BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
450 N Street, Room 121
Sacramento, California

REPORTER'S TRANSCRIPT
MARCH 20, 2007

ITEM J1
RULEMAKING
BOARD OF EQUALIZATION RULES FOR TAX APPEALS
CHAPTER 3: PROPERTY TAX

Reported by: Beverly D. Toms
No. CSR 1662
PRESENT

For the Board of Equalization:

Betty Yee
Chairwoman

Judy Chu
Vice-Chair

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John Chiang,
State Controller (per
Government Code
Section 7.9)

Gary Evans, Acting
Chief, Board Proceedings
Division

Board of Equalization Staff:

Kristine Cazadd
Chief Counsel

Robert Lambert
Tax Counsel

Carole Ruwart
Tax Counsel

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Sacramento, California
March 20, 2007

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MR. EVANS: Next item is the Chief Counsel Matters. Item J1 is an update or overview of the Board of Equalization Rules for Tax Appeals, Chapter 3, Property Tax.

Ms. Cazadd and Mr. Lambert will make the presentation, along with Ms. Ruwart.

MS. CAZADD: Good afternoon. At the February Board meeting the Board instructed staff to present some alternatives to the current appeals process that's written into the proposed Chapter 3 of the Rules for Tax Appeals for State assessee petitions for reassessment.

And so, today we present -- we are presenting you with three alternatives, all three of which are discretionary rather than mandatory, and all three of which would require the Division -- Valuation Division, now the State Assessed Properties Division -- or to allow them just to submit their writeups directly to the Appeals Conference holders, the Appeals Division, rather than going through a write-up -- separate write-up process with the Tax and Fees Division, as we did last year.

So, Bob Lambert and Carole Ruwart will address the details of this.

MR. LAMBERT: Well, there's basically two areas for decision. We're dealing just with Chapter 3. The
first issue has to do with under what circumstances
would there be a conference? Is it discretionary and if
so, at whose discretion?

    And there's a chart attached to the paperwork
laying out the options.

    Second issue would be, you know, does the Board
want -- want to give staff further direction as to
whether or not they want a firm recommendation from the
Appeals Division or not. Those are the two issues that
were raised last time. So those are the issues we have
today.

    MS. YEE: Okay. Questions or comments from the
Members?

    MS. CHU: Well, I'll just give my opinion.
I -- I think Alternative 1 is something I would favor.
I already think it's a step forward to make these
Appeals Conferences discretionary and not mandatory.

    But I do think that on one hand you have to
have the ability for the taxpayer to -- to be able to
have some input into this process and -- and ask for an
appeals hearing.

    At the same time, I would want to make sure
that if the Appeals staff has some kind of concern that
they can address it, as well. So, that's why I think
it's important to have both parties in that process.

    On the second issue, it seems to me that most
everything else has a recommendation from the staff.
Everything that I've seen ends up with some sort of
recommendation. Well, anyway, just in -- in my years --
my 20 years being in elected office, normally when I see
a staff report I see a recommendation. So, I'm just
going from my experience.

And I would tend to think that it would be
better to have a staff recommendation.

MS. YEE: In this case when we're talking about
staff recommendation, is it the Valuation staff in your
alternative or what --

MR. LAMBERT: No, it would be Appeals Division.

MS. YEE: The Appeals Division.

MR. LAMBERT: Yeah, the summary would -- you
know, right now actually there's two types of documents
you get. One is a -- like a summary decision where it's
a non-appearance matter and there's definitely a
recommendation there because it's non-appearance.

But in the other type when there's an oral
hearing, there's a summary. And sometimes it gives
questions or issues or things that the -- that the
Appeals staff thinks are important, but they generally
don't say, "We recommend," you know, "the following
result."

MS. MANDEL: You know, you might recall some of
the comments that I've made before on this. Of course
with Alternative 3 taxpayer does have the burden of
proof, and so I think if the taxpayer feels that an
Appeals Conference would be useful, then fine. But if
they don't feel that an Appeals Conference would be
useful then, you know, they have the burden of proof and so be it.

But property tax matters is the core constitutional function of this Board. And for -- what we get from staff for those property tax hearings, I think the kinds of things that I've said before on the issue is that, you know, I guess I can say this because I'm a lawyer -- you know, putting another level of lawyers making -- effectively making a decision up before this Board when what's coming forward is -- on the property tax cases, leaving aside -- most of the ones that we see are unitary assessment cases that -- where the Board, itself, sitting as the Assessor, doing its major job, the first job that it ever got, values the property owned and used by those companies.

They come forward because they don't like the -- they think that there's something wrong with the assessment. Our Valuation staff, if we get to hearing, is there to defend the Board's original decision from May. There may have been some adjustments that are made. They sometimes reach some kind of agreement, and the taxpayer presents their case. But that it is really the Board that should make that decision as to whether the Board's own assessment from May was correct or was in some way based on, you know, new information, things we didn't know, hadn't heard that argument before or whatever basis -- but the Board is actually deciding a case on which the Board, itself, had originally set the
number. Which is one reason why I really call it our core constitutional function.

And to -- what I think -- you know, in some other perhaps heated or whatever relevance I refer to as we should not effectively delegate that to our Appeals staff.

And so, those were the reasons why in these cases -- and the reason I shook my head no is, as Mr. Lambert described, we do have different types -- and you've, you know, seen some of them -- of cases that we get here. And we get different types of summaries.

And that appeals from Franchise Tax Board, the hearing summaries, although I'm sure everybody who has read one thinks one way or another about whether they can discern how Appeals staff really feels about the case, but there's not a definite recommendation in those.

And in fact those have always -- there's always been an effort to make sure that those are objective, if you will, as opposed to the Business Tax cases where a long time ago, and that's a different sort of statutory function, the Board set up the Appeals Division or whatever the predecessor of the Appeals Division was called, and those do come forward with Decision and Recommendations on them and a lot of times they are resolved.

But because of the particular nature of property tax cases, we felt that having -- it's not to
say that a case, if it winds up at an Appeals Conference, can't find itself resolved. Or winding up on a non-appearance calendar or can't find some issues resolved between the parties. We have seen that happen even before that Appeals Conference process was put in last year. It feels like so long ago.

MS. YEE: Okay. Very good. Other questions or comments?

Why don't we take each of these issues separately. On the first issue of the discretionary Appeals Conferences, is there a motion?

MS. MANDEL: I'll move Alternative 3, which is taxpayer election.

MS. YEE: Okay. We have a motion by Ms. Mandel to move Alternative 3. I will second that motion.

Please call the roll.

MR. EVANS: MS. Yee

MS. YEE: Aye.

MR. EVANS: Ms. Steel.

MS. STEEL: No.

MR. EVANS: Ms. Chu

MS. CHU: No.

MR. EVANS: Ms. Mandel

MS. MANDEL: Aye.

MR. EVANS: Motion fails

MS. YEE: Okay. I think we may have to put this over until Mr. Leonard returns.

Okay, I'll put this matter --
MS. CAZADD: Thank you very much.
MR. EVANS: Bring this back April?
MS. YEE: Yes, please.
MS. CAZADD: Thank you very much.
MS. YEE: Thank you.

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REPORTER'S CERTIFICATE

State of California  )
                   ) ss.
County of Sacramento )

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on March 20, 2007 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 9 pages constitute a complete and accurate transcription of the shorthand writing.


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BEVERLY D. TOMS