BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT
APRIL 18, 2006

CHIEF COUNSEL MATTERS
J RULEMAKING
J1 PROPOSED AMENDMENTS TO
STATE BOARD OF EQUALIZATION RULES OF PRACTICE

Reported by: Juli Price Jackson
No. CSR 5214
PRESENT

For the Board of Equalization:
Claude Parrish
Vice-Chairman

Bill Leonard
Member

Betty T. Yee
Acting Member

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

Gary Evans
Acting Chief, Board Proceedings Division

Kristine Cazadd
Chief Counsel

Bradley Heller
Tax Counsel

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MR. EVANS: Good afternoon, Mr. Vice-Chair, Members. This afternoon we have Chief Counsel rulemaking in the administrative session and the voting on this morning's oral hearings.

The first matter this afternoon is Chief Counsel Matters, rulemaking, Item J.

Ms. Cazadd will make the presentation.

MS. CAZADD: Honorable Chairman, Members --

MR. PARRISH: You may proceed, please.

MS. CAZADD: -- before you today are Chapters 1 and Chapters 2 of the new rules for California tax administration and appellate practice.

Chapter 1 is a statement of intent. And Chapter 2 encompasses the Board's a sales and use tax, timber tax, special taxes and fees with regard to our appellate procedures.

At this point in time, after several interested parties meetings, all unresolved issues have been resolved and agreed upon by the interested parties. And, therefore, we bring this to you today by way of concept approval. We are not seeking publication at this point. We are merely asking you for direction with regard to the concept of the points in front of you.

Here to address any details with regard to the
rules is Senior Tax Counsel Brad Heller.

MR. PARRISH: Maybe you have a small presentation?

And I think Mr. Leonard's -- your area -- you're on the Tax Advisory Committee and maybe you'd have some comments as well.

Why don't just give us a few minutes because I know a lot of work has gone into this.

MR. HELLER: Thank you very much, Mr. Parrish and thank you, Members of the Board.

Basically we were -- we brought this same package to the Board Members back on January 31st and we received quite a few comments and suggestions.

And we went back and looked at those comments and we tried to incorporate the suggestions to the extent possible. And, generally speaking, the main revisions that we made was that we added language that encourages e-filing. We made that language consistent throughout the chapter. And if that language is approved here, we're going to go ahead and add it to the other chapters that we'll be presenting to the Board in the future so that they'll all be consistent.

We also expanded the purposes for which a petitioner could request an administrative hearing. There was some question about staff's original language limiting the purposes for which you could request and administrative hearing. We've changed that language so that they're advisory. And they just list potential
purposes, but also provide for any purpose. So, the
Board can determine whether or not relief is warranted.

We've also added language allowing the Board to
refund or credit storage fees in the cases where we
seize property and stored it and charged the taxpayer a
fee for the storage and then determined that we probably
shouldn't have seized or stored the equipment in the
first -- or the property in the first place.

We have also, excuse me, we decreased the
deadline for a nonparty to file an amicus brief. And
there's two different deadlines, one in each of the
alternatives that we're presenting for briefing
schedules today. Essentially, we revised those so that
-- to allow nonparties to file briefs as late in the
process as possible. One, to encourage them to file so
that we can -- so that they can participate in the
process. But we did have to set some sort of deadline
so that the Appeals Division and the Board Members could
be advised about those briefs prior to the hearing.

Let's see, we also -- we also changed some
language that we proposed to allow taxpayers to
participate in a Board approved pro bono program to file
briefs at the date of their oral hearing as opposed to
in advance, according to the general briefing schedule.

And, let's see -- and, let's see, I think those
are really the major issues.

Other than that, we also a deleted the
original -- our first alternative that staff was
recommendation for briefing schedules back in January.

We have now renumbered what was Alternatives 2 and 3 as new Alternatives 1 and 2. And staff is now recommending what's now Alternative 1 in the current materials. And that's essentially a 20-20-15 schedule that would have -- give taxpayers 20 days from their date of notice of hearing to file their opening brief. We give the Department 20 days from the date of that brief to file a reply and then we give the taxpayer 15 days to file their reply brief. And the additional benefit of that schedule is that it gives the Appeals Division an extra 5 days, a full 20 days to review all that briefing once the briefing schedule's completed and and prepare its hearing summary for the Board Members. So, we're hoping that that will create a more informed hearing -- or a better prepared hearing summary and help the Board Members be more prepared for the hearings themselves.

I think other than that -- those were the main revisions that we made, just a few other clarifying changes throughout.

MR. PARRISH: Very good. Do we have any comments from Members?

MR. LEONARD: I have a question on that briefing schedule.

MS. MANDEL: Why don't you go to that?

MR. LEONARD: Have we had problems with the current deadlines?
MR. HELLER: We really --

MR. LEONARD: You said you want more time to make sure it's more thorough, is that the real motivation for it?

MR. HELLER: Well, from my experience, I don't believe that taxpayers have had a tremendous problem. The only -- the situations where I found that taxpayers have run into issues with our current briefing schedule are situations where they're looking to hire new counsel --

MR. LEONARD: Right.

MR. HELLER: -- as the briefing process has started.

I'm not sure that 5 days is going to make a major impact in alleviating those concerns, at least it does provide a little more leeway for taxpayers who are trying to search out counsel and will give them a little bit more additional time.

As far as the Department's concerned, there -- there have been some serious constraints on trying to reply to briefs within a 15 day period since it involves the Tax and Fee Programs Division of the Legal Department, which is not involved in the case, basically, until that -- that opening brief comes in.

MR. LEONARD: Right.

MR. HELLER: So, it would help them in. And then in the cases where the taxpayer does choose to reply, it is very difficult for the Appeals Division to
get that -- that last minute brief, review that, figure
out whether or not it raises any new issues and then
prepare a proper hearing summary for the Board Members.

And so, we're hoping --

MR. LEONARD: Has any thought been given to
sticking to our original -- our current briefing
schedule, but allowing the Board Chairman to hear from
taxpayer or from Appeals that extra time's needed and
grant that?

My concern is -- is that the combination of the
extra days, while individually may be just justified and
hopefully would be a more thorough and vetted summary
available to all of us as the briefings are submitted,
it -- the culmination of it could easily move the
hearing from one Board meeting to another. And that
extra three to five week period, if interest is accruing
to the taxpayer, the extra days may be totally lost to
him, there's no benefit to him, if -- if they end up
losing, which most do, and now they're paying extra
interest because everybody got an extra five days to
think about it and submit their briefs.

I -- I don't know if anybody has analyzed what
it might do to Board Proceedings and the calendar if --
if everybody was pushed backwards by that amount.

If there -- that's why I'm suggesting, maybe
there are exceptions -- taxpayer wants more time that,
one should be easy, the time constraints in Legal, to go
to the Chairman and talk about that and let the taxpayer
know the extra time is needed on a case by case basis.

I'd like to explore that and ask other Board Members --

MS. MANDEL: Well, my -- my question would be --

MR. LEONARD: -- on that.

MS. MANDEL: -- the time which you have in your your alternative as 20 days -- and currently, I guess, is 15 -- that's -- time starts running from the date of the Notice of Hearing; is that correct?

MR. HELLER: Correct, for both alternatives.

MS. MANDEL: Right. And does this -- pushed Alternative 1, with the 20 days is passed is the concept that the Notices of Hearing will be backed up so that they're going out further in advance of the hearing date so that it's not pushing from -- if we currently send out the Notices of Hearing however many days before a hearing, what 60 days, is it, or 75?

MR. EVANS: Typically in the range of about 80.

MS. MANDEL: Okay, so --

MR. EVANS: The statute says 60.

MS. MANDEL: But we typically do 80 and, so, rather than from the 80, is the idea that the hearing notices would go out sooner so we'd still be at the same place?

MR. EVANS: Good question.

MS. MANDEL: Wouldn't push the calendar?

MR. HELLER: That is exactly the concept.
Basically right now we're -- we have a proposed regulation that would require Board Proceedings to issue Notices of Hearing at least 60 days prior to the hearing.

   With -- with Alternative 1's briefing schedule, we would propose to change that language so it would require the Board Proceedings Division to issue notices 75 days in advance.

   And as Mr. Evans pointed out, Board Proceedings already normally does issue its notices around 75 to 80 days in advance, although there are occasion where it's later.

   And so we do think we can make this change without extending the Appeals process or the briefing time itself that actual length of time to get to the hearing, but just utilizing that time a little bit more effectively by having the Board Proceedings Division in every case get the Notice of Hearing out a little bit earlier --

   MS. MANDEL: Okay. Let me see if --

   MR. HELLER: -- which is where the issue of time comes from.

   MS. MANDEL: -- I can like tie it up real fast.

   So, under the staff proposal taxpayers and the Department and Appeals will have more time to do their work, 5 more days to do their work, you know, get it all right, but -- but we'll still be getting the ultimate product in the same amount of time that we do before the
hearing?

MR. HELLER: Correct.

MS. MANDEL: It doesn't -- it should not impact the Board's calendaring of cases the way Mr. Leonard was concerned because the hearing notices will be going out sooner, so the briefing process out in the world when we're --

MR. LEONARD: Right.

MS. MANDEL: -- doing whatever will happen.

MR. LEONARD: Have we not mandated that, though?

MR. HELLER: That was along --

MR. LEONARD: I missed that

MS. MANDEL: Mandating of the hearing notice?

MR. LEONARD: Mandating that the Hearing Notice go out 75 days instead of 60?

MS. MANDEL: Or whatever the timing is, it will definitely go out sooner?

MR. HELLER: That's correct. If the Board adopts that Alternative 1's briefing schedule, we will make sure that the regulation --

MS. MANDEL: Okay, "make sure" is different than his question, which is mandated.

MR. HELLER: Well, we haven't brought it to the Board at this point and we don't have -- we do currently have a proposed regulation with 60 days in it. We will change that regulation.

MS. MANDEL: Whatever the regulation is that
says how far in advance for sending out the Hearing
Notices will be conformed to what the Board adopts?

MR. LEONARD: You made it a footnote in what
we're not quite publishing here. I don't know what
we're calling it, but maybe -- I missed that.

So, it may not need -- you may need to explain
of which direction the calendar is going that you are
trying to front load it more.

I was counting the days, so close up to hearing
time we get more requests to put it over from either
parties or Board Members who just haven't had time.

MR. PARRISH: I want to thank both of you and
everybody involved in your staff for doing this.

You know, when things go smoothly, it means a
lot of hard work has been done behind the scenes that is
never seen.

When things drag out here it means it's --
sometimes that's not the case, but in this case I would
compliment both of you.

I think this is taxpayer friendly, in my
opinion. And I would hope we get a motion to approve
both of these items.

MS. MANDEL: Okay, I think I'm okay with the
approving it in concept, I think -- and there's been a
tremendous amount of work and it's a -- you know, it's a
lot of words and sometimes there is things that can, you
know, use a little cleaning up and we can, hopefully,
work on those as we approve it in concept.
Just to give you some simple examples of language, there's one on page 8 where the -- some of the language in this thing is maybe not as user friendly as it can be and it's not necessarily consistent throughout where we're saying things.

We've got that sort of third line that says, "The Board will not act upon a petition that is founded upon the grounds described in," sub-paragraphs whatever, et cetera.

In other places we use simple language like, "The Board will not act on a petition based on ..."

You know, it's just sort of accessibility of the words. And I know guys have worked -- it's been sort of a committee drafted thing and people worked real hard and sometimes it's hard to see that kind of stuff when you're really close to it.

So, there's -- I'll try to go through it with, you know, a red pencil to pick things up like that.

And then, just as example of another thing that seemed a little confusing, just as an example, on the same page, that next regulation, which is the scope of a petition filed for the E-waste fee, it says, "A petition for redetermination requesting that the Board reconsider a determination on the grounds that an item is or is not a covered device should be filed with the Department of Toxics. And if the Board gets such a petition,
we're going to sent it to Toxics."

And, you know, I'm not familiar with this program. The question I had was does this mean the Board has no jurisdiction to decide that question or does it mean that the petition has to first go to Toxics before it ever comes here?

If it means that the Board has no jurisdiction, then like the Local Assessment Appeals Hearing Rules, where it explicitly says the Board has no jurisdiction over exemption matters, it seems like we should use something that's more direct so people will know what -- you know, what they're actually reading.

So, there are a number of things like that and, you know, if I hadn't been doing my taxes this weekend I would have had a much more detailed thing that I could have, you know, handed you before the Board hearing and --

MR. LEONARD: Good thing you have lots of taxes to do.

MS. MANDEL: Yeah, I had to do everybody's this year. You know, they send you to law school and I think that's what happens, they think they get pay back forever on the investment.

MR. LEONARD: Family discount.

MS. MANDEL: Yeah, yeah, the family discount's called free.

And then the other sort of thing that I had -- and I wanted to go back through this again -- is still
making sure that we're not putting something in
regulation that hamstrings -- would hamstring the Board
on how it might set up its operations.

And the -- the -- you know, there could be --

MR. PARRISH: I could put it over.

MS. MANDEL: No, no.

MR. PARRISH: Which is okay.

MS. MANDEL: They're asking for approval in
concept, and I have already --

MR. PARRISH: Which is -- we'll just put it
over.

MS. MANDEL: No, no, you know --

MR. PARRISH: Because you bring valid points
up, valid concerns.

This is just polishing it up.

MS. MANDEL: It's polishing it up.

And one of the reasons for that sort of
concern, aside from not wanting to hamstring the Board,
is everything we put in a regulation we have to do it
exactly that way. Or if somebody, you know, loses, then
then that's grounds potentially for them to get it all
reversed.

So, if we actually write in a regulation that
something is going to happen promptly or this or we're
going to do it in exactly these steps and something --
so, I don't think there -- I don't recall that there is
that many of those sorts of things in this group. There
might be a few, but more it was the polishing of
language.

I had talked to the Chief Counsel and she suggested that I just sort of name these things as examples and that approval in concept was okay.

Then, you know, since I no longer have to do my taxes, I can go through it in detail and maybe help you work through some of those language items.

MR. PARRISH: Okay. And your motion is?

MS. YEE: I'll move approval of these rules in concept.

MR. PARRISH: In concept, very good.

Second?

MR. LEONARD: Second.

MR. PARRISH: By Mr. Leonard. Without objection?

MR. LEONARD: I do have one quibble to add to the list.

MR. PARRISH: Please, of course, polishing.

MR. LEONARD: I noticed right at the end and -- in my office when we all write something, we send it out to somebody who had nothing to do with it to look at it. That's maybe the suggestion that Miss Mandel is making, is just does it pass the common sense rule elsewhere?

We're deleting the title of what we're doing of Rules of Practice and we're adopting a new title?

MS. MANDEL: It's a mouthful.

MR. LEONARD: Board of Equalization Rules for California Tax Administration and Appellate Review,
which is, by of governmentese, is BERCTAAR.

Could we call them both Rules of Practice,
known as -- because we're all going to call it Rules of
Practice forever.

Could we put it back in there officially is my
quibble. Thank you, Mr. Chairman

When I call you up and say, "What about the
BERCTAAR?" You're just --

MR. PARRISH: The BERCTAAR?

Well, you know, I never can remember what the
Board of Control is now. That was a big mistake to
change that.

MR. LEONARD: Exhibit A.

MR. PARRISH: That was a bad idea. But, I
think -- you know what, why you don't come back, we're
going to -- we have a motion to approve.

And then they're going to come back for final
approval, right?

So, in case Mr. Leonard doesn't like the
acronym, it could be modified.

Okay. With that being said, we congratulate
you on what you are doing -- in other words, you did
vote yes, didn't you, Mr. Leonard?

MR. LEONARD: I seconded that motion.

MR. PARRISH: You seconded the motion.
Without objection, it's so ordered.
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 APRIL 18, 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 17 constitute a complete and accurate transcription of the shorthand writing.

Dated: MAY 10, 2006

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JULI PRICE JACKSON
Hearing Reporter