


CITY OF LOS ANGELES
INTERDEPARTMENTAL CORRESPONDENCE

Date: September 7, 2023

To: Budget, Finance, and Innovation Committee

From: Diana Mangioglu
City Treasurer / Director of Finance 
Office of Finance

Subject: **COUNCIL FILE 23-0625 RELATIVE TO THE OFFICE OF FINANCE
ASSESSMENT APPEAL PROCESS AND THE TAX BOARD OF REVIEW**

SUMMARY

On June 13, 2023, the subject motion (Rodriguez-Blumenfield-McOsker) requested the City Attorney, with the assistance of the Office of Finance (Finance), to clarify the entity with the authority to make the final determination in the appeal process of business tax assessments and provide recommendations to revise the Los Angeles Municipal Code (LAMC) to allow for Finance or Council, upon Finance's recommendation to review, to have the authority to make the final determination. The Office of Finance agrees that the existing structure and governing language is inconsistent with itself. To address these concerns and prevent final determinations from moving forward without review by the Office of Finance, independent from staff already involved in the existing administrative review process and the City Attorney, Finance recommends creating a clear and transparent framework for the Tax Board of Review (TBOR, or "the Board") through procedural guidelines defined by this Office.

The TBOR has historically been the final step of the appeal process for taxpayers who wish to contest an assessment of business tax due to Finance. The initial step of the appeal process is an administrative hearing before the Assessment Review Officer (ARO). Since the TBOR is an entity that is established by Finance, pursuant to LAMC § 21.16(g), and is therefore subject to rules established by Finance, this Office can use the discretion provided therein to institute a set of procedures for the operation and administration of the TBOR. These rules can address many of the concerns that have been raised regarding the Board throughout its history. These rules may include, but are not limited to: the qualifications, experience, and neutrality of TBOR members; transparency and clarity on determinations and the process by which the determinations can be made; effectiveness of the City's representation in TBOR proceedings; and timeliness of case resolution. Lastly, Finance recommends revisions to the LAMC as directed by Council to avoid lasting confusion.

HISTORY OF THE TAX BOARD OF REVIEW

The TBOR is currently an optional step in the appeal process pursuant to LAMC § 21.16. It was created at least 50 years ago to establish an administrative review process to evaluate appeals from taxpayers regarding their business tax assessments. From the oldest available records it appears that as of 1969, the Board was designed “to streamline present business tax administrative hearing procedures by promoting efficiency and economy for both the taxpayer and the City” (C.F. 142163). At that time, members of the Board were defined in the LAMC as the Controller, City Clerk, and City Attorney, or their representatives. From that time until 2001, the TBOR operated as the sole body hearing business tax appeals, and its decisions were deemed final.

In 2001, Council adopted the recommendations of the Business Tax Advisory Committee to create the Assessment Review Officer (ARO) as an intermediate appellate body to review assessments as the first level of appeal and to revise the TBOR’s membership to the Director of Finance, City Attorney, or their respective designees, and a public member “selected from a panel of tax professionals, such as attorneys and certified public accountants” (C.F. 98-2358-S12). This private citizen was intended to help provide the taxpayer with “confidence that the decisions rendered are fair and impartial” (C.F. 98-2358-S9).

In 2005, Council adopted the recommendations of the City Attorney in light of changes in case law surrounding potential Brown Act requirements that could create a conflict with confidentiality requirements of taxpayer information. This revision changed the TBOR from a decision-making body created by the formal action of Council, a legislative body, to an advisory body created at the discretion of the Office of Finance. Members and their qualifications were not defined but suggested as “City staff and members of the public, including members of the business community” (C.F. 05-1394). The authority given to this Office to “establish one or more advisory bodies” (LAMC § 21.16(g)), while it addressed the identified Brown Act concerns, created uncertainty regarding the finality of the TBOR’s determinations where there had only been certainty in its finality prior to this amendment.

In 2011, Council enacted revisions that created additional rules on the TBOR’s ability to overturn its previous determinations, specifically addressing situations in which the TBOR could issue multiple conflicting decisions regarding the same taxpayer (C.F. 09-2476). Critically, this revision also added the following language to LAMC § 21.16(i)(1): “The assessment shall be final and the administrative review process shall be complete when the Board of Review issues its determination.” This is the strongest language regarding the finality of TBOR determinations that has been included in the LAMC since 1969, even with the 2005 revisions and decades of consistent practice.

CURRENT TAXPAYER APPEAL PRACTICES

Currently, a taxpayer's right to appeal for administrative remedy includes a hearing with the ARO and the TBOR. During these hearings, the appellant and a representative of the Director of Finance are provided with the opportunity to present their respective positions along with supporting evidence.

The first level of appeal is the ARO, which is a Senior Tax Auditor in the Office of Finance with experience reviewing more complicated cases. Finance generally has two assigned hearing officers, allowing the Department to ensure that the hearing officers have had no previous involvement with the audits they are reviewing. The ARO, while independent from the initial audit process, reports to a Chief Tax Compliance Officer who reviews the draft ARO determinations before they are released to the taxpayer.

When the ARO has sustained an assessment (i.e., rejected the taxpayer's appeal), the taxpayer may file an appeal with the TBOR. The LAMC provides no deadline for this filing, though the Office of Finance appeals guidelines state that the appeal should be filed within fifteen (15) days of the ARO decision. Once the appeal is filed, a hearing is scheduled.

The TBOR is currently comprised of three members: 1) one long-time member with significant knowledge and experience of the City's tax code and general tax law; 2) one member who has been on the board for approximately two years after an extensive career with the Office of Finance; and 3) a current Senior Tax Auditor with the Office of Finance, who has experience interpreting the City's tax code in the context of audit cases. There is no prescribed practice for replacing or appointing TBOR members. Board members are included in the Office of Finance's Conflict of Interest Policy as Level One reporters, meaning they are required to complete Form 700 on an annual basis and disclose gifts and potential conflicts at the same level as department management. Finance staff have consulted with the Ethics Commission and feel that this is the appropriate level of disclosure for this role.

Additional details, requirements, and timelines of these hearings and restrictions on the TBOR's discretion in certain situations are prescribed in Subsections (b) through (j) of LAMC § 21.16. There is no mention of the internal operations of the TBOR and, other than the suggestion added in 2005, there is no guidance on its membership.

Historically, hearings have been held in person, though during the pandemic they have been held remotely. At the hearing, the Office of Finance representative, generally the Senior Tax Auditor who reviewed the original audit, presents the City's position, and the taxpayer and their representative(s) present the taxpayer's position in addition to any evidence or information they deem relevant. After the hearing, additional information can be requested by the TBOR from the taxpayer, Finance representative, or both; audits and/or audit findings can be revised; and other discussions between the TBOR

members, Finance staff, and the taxpayer and their representatives may occur. Subsequently, the TBOR arrives at a determination and the internal member of the Board drafts the determination report. Once the determination is written, it is signed by each Board member and mailed to the taxpayer.

The TBOR is not considered a body subject to the requirements of the Brown Act. Under the Brown Act, all “local agency” meetings must be open to the public, and all records reviewed by the local agency must also be publically available, unless an exception applies. This applies to any local agency if the City Council “played a role” in bringing that committee or board into existence, if the City Council has the authority to review the decisions of that board or committee, or if the City Council has involvement in the appointment or replacement of board members. No exception would apply if a Brown Act body held a hearing to review a Board of Review determination. The 2005 LAMC revision was specifically written to keep the TBOR outside the scope of the Brown Act in order to maintain the proceedings in confidentiality as is appropriate due to the sensitive nature of the business data presented and discussed in the hearings and determinations, and as required by LAMC § 21.17.

The Director of Finance does not review nor approve TBOR determinations before they are sent to the taxpayers, and there is no existing framework for appeals of TBOR decisions from either party; if the City is in disagreement with the TBOR’s determination, there is no existing mechanism to change the determination. While Charter Section 300(b) does invest the Office of Finance with the power and duty to “collect revenues” along with the other roles assigned to it, there is no mention of or prohibition from delegating those responsibilities to subordinate entities.

If the taxpayer is in disagreement with the TBOR’s final determination, the taxpayer can make an offer in compromise, seek to negotiate a settlement through the Office of the City Attorney, or pursue legal action against the City through the judicial system.

In cases where the taxpayer has paid the assessed taxes but the TBOR subsequently decreases the assessment, a refund is required. Pursuant to LAMC § 22.12 and 22.13, the Office of Finance is authorized to approve and issue refunds up to \$61,379, with refunds above that amount being referred to the City Attorney for review and the City Council for approval. This consideration, however, covers only the refund itself, not the core determination made by the TBOR.

Were the City Council to establish itself as a body with authority to review and potentially overturn actions taken by the TBOR, the Board would become a Brown Act body and all records reviewed would be subject to public disclosure. This would cause an immediate and significant barrier to the daily operations of the department. Businesses under audit would become reluctant or unwilling to provide their confidential financial information, rendering audits difficult at best and useless at worst. In addition, such an action would invalidate Finance’s existing data sharing agreements with various

State agencies, crippling the department's new account discovery efforts. Both of these impacts would have a negative impact on the City's tax revenue. For this reason, the Office of Finance does not recommend that the City Council insert itself into this process in this way.

RECOMMENDED POLICIES AND PROCEDURES

As stated above, the definitions and limited policy guidance provided by the LAMC do not provide detailed procedural guidance for the TBOR process. Given the legal nature of the TBOR's existence at the discretion of the Office of Finance, the Code implies that the operating policies and procedures are also at the discretion of the Office of Finance. In effect, this is how the Board has operated through its known history, with the Office of Finance establishing administrative rules and steps to facilitate the flow of cases through the appellate process. However, as is clear from the present discussion, the current steps can lead to a lack of clarity, especially in the context of conflicting LAMC language regarding the finality of TBOR determinations.

Based on conversations with Finance staff, City Attorney, Council staff, and taxpayers, this Office believes that a more structured set of procedures would help add clarity and transparency to the process of reviewing and deciding appeals while still maintaining the integrity of the process and the principle that the final determination is made by a neutral body.

Finance proposes codifying and posting rules governing the TBOR. At the same time, a change approval process will be implemented in order to facilitate an orderly discussion of revisions that may become necessary over time. The Board procedures will be inclusive of, but not limited to, the following:

Creation of the Tax Board of Review

- A. As part of the Office of Finance's power and duties assigned in Charter Section 300, and consistent with Los Angeles Municipal Code (LAMC) Section 21.16(g), the Director of Finance delegates their authority to make tax assessments to a Tax Board of Review in cases where a taxpayer requests an appeal from a decision of the Assessment Review Officer.
- B. Per LAMC § 21.16(i)(1), a final determination of this Tax Board of Review is final and the administrative review process is complete once a final determination has been issued.

Tax Board of Review Membership

- C. Each Board of Review shall consist of three (3) panelists: two (2) of whom shall be selected randomly from a panel of pre-qualified members of the

public, to be approved by the Office of Finance based on knowledge and experience in tax law, business finance and taxation, and/or the City's tax laws and procedures, and one (1) of whom shall be the Director Finance or their designee.

- D. If a panelist is chosen to hear a case in which they had, have, or may potentially have any relationship, professional or personal, with the appellant or their representatives and/or have any apparent or real conflict of interest relative to the case, they shall notify the Office of Finance at the earliest possible opportunity, but no later than fifteen (15) calendar days prior to the hearing date, and a new panelist will be chosen to hear the case.
- E. A panelist's pre-qualification expires after five (5) years from the date of qualification. If both the panelist and Finance agree, a new five year pre-qualification can be approved.
- F. As Level One reporters as identified and defined in the Office of Finance's Conflict of Interest Policy, each panelist shall disclose all potential conflicts of interest upon appointment, and renew this disclosure on an annual basis.
- G. Each panelist shall agree to abide by the policies herein and maintain confidentiality of any and all Tax Board of Review proceedings. Failure to comply may result in immediate suspension or dismissal from the pre-qualified panel or Board membership.

Tax Board of Review Proceedings

- H. At the hearing before the Tax Board of Review, the appellant and the representative of the Director of Finance, who shall be a person other than a member of the Tax Board of Review, may present such evidence and argument as they believe to be relevant to their respective positions.
 - 1. All such evidence and arguments must be submitted to the Board and the opposing party for review at least thirty (30) business days prior to the date of the hearing.
 - 2. Should the appellant choose to be represented by legal counsel at the hearing, the Office of Finance may request representation by the City Attorney at the hearing.
 - 3. The Board may require the presentation of additional evidence or argument, or both, from either the appellant or the representative of

the Director of Finance, or both, and may continue the hearing from time to time for the purpose of allowing the presentation of additional evidence, argument, or both.

- I. At the end of the hearing, the Board may reach a preliminary determination to either affirm or decrease the assessment made by the Office of Finance. Subsequent to the hearing, the Board will report on its analysis of the pertinent issues and decisions, and the report will be shared with the appellant and the Office of Finance. If both parties notify the Board that they are satisfied with the preliminary determination, the preliminary determination will be issued as the Board's final determination. If either party is not satisfied with the preliminary determination, a final hearing will be scheduled. At that time, the Office of Finance and the appellant may make final arguments regarding only the evidence and arguments addressed in the preliminary determination. After the final arguments are made, the Board will hold a voice vote on whether to approve the preliminary determination as final or whether to issue an amended determination.
- J. A determination made by the Board will be considered final once signed and approved by the City Attorney as to form and legality. Should the City Attorney find that the Board's determination is unlawful as pursuant to the City Charter, Municipal Code, Administrative Code, or any other applicable law, the City Attorney shall provide a written opinion to the Board stating the disagreement, with specific reasons as to why the determination is unlawful. Upon receiving this opinion, the Board has thirty (30) days to prepare an alternative determination that complies with the issues brought forward by the City Attorney and is approved as to form and legality by the City Attorney.
- K. The Tax Board of Review shall not affirm an assessment under the following circumstances.
 1. The taxpayer has a previous Tax Board of Review determination. A "previous Board of Review determination" means an earlier determination by a Tax Board of Review created under LAMC § 21.16 or a predecessor or successor ordinance, and refers to the previous Tax Board of Review determination that most recently addressed the item that is currently in dispute;
 2. The previous Tax Board of Review determination resulted in a written determination specifically stating that the taxpayer earned revenues under one or more Gross Receipts Fund Class or Classes (as defined in LAMC §§ 21.41 through 21.49, inclusive, or

their predecessors or successors), after reviewing the results of an audit by the Office of Finance in which the taxpayer provided full and complete cooperation;

3. The assessment that is proposed to be affirmed would result in higher business tax liabilities than those self-reported by the taxpayer solely because of one or more changes from the Gross Receipts Fund Class specifically stated in the previous Board of Review determination or determinations, and the taxpayer provided full and complete cooperation to the Office of Finance in the audit resulting in the assessment proposed to be affirmed;
 4. The business model and method of operations of the taxpayer were exactly the same with respect to the previous Tax Board of Review determination or determinations as before the Tax Board of Review proceeding that resulted in the assessment that is proposed to be affirmed, and in both circumstances the taxpayer fully reported its gross receipts; and
 5. Nothing precluded the Office of Finance from conducting a full and complete audit of the taxpayer both prior to the previous Tax Board of Review determination or determinations and with respect to the audit resulting in the assessment that is proposed to be affirmed.
- L. When a determination (or determinations) made by a previous Tax Board of Review with respect to a taxpayer's Gross Receipts Fund Class is overturned by a subsequent Tax Board of Review determination, the change(s) to the taxpayer's Gross Receipts Fund Class or Classes shall apply to the first full tax year beginning after the year in which the new determination is made.
- M. Should a taxpayer wish to challenge a Tax Board of Review determination regarding business classification that would otherwise be negated by operation of Section [G], the taxpayer shall notify the Tax Board of Review via certified mail that must be postmarked within fifteen (15) days from the date of service of the notice of decision of the Tax Board of Review. If the taxpayer provides notice under this section, the restrictions in Section [G] shall no longer apply to that case. The taxpayer may then proceed under the normal procedures for challenging assessments set forth in this Code and California Law. If the taxpayer does not provide notice under this section that it wishes to challenge a Tax Board of Review determination that would otherwise not be affirmed by operation of Section [G], the

taxpayer is deemed to have acquiesced to the determination of the Tax Board of Review and may not further challenge the determination.

N. All Tax Board of Review determinations will be reviewed by the City Attorney and approved as to form and legality before being presented to the appellant or the Office of Finance. This approval will not indicate that the City Attorney agrees with the Board's determination but will confirm that the facts regarding the case and the case law are presented accurately and the determination is not in direct conflict with the City's laws or the Board's operating procedures.

1. Once a final determination has been approved by a vote of the Tax Board of Review members and is approved by the City Attorney as to form and legality, the administrative review process shall be complete.
2. Written notice of the determination of the Tax Board of Review shall then be given to the appellant in the same form and in the same manner as the notice of assessment.

RECOMMENDATIONS

The Office of Finance recommends that the City Council request the City Attorney to prepare and present an ordinance revising LAMC § 21.16 to:

1. Codify the authority of the Office of Finance to establish policies and procedures governing the activities of a Board of Review established under Section (g), to update those rules when the need arises, and to make them available to the public;
2. Retain the authority of the Office of Finance to audit a business that has undergone administrative review proceedings pursuant to Subsection (i)(5);
3. Retain the language of Subsection (i)(1) that effectuates the finality of a determination issued by a Board of Review, adding language to clarify that this is pursuant to the Director of Finance's delegation of their power and duty to collect revenues, and add language that renders a determination as final and complete only upon the approval as to form and legality by the City Attorney; and
4. Repeal Sections therein that are no longer necessary inasmuch as the Office of Finance will establish procedures, pursuant to Recommendation 1a, to effectuate those sections.