REPORTER'S TRANSCRIPT
JANUARY 31, 2006

ITEM J3
REQUEST APPROVAL OF NEW RULES
CHAPTER 1, TITLE
CHAPTER 2, SALES AND USE TAX, TIMBER YIELD TAX, AND SPECIAL TAXES AND FEES

ITEM J4
STATUS REPORT ON PROPOSED REVISIONS TO SBE RULES OF PRACTICE

Reported by: Juli Price Jackson
CSR No. 5214
PRESENT

For the Board of Equalization:

John Chiang
Chairman

Bill Leonard
Member

Betty T. Yee
Acting Member

Marcy Jo Mandel
Appearing for Steve Westly, State Controller (per Government Code Section 7.9)

Deborah Pellegrini
Chief, Board Proceedings Division

Ramon J. Hirsig
Executive Director

Kristine Cazadd
Chief Counsel

Bradley Heller

SPEAKER:

Joseph Vinatieri
Attorney

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MS. PELLEGRINI: The next item is J3 and J4, and that's to request approval for the BOE rules for the California Tax Administration and Appellate Review, Chapter 1, Title, and Chapter 2, Sales and Use Tax Yield -- Timber Yield Tax, and Special Taxes and Fees; and also for a status report on the project.

And Miss Cazadd will present these items.

MS. CAZADD: Good afternoon parts 1 and 2 of the Rules and Practice are submitted to you this afternoon for your approval.

Part 1 is the statement of intent with regard to the rules.

And Part 2 is the business taxes procedures and the revisions.

And there is a recommendation for a briefing schedule and alternative -- staff recommends alternative 1 for your consideration. If the Board determines today to approve Parts 1 and Part 2, this will only be a vote of approval, this is not adoption or direction for authorization for publication.

The reason is that based upon our schedule for the remainder of the rules, we would like to bring all parts -- Parts 1 through 5 -- to the Board in June, at the Board's meeting in June for formal adoption. So
that once everything is adopted and noticed for
publication, it will move through the OAL process as a
complete package.

So, this is brought forward to you because
we've completed the interested parties meetings on this
particular -- these particular sections and we have
consensus from all parties -- taxpayers as well as the
Department.

And Carole Ruwart and Brad Heller are here to
answer any questions.

MR. CHIANG: Very good.

MS. PELLEGRINI: We do not have any speakers
that signed up for this item.

Is there anyone who would like to address the
Board on this issue?

MR. LEONARD: Mr. Chairman?

MR. CHIANG: Yes.

MR. LEONARD: I've been trying to better
understand this.

And been working and appreciate Ms. Ruwart and
Mr. Heller's work on this. I typed up my notes to hand
out to you and extra copies if Board Proceedings wants
to put some out for others.

I am not sure how you best wish to handle it.
I had suggested changes in eight items.

MS. MANDEL: Okay, I -- I had talked to staff
because I was reading through these again and there were
some -- there were a bunch of things that I noticed --
some of them were grammar, some of them looked like there were incomplete thoughts.

And staff suggested that there would be an opportunity to sort of go over all of those with them.

MR. LEONARD: Right, I had some of those too.

MS. MANDEL: You managed to type yours up.

MR. LEONARD: This list is a little more policy than just style. And I am not sure there's any surprises, but I wanted to put them before the Board and I appreciate Miss Cazaad's point that -- and I don't mind voting to move forward. I think this body of work here is well done, but I would like to bring these before you and -- either now or whenever you deem appropriate -- to speak to them.

MS. MANDEL: Well, and I noticed just from looking at it real fast, your first one, I also have an issue with the staff recommendation on the briefing schedule.

MR. LEONARD: Right.

There is one point and that's my No. 1, in which the staff has given us three alternatives, recommended one of the three, it's the only point in the whole document in which we've been given choices.

MR. CHIANG: What's the sense of the Board about how we want to handle these? Do you want to continue? Do you want to discuss them at a future date?

MS. PELLEGRINI: In addition, Mr. Vinatieri has -- would like to speak, make a public comment.
MR. LEONARD: My comments got you to do that?

MS. MANDEL: Well, on the briefing schedule, my concern with the staff recommendation, which was a briefing schedule that keyed off D & R was that was sort of -- had several things.

The first was the D & R is not necessarily done when its's issued because there is often opportunity from the D & R for the taxpayer to bring in further documentation. There is often in the D & R a request to the Department to re-audit.

So, IT'S sort of not a done thing when the D & R is issued.

MR. LEONARD: Right.

MS. MANDEL: Also you might have a lot of unrepresented taxpayers or, perhaps taxpayers who weren't happy with the representation, who, when they see the D & R, think, oh, my goodness, if I am to go forward to a Board hearing, I really better get some big guns on my side -- or at least some guns on my side. And they need time to, you know, hire counsel or find a CPA or whatever they need to do before they -- they brief and they also need time to digest the D & R, even if it is a done deal before they decide whether they're going to go ahead and write a brief.

So, my preference was for something like we have currently, that keys off of the hearing date for the briefing.

Now what did hear in the interested parties
process was that people wanted to have a little more
time for that briefing and also maybe there was some
interest from the Board's side that the last brief not
come in, you know, five days before the hearing or
whatever.

So, I know you've got alternative 3 because of the
current briefing schedule.

MR. LEONARD: Status quo.

MS. MANDEL: because of what I had heard in the interested parties meetings of the -- you know, have a little bit more time, I kind of went towards alternative 2. I didn't really like the alternative 1 off the D & R.

MR. LEONARD: I share that alternative 1 and the reason I recommended to the Board alternative 3, which is basically the current process is I thought we were also pretty flexible as a Board in scheduling the timing of briefs, even allowing late briefs with proper notice or a bigger case asking for more time to brief that called the Chairman, talked to him and, basically, done that we -- that this is what we'd like to see happen, which is what I think our rules of practice should be, but it's also part of our culture.

We want to get at the truth and we'll be flexible to do that.

And the other two seem to provide other ways of trying to do the same thing that wouldn't be as cost effective on most of the cases.
MR. CHIANG: Joe?

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JOSEPH VINATIERI

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MR. VINATIERI: Yes, very quickly, I've been involved in the rules of practice from when Don Hennessey and --

MR. CHIANG: Joe, your name for the record, please?

MR. VINATIERI: I'm sorry, Joe Vinatieri. For purposes of Matt Fong and Don Hennessey, back in -- a long time ago.

And I just wanted to indicate I am one of the proponents that responded probably more than anybody else on at least this section of the rules. And I have gone through them and I obviously don't see Mr. Leonard's -- haven't seen his changes yet, but just as a general proposition, the rules, at least relative to the changes that I had proposed, it looked -- most of them had been incorporated into the draft, which I appreciate.

There is a couple of areas that I think we might end up agreeing to disagree, but then you have to ask yourself, "How material is it in light of the large undertaking that is taking place here?"

So, I just wanted to indicate that I'm relatively pleased with what I have seen so far. And I appreciate the fact the way Mr. Heller and staff has
handled this so far because it's been very wide open and
as Marcy -- excuse me, as Miss Mandel knows, we've spent
a little bit of time around the table knocking these
things out.

And I was concerned about trying to do this too
fast, especially before Christmas, and I appreciate the
fact now that it's been -- and I think we're going to
get it done and it will be done probably with even a
little bit better quality because we do have time now.

So, thank you.

MR. HELLER: Mr. Chairman, could I address the
Board briefly?

MR. CHIANG: Please?

MR. HELLER: First off, I just wanted to say
and point out also -- and I meant to speak before Joe --
but I wanted to thank Joe Vinatieri who has provided
written comments to every one of our proposed
regulations and has been very helpful throughout the
process, also Abe Golomb, Joan Armenta-Roberts, Kai
Mickey, Marty Dakessian, Kenneth Davis from the
Franchise Tax Board and also on our staff David Levine,
Phil Spelman and Arlo Gilbert, who have all been
invaluable in the process.

And I think it's really generated a much better
product, even if it's not absolutely complete at this
time, although I kind of hoped it was.

But, anyhow, on the briefing issue, though, I
just wanted to address what staff's thoughts were and I
think that really David Levine did raise the same exact concerns that Marcy's -- Miss Mandel is raising right now.

And, you know, our feeling is that people are just essentially just tied to what we currently do, but if the D & Rs did advise taxpayers on what the options were at the point the D & R was issued, which would, I think, be helpful to taxpayers anyway to advise them what all their options are, whether we've asked for a re-audit, where we're requesting additional information from the Department or the taxpayer, it would be beneficial to explain that the taxpayer could file a request for reconsideration and if it did so, then the briefing period wouldn't start.

If no one files a request for reconsideration, then your brief would be due. Also we can do other things here to, like, for instance, stretch the period out to sixty days for the original brief so that we would know if somebody had filed additional documents or requested relief for anything -- or requested reconsideration.

So, there are ways to move with alternative 3 and still treat it as an improvement. The reason that Staff recommended it, although --

MS. MANDEL: You mean --

MR. HELLER: -- I'm sorry, they were renumbered recently, so, I apologize.

Yes, alternative 1, which has the -- which keys
off the decision and recommendation, but essentially what we were thinking as staff is that we were looking more at the appeals from the Franchise Tax Board approach, which does complete the briefing process before we schedule and oral hearing. And that provides the Appeals Division with all of the information that it needs to prepare the hearing summary and provides for more information and it also gives the Appeals Division the time to identify any information that hasn't been included in a briefing that they may want to request or that they may want to recommend that the Board request.

Under our current system, we like -- like we were saying earlier, we may not get that final brief until at the -- under our current schedule, fifteen days before the hearing, which essentially gives the Appeals Division a real hurry up and look, don't ask for anything unless you have to kind of an attitude because we've already scheduled a hearing and we're going to have to change our whole calendar, we're going to have to re-notice the taxpayer and they're going to have to shift all their plans if we decide to go ahead and postpone things to go ahead and get additional information.

Under our current -- under Alternative 1 everything would be completed before we scheduled the hearing. And we would have all of the information so that cases could come in a more organize fashion and that all of the information that would be relevant would
already be provided in advance.

However, with that aside, those were just the basis for our recommendation. We do think that, you know, Alternative 2 would also be good. And as Miss Mandel pointed out, there was some support from the interested parties for at least a little bit more time, especially since, as far as I understand it, their time period runs from the mailing of the notice of hearing.

And, so, they may or may not get that notice for a few days, five days, whatever, but their time is running. And so, it many cases they may not get exactly the same amount of time as the Department to respond, even though it looks like everybody has the same amount of time. In fact, the Department is told to respond from when the brief comes into the Board of Equalization. So, there is only lag time between Board Proceedings talking to the Department and the Department starting to prepare the brief; whereas the taxpayer has to wait for the mail to come and their representative to get the -- get notice of the hearing and then start the briefing process.

So, there are some hitches either way that we go and we just thought that would be an improvement and we did expect to have to do a little work to make it -- to implement it. But that was our suggestion there.

And, in addition, staff would be more than happy to work with Mr. Leonard's comments and Miss Mandel's comments to revise this proposal.
And we could probably present it either at the next Board meeting or the one after that if we want to make sure that, you know, we've had a chance to share the revisions before we bring it back for a full Board meeting and approval, so that that both Mr. Leonard and Miss Mandel can be sure that we have incorporated their comments in the manner that they intended them to be incorporated and then present it Board again or -- either on those particular provisions or on the entire proposal for those two chapters, if that's what would be appropriate.

MR. CHIANG: Thank you. Any other questions? Anybody want to take any action?

MR. LEONARD: Just to further comment on the change in briefing schedule, absent a compelling reason, I like the accelerated one, with flexibility.

I wish we could do a better job with our taxpayers in telling them that the interest is still accruing on most of these appeals unless they paid.

Now under the amnesty penalty period we could be talking about a lot of money and in going from a 45 day process to a 75 day process could make -- could make substantial difference in interest and if it wasn't necessary and that the briefing schedule could be truncated because it was a easy factual or easy legal case, I would hope we would be able to do that.

But if we adopt the one that say no -- basically, the maximum becomes the minimum. If it's
thirty days for each side, you're going to take it all. And you're not going to start the clock again until the time you've taken it all. So, you have that issue. If it's fifteen days, you'll do it in fifteen and so will the taxpayer.

So, that's the -- as you think -- I appreciate the offer and would love to sit down with you, but that was my concern -- and maybe do some research on how many of these have interest running, how many of these really had a problem getting done in the fifteen day deadline on Department side, on taxpayer side or came in -- just by postmark came in right at that point of submission date and how many were well within the period -- just to get a sense of the workload as well as the accrued interest issue.

MS. CAZADD: Given the issues here before you, would you like us to bring this back to you next month with additional work?

MS. YEE: I guess I have a question. Is there some magic with the June time frame?

MS. CAZADD: Not necessarily, that's just the schedule that we agreed with interested parties that -- that we would be able to accomplish the work by that time.

We have schedule tentatively another interested parties meeting on the Part 3, a separate one on Part 4 and 5.

So, in order to schedule those and make further
changes and then bring those changes in modified format back to Board, we assume that we would need that amount of time.

MS. YEE: Okay, I mean -- I think given the level of interest in trying to look at some of these proposed amendments in more detail, I think we should defer action with respect to approval of the first two parts and have an opportunity to at least get some better understanding as to, certainly, Mr. Leonard's proposed amendments and comments as well.

I mean I just don't want the conversation to be piecemeal. I think it's -- I support the notion that all of the different parts of the rules move together ultimately to OAL, but I don't think we should cut ourselves short with respect to having the opportunity to get some of these comments more fully.

MS. CAZADD: All right, I'll be happy to do that.

MR. CHIANG: Okay.

MS. MANDEL: Defer.

MR. CHIANG: Next -- just put it over until next month?

MS. YEE: I mean I don't know that I want to put a time frame on it. I really would like to have some discussion and really understand the rationale behind any proposals to amend what's currently in place.

So, whatever that process is -- it may be part of -- incorporated into the next interested parties
meeting -- since these look like they're discrete issues that are being raised and there might be others that may want to raise --

MS. CAZADD: Certainly --

MS. YEE: -- additional ones.

MS. CAZADD: -- we can do that. That's fine.

And then I think our schedule for returning to the Board the next time would be April, with part 3.

So, we could -- if it's your decision -- to bring back Parts 1 and 2 at that time, at least to air it and let you know where we are and what the progress is.

MS. MANDEL: Right, and if -- if -- I mean, Mr. Leonard's are -- you know, they're more policy-oriented types of things. So, if the rules stay recommended the way it is, presumably, unless he gets an explanation that he's satisfied with, he's still going to have the issue and then the Board could just discuss and decide which one of these are left.

MR. LEONARD: Exactly.

MS. MANDEL: Is that your idea?

MS. CAZADD: Okay.

MR. LEONARD: And if you want to schedule, Mr. Chairman, for the hearing, the March hearing, I will do my work to be ready -- be ready for them.

MR. CHIANG: Whenever you're ready.

MS. CAZADD: Okay. We'll do that. We'll work together and figure it out and bring it back to you when
it's ready.

MR. CHIANG: Very good.

Next item.

MR. LEONARD: Mr. Chairman, I just had an idea, I'm not sure how to deal with this, I only brought so many copies -- I will make -- if anybody here wants one, I will get them to them -- but maybe Mr. Hirsig, could you will help me post these on my web page so it's not confused that it's anybody else's proposal?

If I get it on my web page and we could direct people that are searching for comments on this that they can get it for themselves?

MR. HIRSIG: I can do that.

MR. LEONARD: Thank you very much.

So, for everybody that's listening, it should be up on the internet soon.

MS. CAZADD: Thank you very much.

MR. CHIANG: Thank you.

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REPORTER'S CERTIFICATE

State of California  )
                     ) ss
County of Sacramento )

I, JULI PRICE JACKSON Hearing Reporter for the California State Board of Equalization certify that on JANUARY 31, 2006 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 19 constitute a complete and accurate transcription of the shorthand writing.

Dated: March 12, 2006

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JULI PRICE JACKSON

Hearing Reporter