clarify the provision.

~~(F)(H)(A) The Franchise Tax Board, shall give Tthe parties shall each have to the appeal thirty (30) minutes to present their respective positions and an additional fifteen (15) minutes for the taxpayer's reply. The Franchise Tax~~

Board, itself, Three-member board has the discretion to allow additional time **as warranted**. Presentations of the parties at the hearing shall occur as follows:

1. The taxpayer shall **first** make its opening presentation.
2. ~~FTB-Franchise Tax Board~~ staff shall make its opening presentation immediately following the taxpayer's opening presentation.
3. The taxpayer shall make its reply presentation immediately following ~~FTB Franchise Tax Board~~ staff's **opening** presentation.

The word "each" was added to clarify that the time limit applies to each party rather than to both parties combined.

15. CCR Section 25137(d)(3)(B) was amended to specify notification procedures of witnesses to the Franchise Tax Board, itself. Minor changes were also made to clarify the provision.

~~(G)(1)(B) Witnesses. A party seeking wishing to have an expert or percipient witness or witnesses testify before the Franchise Tax Board, itself, and must notify the other party to the proceeding in writing no later than fifteen (15) calendar days after the filing of the taxpayer's reply brief prior to the hearing date, of the identity of the witness or the witnesses, the general nature of the expected testimony, and the expected duration of the testimony at the hearing. The Executive Officer of the Franchise Tax Board, or the Executive Officer's designee, shall notify the Franchise Tax Board, itself, of any witness, the general nature of the expected testimony, and the expected duration of the testimony at the hearing.~~

This subparagraph was modified to provide that the Executive Office of the Franchise Tax Board, or its designee, shall notify the Franchise Tax Board, itself, of any witness, the general nature of the expected testimony, and the expected duration of the testimony at the hearing. The language was also modified with some minor changes to the wording for added clarification and consistency.

16. CCR Section 25137(d)(4) was modified with minor changes to clarify the provision.

~~(34)(4) Applicability of Ex-parte Communication Rule. Rules. Except as provided by this regulation, there shall be no ex-parte communication regarding any substantive issue in the petition without notice and opportunity for all parties to participate in the communication.~~

The word "rules" was replaced with "rule" as there is only one ex-parte communication rule.

17. CCR Section 25137(d)(4)(A) was modified to make clearer and streamline the subparagraph in relation to the other parts of the regulation.

~~*(A) The Ex-parte communication rules do not apply during the pendency of a petition variance action that is initially submitted before FTB Franchise Tax Board staff, or the Three-member board.*~~

This language was modified with a minor change and relocated to subsection (d)(4)(B).

~~*(B)(A) The Ex-parte communication rules applyes beginning with the acknowledgement of the taxpayer's petition continuing until a final decision has been rendered, as is set forth in subsection (2)(E) above notification to the taxpayer and the Franchise Tax Board, itself, of the receipt of the taxpayer's petition, continues while the petition is pending with the Franchise Tax Board, itself, and terminates when the Franchise Tax Board, itself, renders a decision. The Executive Officer of the Franchise Tax Board, or his or her the Executive Officer's designee, shall notify the Franchise Tax Board, itself, of the applicability of the ex-parte communication rules to the petition. during the pendency of any appeal to the Franchise Tax Board of a variance action as follows: There shall be no communication, direct or indirect, regarding any substantive issue relating to the appeal between any Franchise Tax Board member or Board member staff, appellant or appellant's employee or representative, and/or FTB staff, without notice and opportunity for all parties to participate in the communication.*~~

This subparagraph was modified and relocated from previously proposed subsection (d)(2)(E) and makes clearer the applicability of the ex-parte communication rule. This language was modified to clarify that ex-parte communication begins from the date of notification to the taxpayer and the Franchise Tax Board, itself, of the taxpayer's petition. This language was also modified with some minor changes to the wording for added clarification and consistency.

18. CCR Section 25137(d)(4)(B) was relocated from previously proposed subsection (d)(4)(A).

~~*(B) The ex-parte communication rule does not apply during the pendency of a variance action that is before Franchise Tax Board staff.*~~

This subparagraph was relocated from previously proposed subsection (d)(4)(A).

19. CCR Section 25137(d)(4)(C) was modified with minor changes and separate subparagraphs to make clearer the instances when the ex-parte communication rule does not apply.

~~*(C) Applicability of tThe ex-parte communication rules does not apply to communications between members of the Franchise Tax Board, itself, or*~~

Franchise Tax Board member staff, FTB-Franchise Tax Board staff, and the taxpayer or its representatives during the pendency of a petition if the communication is only related to the scheduling of a future discussion of the petition, and which only involves one member of the Franchise Tax Board, itself, member at a time. ~~In such case: in which case: ends when the Franchise Tax Board renders its decision on the appeal of a variance action.~~

~~(D) Permitted communications between the Franchise Tax Board, FTB staff, and the taxpayer and/or its employees and/or representatives during the pendency of an appeal of a variance action include:~~

~~1. Briefs and oral presentations at open session are not ex-parte communications, and are permitted communications.~~

~~2. Ex-parte communications are permitted provided that the communication does not pertain to any matters within the variance action, but instead involves communication between the taxpayer, the representative, the board member or Board member staff, and FTB staff that only relates to the scheduling of a future discussion about the substantive matters of the variance action. If this is the goal of such an ex-parte communication, then:~~

~~(a)1. The Franchise Tax Board member and/or Franchise Tax Board member staff shall invite all parties and/or their representatives, but no other Franchise Tax Board members, to participate in a scheduled telephonic discussion or in-person meeting as soon as practicable.~~

~~2. Any communication for purposes of setting up arranging this scheduled future discussion or in-person meeting shall only concern the scheduling and not the substance of the petition subject variance request.~~

~~3. All parties and/or their representatives and the Franchise Tax Board member and/or Franchise Tax Board member staff shall coordinate to work together and make a reasonable effort to arrange find a mutually agreeable date, time, and place to hold the telephonic discussion or in-person meeting between the parties and one Franchise Tax Board member at a time. If the parties cannot agree on a date, time, and place to hold the telephonic discussion or in-person meeting by five (5) working calendar days before the scheduled telephonic discussion or in-person meeting, then the meeting it shall not occur be held.~~

Unnecessary language was deleted. The word "working" was replaced with "calendar" for clarity and consistency throughout the regulation.

(b)24. If the telephonic discussion or in-person meeting has been scheduled and one of the parties does not participate or attend, then the telephonic discussion or in-person meeting may proceed and will not be considered an ex-parte communication. All parties must be given the opportunity to participate in a telephonic discussion or attend an in-person meeting scheduled at a mutually agreeable place, date, and time.

5. Regardless of whether all parties actually participate in the telephonic discussion or attend the in-person meeting, the Franchise Tax Board member ~~and/or Franchise Tax Board member's~~ staff participating in the telephonic discussion or attending the in-person meeting must:

(i) a. Document in writing substantive matters discussed at the telephonic discussion or in-person meeting.

(ii) b. Provide to all parties ~~and/or their representatives to the petition, but not to other Franchise Tax Board members, on the day subsequent to within ten (10) calendar days from the date of the telephonic discussion or in-person meeting,~~ the documentation ~~pertaining to the substantive matters addressed~~ and copies of any materials ~~distributed by any of the parties shared by the parties, the Franchise Tax Board member, and/or Board member staff participating in the telephonic discussion or attending the in-person meeting.~~ ~~to all parties to the appeal and their representatives within fifteen (15) days of the telephonic discussion or in person meeting.~~ ~~If any party is does not participate in absent from the telephonic discussion or in-person meeting, that party shall have within fifteen (15)-twenty (20) calendar days from the date of the telephonic discussion or attend in-person meeting the Franchise Tax Board member and/or the Board member staff must provide an opportunity for the absent party or parties to respond to the substantive matters discussed documentation and the any materials distributed. Such written response shall be provided to the opposing party.~~ ~~for the telephonic discussion or in person meeting within fifteen (15) days of the telephonic discussion or in person meeting. The documentation of specific matters discussed must be in sufficient context and detail to allow the absent party or parties the opportunity to respond to any matters discussed at the telephonic discussion or in person meeting in writing and/or submit any other materials for consideration he or she may wish to provide to the Board member and/or Board member staff. Any such writing or material must also be supplied at the same time to the opposing party or its representatives within ten (10) days before the hearing.~~

The deadline to provide all parties with the documentation of the telephonic phone or in-person meeting was changed from "on the subsequent day to" to "within ten (10) calendar days from the date of" to allow a more reasonable time to provide the documentation. The deadline to respond was changed from "fifteen (15) calendar days" to "twenty (20) calendar days."

20. CCR Section 25137(d)(4)(D) was modified with minor changes to clarify the provision.

~~(E)~~**(D) In the event an ex-parte communication occurs**, ~~When there has been an ex-parte communication, the Franchise Tax Board member and/or Franchise Tax Board member staff shall document~~ **must in writing the substance of the ex-parte communication and shall provide it to the other Franchise Tax Board members and the parties to the petition during the open session of the** ~~at a regularly-scheduled meeting when the petition is considered by the Franchise Tax Board, itself. make a record of the ex-parte communication and provide it to the Franchise Tax Board members present at the Franchise Tax Board's open meeting where the Franchise Tax Board will consider the appeal of the variance action. If any documents are provided or exchanged, copies must be provided to all parties and/or their representatives within fifteen (15) days of the telephonic discussion or in person meeting.~~

Unnecessary language was deleted. The phrase "open session of the regularly-scheduled meeting" was changed to "open session at a regularly-scheduled meeting" to accurately state a defined phrase and to maintain consistency throughout the regulation.

21. CCR Section 25137(d)(5) was modified with minor changes to clarify the provision.

~~(5)(4)(5) Applicability of Date. The amendments to subsection (d) are applicable only as of the effective date of the amendments to this subsection of the regulation. revisions to this subsection prospectively apply to variance actions and appeals of variance actions filed on or after the effective date of these changes.~~

The letter "D" was capitalized. The word "the" was added.

22. Reference was amended to include all referenced statutes.

Reference: Sections 6253 and 11125.1, Government Code. Sections 19041, 19301, 19507(a), 19542, and 25137, Revenue and Taxation Code.