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

REPORTER'S TRANSCRIPT
MAY 17, 2006

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

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

For the Board of Equalization:  
John Chiang  
Chairman

Claude Parrish  
Vice-Chair

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

For Board of Equalization Staff:  
Kristine Cazadd  
Chief Counsel

Lou Ambrose

Carole Ruwart

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Sacramento, California

May 17, 2006

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MR. EVANS: Next item are the Chief Counsel Matters.

MR. CHIANG: Okay. Very good.

MR. EVANS: J1 is the Request Concept Approval for Revised Procedures for Property Tax Appeals and new Rules of Practice, Chapter 3, Property Tax. Ms. Cazadd will make the presentation.

MS. CAZADD: Good afternoon.

MR. EVANS: Are there any speakers for this item?

Mr. Michaels.

MS. CAZADD: Good afternoon, Mr. Chairman, Members. For your approval this afternoon we are presenting to you a memo describing the concept that we have in mind for the State assessees -- and actually all property tax appeals. And the way that we would proceed this year. And also the way that we would develop the language -- in fact I've already developed it for purposes of Chapter 3 in the new Rules of Practice.

In the interested parties meetings that have occurred over the past six to nine months, it was agreed by all parties that State assessees would be permitted to have appeals conferences. And given our last interested parties meeting, those conferences would be discretionary upon request.
After further consideration, however, the staff has determined that Appeals Conferences are extremely valuable tools, in preparing matters for the Board's consideration, particularly in oral hearings. And that there are sufficient resources and that there is time in the calendar year to accommodate Appeals Conferences for a majority of the State assessees petitions.

Therefore, staff is requesting in this concept approval memo that has been presented to you approval for holding Appeals Conferences for all State assessees who request an oral hearing before the Board, the -- beginning with this year.

So, the difference that you will see -- if you approve this concept, the difference that you will see between last year and this year is that all of the State assessees who check the box, if you will, on the petition for an oral hearing will also receive an Appeals Conference.

That gives the opportunity to the Appeals Conference holder to narrow the issues and possibly resolve the matter before it is brought to the Board.

For detailed questions and specific -- a specific summary of all the procedures, Tax Counsel Lou Ambrose is here and Senior Tax Counsel Carole Ruwart.

MR. CHIANG: Okay. Any questions? Comments? Is there a motion?

MS. MANDEL: You have a speaker.

MR. EVANS: Mr. Michaels would like to make a
comment.

MR. CHIANG: Oh, I'm sorry. Peter.

MR. MICHAELS: Thank you. For the record, this is Peter Michaels from the San Francisco law firm Cooper, White and Cooper. And I was actually -- I've worked collaboratively with staff, and this project has been ongoing now for a considerable period of time. And I was -- and I'm supportive of their efforts and think they're doing this in the best of good faith, and was asked to weigh in here since I will be working with a number of the State assessees.

And in concept I would say that this is a experiment that we're willing and agreeable to work on with the staff and with the Board. And certainly this is a tentative fix and an experimental tentative fix at that, but we support what they're trying -- I support what they are attempting to accomplish, even though it's still very much in development.

The one thing I noticed here just now, and perhaps either one of -- one of the staff attorneys can address it, when Ms. Cazadd spoke a second ago she mentioned that whoever checks the box for a hearing will get a conference, but the conceptual memo, Kristine, also says, "For each petition that -- petition that requests an appeal conference but not an oral hearing."

And, actually, based on what's happened earlier today, I envision a number of appeals being filed where no hearing is requested but a conference would certainly
be welcome. We would like a conference but probably
don't want to take the Board's time or spend the money,
frankly, on a hearing.

So, is that in or out? You see what I'm
talking about here on the top of page 3?

MS. CAZADD: Yes, I believe that's in. That
is --

MR. MICHAELS: Okay. So, if we file an appeal,
don't say that we would -- don't request a hearing, that
would fit into this conference mode?

MS. CAZADD: That is correct.
The oral hearings -- if you request an oral
hearing, as I understand it the Appeals Conference would
be mandatory. If you don't request an oral hearing,
it's written only that you want an appeal conference,
then that's discretionary.

MR. MICHAELS: And presumably the substance of
that conference would be reflected in whatever
recommendation is made when the case is decided on the
writings rather than on the oral arguments?

MS. CAZADD: That is correct. Lou, perhaps you
could address that in more detail.

MR. AMBROSE: Right, that's correct. That
would be the whole purpose of the conference is to
develop a record and narrow the issues and so forth.

MR. MICHAELS: Yes. Well, I mean this puts a
time crunch on us, we all know that, I think, and
there's an inherent time crunch on State assessees,
anyway where by law you must decide the appeals during the calendar year, in this case the last Board meeting of the year is in early December.

    MS. CAZADD: Early December.

    MR. MICHAELS: And we're -- if we have these conferences we're not going to have the actual -- first actual Board hearing on the State assessees appeal at the earliest until October, is that right?

    MR. AMBROSE: Actually, it would be November.

    MR. MICHAELS: November would be the earliest. And the latest is December. So, it -- you know, I'm -- I'm supportive of this but it -- we should go into it eyes wide open. It's going to put a time crunch on the -- on the -- on the process in -- in some respects, I would say.

    In a way it will be advantageous, too, because it will accelerate much of the discussion at the front end and then we'll be talking in July and in August instead of waiting until October to start talking. We hope.

    MS. CAZADD: That -- actually, that's part of the objectives. And one of the things that we considered was moving the time crunch from the last two months, November and December, to the fall, and getting the presentation of the evidence and going through all of the arguments at the earlier stage rather than later.

    MS. MANDEL: I have a couple of questions. In -- well, I'll start from the back and go to the
front. In tax -- some taxpayers request written findings. We don't do written written findings unless they request them and it's statutory that they have to request written findings if they want them.

In the last few years the written findings have basically become you didn't prove your case. And they really don't say much more than that. And the way that this is set up now, it looks like we're going to be essentially through these summary decisions or hear -- appeals hearing summaries effectively, although everything will be a recommendation to the extent there's a dispute of value or everything will be a recommendation to the extent there's a disputed fact with, as I understand it, a neutral discussion of the pros and cons and the reasons why one might find one way or another on those disputes. Same thing with any legal issue of which there are not generally these days too many legal issues.

So, we're -- in a sense, if the Board adopts this appeals recommendation ultimately we're essentially preparing much more extensive written findings for each matter, whether the person has requested written findings or not, and I don't know if there was anything over the last few years in terms of why the written findings became so much less explicit, or if that was just sort of like a workload thing, but I don't know if you've sort of given thought to the potential impact of those more extensive material preparation for the Board.
MS. CAZADD: I think -- and I'll have Carole or Lou answer the second part of it. I think the first part of your question relates to the Board's findings and decisions are actually presented to the Board for adoption at the conclusion of a hearing. If the hearing is held and then some time later, within -- usually it's 30 days or 45 days we present to the Board, here are your findings and decisions on each of the hearings, the matters that came before you.

Those findings are indeed relatively brief in nature. And that was the direction -- it has been the direction of the Board for a number of years. But here I believe the findings that are -- or whatever comes out of Appeals Conferences is a different -- a different category.

Perhaps, Lou or Carole, you could address that.

MR. AMBROSE: Right. I -- I don't think it would be much different than what we presented to the Board last year, except for the fact that we're going to, you know, probably have additional documents and -- and information, oral information, from the Petitioner, from the Department.

So, I -- I don't really think, you know, appearance-wise or even content-wise it's really going to change much.

MS. MANDEL: Okay. Thanks. The -- the other question I have, I don't know if it's a question as much as sort of a statement, and you've heard this out of me
before, is that whether we really need to be doubling up
on attorney's staff for these Appeals Conferences. You
know, if we have Appeals Conferences, if the model was
the business tax side of the world, those Appeals
Conferences you have the Auditor come in and the
Taxpayer comes in who may or may not be represented, but
the -- we don't have, as I understand it, Department
Legal staff showing up at those Appeals Conferences.
The Auditor is there to defend his audit or explain his
audit and Valuation staff, you know, is -- most of these
are sort of valuation issues, valuation judgment types
of things.

I've always found Val. staff quite able and --
and I'm wondering in the absence of a true legal issue
in a case, what the -- what the need is to double up on
attorney staff in the context of an Appeals Conference.

And maybe that's not really a --

MS. RUWART: Sure, I would say it's a valid
comment. The rules of the Appeals Division attorney and
the Valuation -- the Tax Fee Program Division attorney
are obviously quite different, even though we're both
Members of the same Legal Department.

The Appeals Division Conference-holder is a
neutral conference-holder designed to evince or elicit
the facts and positions of both sides. The thought is
that while I'm sure that the Valuation Division is
obviously very good at what they do, that there are
sometimes legal issues that occur and the fact is, is
that Petitioners are frequently represented by their attorneys, as well.

And given the short timeframe of the -- the whole process that it is appropriate to bring the Tax and Fee Program Division attorneys in at an earlier stage rather than later.

MS. MANDEL: Okay. And --

MS. CAZADD: I have to say, also, if I may, that they -- we tried as much as possible to retain the existing working relationship that we had over the years between the Tax and Fee attorneys and the Valuation Division. Tax and Fee attorneys have always assisted the Valuation Division appraisers in preparing the case, and developing it for presentation.

MS. MANDEL: Yeah, they -- they've often assisted in --

MS. CAZADD: So --

MS. MANDEL: -- handling the function that you're now adding another attorney for --

MS. CAZADD: -- this --

MS. MANDEL: -- but that's --

MS. CAZADD: -- this would continue that practice and that relationship and then -- but add a neutral body, the Appeals Conference-holder.

MS. MANDEL: Okay. And I guess, just in the interest of time, the last thing is just a cute little correction for your memo, in terms of requests for rescheduling, and I assume that -- that in the next to
last paragraph on the fourth page when you said, "If possible, Board Proceedings would attempt to accommodate a request," you probably meant that if possible you would accommodate -- if possible you would accommodate a request. You certainly will attempt to accommodate a request.

But I can hear the voice of the person I know who --

MS. CAZADD: So, you --

MS. MANDEL: -- speaks this way, but --

MS. CAZADD: You are right. Thank you very much, you're absolutely correct.

MS. MANDEL: Thank you.

MR. LEONARD: Mr. Chairman, I want to commend the staff for a great deal of hard work and -- and appreciate the comments that have been made. But it's also important to get this out to the public and to the affected parties as early as possible, because we're -- we're going to try to use it this year, which will really break it in as to what works and what doesn't. And I think it's really critical.

My goal is to have less hearings before this Board, and more taxpayers and Department folks who will resolve the issues before they come to us. If they're issues of law, that they'll either be resolved or they'll be clarified by the time they get to us. If they're issues of evidence, that the -- the third party that's now formally part of this process, because you're
right, Ms. Mandel, they always were there in the past, will -- will be able to sharpen what the evidence area or the factual issues are, where the disagreements are, and either attempt to resolve them or again sharpen them so when they come before us that those hearings before us in December can be very, very brief, there's just the one issue remaining, here's what they say, here's what we say, here's what Appeals recommends on that, and we go forward from there.

And I -- and I think that will help resolve things earlier, as Ms. Cazadd pointed out.

I move adoption.

MR. CHIANG: Okay. We have a motion by Leonard. Is there a second?

MR. PARRISH: Second.

MR. CHIANG: Second by Mr. Parrish.

Any objection?

MS. MANDEL: Yeah, I'm -- you know, I'm going to object and maybe this year change my mind.

MR. CHIANG: Okay. Very good. Please take roll.

MR. EVANS: Mr. Leonard.

MR. LEONARD: Aye.

MR. EVANS: Mr. Parrish.

MR. PARRISH: Aye.

MR. EVANS: Ms. Mandel.

MS. MANDEL: No.

MR. EVANS: Ms. Yee.
MS. YEE: Aye.

MR. EVANS: Mr. Chiang.

MR. CHIANG: Aye.

Motion passes.

Next item.

MR. MICHAELS: Mr. Chiang, could I just clarify, that's this year? The motion didn't say what year. We're talking about doing this this year only for the -- for starters, is that correct?

MR. CHIANG: I don't know what you mean by "only," but --

MR. MICHAELS: Well --

MR. LEONARD: I was with you till "this year."

MR. MICHAELS: This year.

MR. LEONARD: We're starting this year.

MR. MICHAELS: This year, yeah. Your motion covered this year.

MR. LEONARD: No, my motion covered adopting --

MS. MANDEL: The --

MR. LEONARD: -- the staff recommendation in concept of the Rules of Practice for Property Tax Appeals.

MR. MICHAELS: Okay.

MR. PARRISH: Now, you know -- you know what? I -- I concur. My second, because I don't know if I want to saddle my predecessors --

MS. MANDEL: Your successors?
MR. CHIANG: Successors.

MR. PARRISH: Successors, yeah. My predecessors are already saddled, right?

MS. MANDEL: Yeah, they -- they saddled --

MR. PARRISH: My successors.

MR. CHIANG: They saddled off.

MR. PARRISH: Okay. So, I think -- that may change a vote, but I just want to do it for this year only. I only wanted to do it for this year. That's my motion.

MR. CHIANG: You want to expunge the record?

MR. PARRISH: Well, I'd like to -- I don't know if anybody will consent. He likes his motion. But I --

MS. YEE: I have a question.

MR. PARRISH: My thought was it was for this year.

MR. CHIANG: -- my vote.

MR. PARRISH: You're going to win anyway, so why worry about it? So --

MS. YEE: Can I just ask a question?

MR. CHIANG: You can move to reconsider it.

MR. PARRISH: Yeah, I move to reconsider it. Yeah, I -- I move to reconsider for this year only.

MS. YEE: Yeah, could --

MR. PARRISH: Is there comments?

MS. YEE: Well, I have a question. We're approving this in concept --
MS. CAZADD: Right.

MS. YEE: -- but we're actually putting this procedure in place for Appeals Conferences for property tax appeals this year.

MS. CAZADD: That's true.

MR. PARRISH: Yeah.

MS. CAZADD: It's a two-part request.

MS. YEE: So -- but I guess my -- my question is when does the actual proposal going forward for the actual rule change come back to us?

MS. CAZADD: That will be coming back to the Board either in July or August.

MS. YEE: I -- I would suggest that come back --

MR. LEONARD: You have another shot.

MR. PARRISH: I have another shot, okay.

MS. YEE: -- after --

MR. PARRISH: To correct. It looks good but, you know --

MS. CAZADD: Okay.

MR. PARRISH: -- we still have a right to reject it, right?

MS. CAZADD: Absolutely.

MR. PARRISH: Because there's been some valid concerns raised.

MS. CAZADD: Yes.

MR. PARRISH: Okay.

MS. CAZADD: Okay.
MR. PARRISH: Thank you.

MS. CAZADD: Thank you.

MR. CHIANG: So, there's no motion to reconsider?

MR. PARRISH: No. No. We'll go for the -- we'll think about it when it comes up for --

MS. CAZADD: Right.

MR. PARRISH: -- for the rule change.

MR. CHIANG: Very good.

Next item.

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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 May 17, 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 17 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: June 1, 2006.

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BEVERLY D. TOMS
Hearing Reporter