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

REPORTER'S TRANSCRIPT
SEPTEMBER 27, 2006

ITEM J
CHIEF COUNSEL MATTERS
RULEMAKING
REQUEST TO PUBLISH
BOARD OF EQUALIZATION RULES FOR TAX APPEALS

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

Richard Chivaro
Appearing for Steve Westly, State Controller (per Government Code Section 7.9)

Gary Evans, Acting Chief, Board Proceedings Division

Board of Equalization Staff:

Robert Lambert
Tax Counsel

Carole Ruwart
Tax Counsel

Bradley Heller
Tax Counsel

Ian Foster
Tax Counsel

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Sacramento, California

September 27, 2006

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MR. EVANS: The next item is Item J, Chief Counsel Matters.

MR. CHIANG: Okay.

MR. EVANS: This is a request to publish the Board of Equalization Rules for Tax Appeals, Chapters 1 through 5. We have four speakers that have signed up.

MR. CHIANG: How many?

MR. EVANS: Four.

MR. CHIANG: Four.

Somebody wish to -- summoning Mr. Chivaro.

Summoning Mr. Chivaro.

MR. EVANS: Mr. Lambert will make the presentation.

MR. LAMBERT: Good afternoon. The staff is requesting authorization to publish all five chapters of Proposed Rules for Tax Appeals.

These rules are a product of a one-year long process. The process has included seven interested parties meetings, five Board meetings, numerous drafts of Chapters 2 through 5.

It should be noted that consensus was reached with the interested parties on all but a very few issues. And all alternate and alternative language proposals received from interested parties have been at one time or other distributed to the Board and placed on
the special Board web site.

Among other things, these new rules have compiled all Board hearing procedures into one logically organized and comprehensive source for ease of taxpayer use.

They have also made a number of improvements and clarifications to the Board's procedural rules, including providing for appeals conferences for all types of taxes and fees administered by the Board; including State assessee property taxes.

They've also provided for such things as the coordination of innocent spouse appeals. And they have also codified the Board's long-standing opinion that constituents may communicate with their Board Member representatives even if they have a tax dispute.

With me today on my right are Carole Ruwart, who's worked on the property tax component of the rules; Bradley Heller, who has worked on the Business Tax Rules and the General Procedural Rules in Chapter 5; and Ian Foster who has worked on the FIT Procedure Appeal Rules.

Among -- between the four of us we'll try to answer any questions that you may have.

MR. CHIANG: Okay. Very good.

MR. EVANS: The first three speakers, Teresa Casazza, Lenny Goldberg, Joshua Golka.

MR. CHIANG: Okay.

MR. LEONARD: Mr. Chairman.

MR. CHIANG: Yes.
MR. LEONARD: While they're coming down I just want to say thank you. You guys did a great job of putting this all together and -- and putting both our traditions and the way we do things and then ironing out some issues that we hadn't thought of, of getting that.

So, thank you all, that's great work.

MR. PARRISH: I would also like to say that -- to thank the many Board staff who worked extremely hard on this project, and I'd especially like to thank -- I'm going to mention your name and I apologize. Arlo Gilbert. Bill Kimsey. Cheri Kendall. Philip Spielman. Diane Olson. Ian Foster. Reed Schreiter. Bradley Heller. Carole Ruwart.

And I -- I want to tell you that this is -- I am aware of how much effort has been put behind this, and it has been going on for a long time. And I think you've done a wonderful thing for the people of California to make it a more open, more sunlight, more simple, more user friendly, and addressed the -- the criticisms whether warranted or unwarranted.

You've attempted to address them. And on my behalf, I personally thank you. And I know that our -- our -- our Chief Counsel appreciate -- appreciates what you did. And it doesn't go without recognition as far as I'm concerned.

Thank you very much

MR. CHIANG: Okay, very good. Welcome. You have three minutes.
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TERESA CASAZZA

MS. CASAZZA: My name is Teresa Casaza. I'm with the California Taxpayers Association. And I also wanted to start off saying that we very much appreciate and commend the hard work of the staff. Meeting with taxpayers on many interested party meetings, accumulating our input, taking questions off-line, being very responsive, providing this detail of the underscoring and the highlighting, all of the work that they did was just truly appreciated.

We do support the staff's recommendation to approve the publication for the Rules of Practice. We believe that this was a very worthwhile and important endeavor. It provides clarity and encourages a real fair and efficient process.

We would hate for this work to be delayed or be shelved and we do ask for a timely publication.

Thank you

MR. CHIANG: Thank you.

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LENNYGOLDBERG

MR. GOLDBERG: Yes, Lenny Goldberg, California Tax Reform Association. We participated in the process. We appreciate that there was a long and extended process. However, and I would say this and I would urge rejection at least of Section 5 or of -- and I'll speak to the specific issues that I think you should reject.

The -- as we understood this process from beginning, it was going to clarify the separate -- and separate some of the adjudicatory roles of the Board from some of its administrative roles. It was going to set up a process of appeal that would help to deal with -- and I -- I should say I'm one of the critics here, make the process more Court-like. Make the process more accessible to taxpayers and to other interests with regard to an adjudicatory process.

And in -- in several key ways we think it's -- it failed. It may be that I'm only speaking about a small number of provisions. Sections 1, 2 and 3, I sat through some of those meetings, not of great interest. I think you worked out a bunch of problems.

Section 4, that seems to be the case, as well, with regard to the input of the Franchise Tax Board.

Specifically we started with what we thought was a placeholder. Communications can be free and easy and open at all times in an adjudicatory process. We had several different proposals and several different discussions with regard to ex parte communications.
What came back from the staff to the Board that we think should be rejected in Section 50 -- 5000 5015.1 is no reference whatsoever to disclosure of ex parte communications. FTB suggesting all party meetings. Us suggesting that you have many more hearings per month so that you don't have the requirement that you meet in private with -- in an adjudicatory process.

What we are left with here is after all this process absolutely no change in terms of making this more Court-like in terms of the relationship between the adjudicatory process, the taxpayer and the public who needs to hold the process accountable.

Instead, we have many things happening that are not on the record with regard to the lobbying and briefing about -- and in private about tax matters.

We've spoken of this before. I think there are a number of solutions to it. Some are -- you might consider extreme. Some are moderate. None have been accepted in -- in this publication.

Secondly, I think there -- an effort to improve the process with regard to sales tax cases. Franchise Tax cases are all on the record, you can read all the briefings and all the documents. Sales tax cases are not. And we've had the experience where we've been -- I've been personally involved with -- on behalf of Northern California Independent Book Sellers and the Borders and Barnes and Noble cases, for example, in which no information was available to the public as
these issues get -- or to -- to interested parties or
the public, as these issues came before the Board.

Similarly, with LSI Logic, the documents and
the background information was not available. On many
of those cases that have implications -- significant
implications for revenue, we do not learn what the --
what the potential revenue implications are.

Now --

MR. EVANS: Time has expired.

MR. GOLDBERG: -- there is one --

MR. CHIANG: Lenny --

MR. GOLDBERG: I'm sorry.

MR. CHIANG: -- your time has expired. I'll
ask some questions, maybe you can flush it out with
them.

MR. GOLDBERG: Okay.

MR. CHIANG: Okay. Where -- the -- and then
let me talk to staff. Where was it -- where did you
sense for you the breakdown in the process?

MR. GOLDBERG: I -- only at the very end when
we saw coming before the Board issues that were -- had
been resolved presumably by staff. Now, if they
represent the thinking of the Board, I'll just be a
minority here.

But I don't think the process was a bad process
until -- and -- and just at this three minutes -- I mean
this -- this is the example. I thank you for asking me
the question.
If you're going to -- we never -- there has never been in the process a broad public hearing in which Members and Members of the public have discussed the actual final recommendations that are before you.

So, what I would have expected in the process was that we would have a broad public hearing. I have two other issues I'd like to talk about but I only have three minutes.

That is not a public process. Some of this occurred in interested parties meetings. But the decisions to publish never -- we're going to publication with this without ever having a public hearing and public discussion in which -- and -- and we're at -- I'm sorry, I was at a loss here, I didn't realize we only had three minutes to just say, "We don't like it, don't publish it," or, "We like it and publish it."

I think there have never been a broad public hearing and discussion of the alternatives in a public process. What we have is what was presented by staff to the Board. So, if I may, I have two other -- two other issues.

MR. CHIANG: Okay. So -- so, did you communicate your -- your disagreement with staff at an earlier point in time? It was reported and I wasn't -- I can flush this out with Bob. But, you know, he sensed that there was a general agreement to this.

At what point did you communicate -- excuse me --
MR. GOLDBERG: I never had any understanding of a general agreement until I saw the agenda, which is two weeks ago which said, "Here's what's being published." And everything that was on the web site prior to that, it contained -- in -- in the ex parte piece, three different alternatives. We're always there. Here's the underscored. Here's the Alternative 1, Alternative 2, SEIU alternative, the -- the FTB alternative. Interested parties meetings in which I had expressed my opinion about some of these issues and other -- other alternatives not submitted in writing.

So, their -- but their -- only until we saw the agenda did we realize the decisions had been made about these in a definitive manner. Not that we are going to have a hearing in front of the Board in which we can discuss the different alternatives in public, but only that the decisions had been made.

MR. CHIANG: Let me try to winnow your answer so that I have a better perspective yes or no, you know, on this -- and I don't know if there's a third answer, okay, when they presented the alternatives in the interested parties was -- were the -- all the alternatives not available to you?

MR. GOLDBERG: No, they were all available. And then we had other discussions, too, such as having a number -- many more hearing hours, other things that were not submitted in writing. Those were all discussed at the interested parties meetings and the --
MR. CHIANG: And so, did you communicate that you had a disagreement and is staff incorrect in understanding that there was a general agreement, or did you just have these discussions just generally and somehow it was miscommunicated?

I'm just trying to get a sense of --

MR. GOLDBERG: I have no idea where staff thinks that everybody has come to broad agreement on this issue. I have no idea where that comes from. I know that the Franchise Tax Board's issues have not been considered. I know that -- it was stated that SEIU 1000 withdrew its -- its full-blown proposal, but that does not mean they agreed and -- and someone is here from them and can speak for them.

But that does not mean they agreed to the original proposal that there should be no consideration of -- other considerations than pure ex parte without any disclosure or discussion or anything.

So, I -- I don't know where staff got the idea that there was broad agreement on this.

MR. CHIANG: So, when -- when SEIU 1000 withdrew its proposal, was it communicated that they were not in agreement, or did they just say, "We're withdrawing it"? Right, I'm just trying to flush this out.

MR. GOLDBERG: I can't speak for what -- what happened -- what happened with that, but I think they can speak that they never did accept that meant
accepting the proposal. It may have been they accepted
the Franchise Tax Board proposal. I certainly stood
behind the Franchise Tax Board proposal and thought it
was reasonable even though it was not fully consistent
with everything I would like to see.

MR. CHIANG: Okay. And so that I can get this
on the record and I have a better sense and having
checked with everybody, the -- you mentioned earlier in
your comments making a process so that it's taxpayer
accessible. And then -- I need to get -- understand
this better.

You then provided that we -- in regards to
adjudicatory matters you wanted it to be more
Court-like, right, which -- which means -- I need to
hear your perspective which is less taxpayer accessible,
right?

Everything is on the record, right? I mean, we
sort of have these informal things and I just need to
flush it out. Because when people have tax cases,
right, I just need to -- right, I won't necessarily meet
with the taxpayers, but my staff will. Right. They'll
meet with anybody who has an issue.

So, I need to get a sense from you, you know,
if that's the -- you know, what needs to be disclosed.
I'll disclose everything. I don't care.

MR. GOLDBERG: Well, that's -- that was one of
the proposals. Let's know what -- let's put everything
on the record. Let's make sure that in -- more
Court-like means that we know what documents have been presented, what -- what kinds of issues are at stake. Is it broader than just the factual question between the taxpayer and the Board or in the several cases today there were precedential questions that could cost millions of dollars one way or another for the State or for the taxpayer.

What is on the table? What is at stake? I know the cases I've been involved with have been important issues of nexus, but we have never been able to get any -- and I'm -- I'm speaking for taxpayers who were the independent book sellers -- we were never able to get any information with regard to the competitive disadvantage that they felt as those cases were coming fully to the Board.

So, there's a broad question of public accountable -- and I should go broader than taxpayer accessible, public accountability. You are -- as the Board says that we're all elected officials and we're accountable to the public. There's a broad public out there that needs to be able to hold elected officials accountable for the decisions they made.

If you do not have information and decisions are based on private meetings which are undisclosed and -- as part of the record, then it's very difficult to know what's -- what you're being held accountable for and what actually transpired in a case.

MR. CHIANG: Yeah. No, I -- I understand your
perception. I -- the -- you know, and everybody's different. I never commit at a meeting. Right? In fact, I don't sit (inaudible) taxpayers; my staff does. Right. And I have no problems disclosing what -- if people want to share that. Right.

I just need to get a sense of view of what needs to be disclosable, what -- at what point those meetings should not take place. Right.

I have disagreements procedurally, right. I think if a taxpayer has his case that's scheduled and as a Chair and somebody wishes to postpone their case because their representative is not available or -- you know, an important witness is not available, right, like the -- you know, I -- I don't think it's -- you know, I still think because it's the Chair's prerogative to make the schedule work.

MR. GOLDBERG: Sure.

MR. CHIANG: So -- but I need to know, you know, within the parameters you're drawing whether that is permissible or not permissible. You know, what your public policy concerns are.

MR. GOLDBERG: Well, the public policy -- now, I've said this a number of times, and I -- I actually think that ex parte communications should be strictly limited, if not prohibited, and then to do that as I've been -- as I've had discussions with Board Members, one of the problems is that the ten-minute period -- ten or 20-minute period for a case, my suggestion has been that
the Board meet, you know, ten -- ten days -- separate
out the policy and rulemaking regulatory functions of
the Board and the adjudicatory functions and meet for 10
or 12 days a month if that's what it takes to work
through -- work through cases in public in which
everything is on the record.

Short of that, we certainly -- and this is one
of the issues here -- think that the sales tax
record has -- needs to be broadened.

Ms. Mandel mentioned to me that --

MS. MANDEL: This -- but now you're -- now
you're starting to talk about a second issue.

MR. GOLDBERG: Okay.

MS. MANDEL: So, just to make it clear, in your
presentation, because you had the one issue which is
contact -- Board contact outside the context of the
hearing. And certainly, you know, we always strive to
make sure that everything is on -- on the record in
those appellate matters.

But when you -- when you start talking about
your issue with respect to finding out the information,
for example, about a sales tax case, you were talking
about versus income tax case and how in the past the
income tax matters were available and much less
information was available on the sales tax matters.
That gets into the -- and waiver and disclosure of --

MR. GOLDBERG: In 5033.

MS. MANDEL: -- information that -- of things
that's coming forward to hearing. So, just to make that distinction.

MR. GOLDBERG: Right.

MS. MANDEL: And that's the second of one of your points, right?

MR. GOLDBERG: I see them as a piece.

MS. MANDEL: Okay.

MR. GOLDBERG: And the reason I see them as a piece is the question is how -- how accountable is the adjudicatory process? In Court, everything is on the record. Everything -- the -- the Judge takes it into advisement. You know, it may or may not have a written decision. Frequently it has a written decision on -- on the case.

But everything is on the record. You can see what -- exactly what's at stake.

That's not -- and -- and the combination of lack of access to information and the private ex parte communications that occur that are undisclosed with regard to what -- what has been submitted during them, what the nature of the discussion is, and that's in Franchise tax cases, as well, so everything may be on the record in the Franchise Tax case other than the private communications.

It means that it is much -- one -- from the outside the public can hold the Board far less accountable for its adjudicatory decisions because we really don't know and we can't know what's at stake,
what's been presented. Some -- many things that
happened are not on the record, including the private
communications that exist with the Board Members.

MR. CHIANG: And so, counsel, what are you
recommending?

MR. GOLDBERG: Well, I've -- I've recommended a
number of things. I think there -- the FTB proposal is
quite a reasonable one. It's not -- it doesn't go as
far as I would like to, but it certainly meets with the
cconcerns of FTB staff with regard to when there is a
meeting that the meeting is offered to be an all-party
meeting, so that all parties in the case are in the room
with the same information at the same time. That the
record of the communications be disclosed as a Member --
as a part of the public record.

And -- and I'm not sure if the FTB goes quite
far enough on this, that the nature of any information
that's been presented at a private meeting for -- become
part -- specifically become part of the record. If
there's going to be a full hearing record, it should be
exactly that, a full -- a full hearing record.

So, the FTB proposal would be a reasonable step
forward.

MS. MANDEL: And then on -- I'm sorry. And
then on your -- your --

MR. GOLDBERG: I should say the John Davies
proposal because it's not clear that it represents FTB,
per se.
MS. MANDEL: And -- and then on your question
of -- of access to information, was that a separate --

MR. GOLDBERG: That is a separate point, as is
the question of holding closed hearings. The -- the
criteria in -- annoyance, embarrassment or oppression of
the taxpayer. I would be embarrassed -- if I had an
abusive tax shelter case, I would ask for a closed
hearing, thank you very much, but my embarrassment
should not be -- my potential embarrassment should not
be the reason for a closed hearing.

And I read the language. It is fairly --
arguably, it's certainly not tight enough with regard to
closed hearings as -- as I think are the -- even the
trade secrets. If I were a major corporation I would
say all of this involves trade secrets, it should all be
done in closed hearings.

So, I think that the direction of Section 5 is
exactly the opposite direction. It allows for private
meetings, it allows for -- well, I -- I -- let me amend
that. On the question of sales tax, it does give the
hearing -- make the hearing summary public. And I have
to say it's not clear to me at this point to what extent
that hearing summary is sufficient to really expose the
information at stake, or whether the -- there's
significant background information.

I think anything that you go -- goes to the
Board should go to the public, with regard to a case.

MR. CHIANG: I think -- well, I
think certainly -- I can't speak for the future Board, it's certainly been the practice of this Board.

    MS. MANDEL: Well --

    MR. GOLDBERG: Not with regard to sales tax issues.

    MR. CHIANG: Pardon?

    MR. GOLDBERG: Not with regard to sales tax issues.

    MR. CHIANG: (inaudible) closed hearings.

    MS. MANDEL: No, no. See, now -- the closed hearings is one issue. Now he's talking about in these rules -- yeah, he changes that a lot.

    MR. GOLDBERG: See, I have three issues. In my letter I have three issues.

    MS. MANDEL: Right.

    MR. CHIANG: You just have to keep a -- stay on one --

    MS. MANDEL: You got to keep -- you got to stay straight -- straight on one.

    MR. CHIANG: I'm focused on one issue.

    MR. GOLDBERG: Okay, good. Thank you.

    MS. MANDEL: So -- so closed hearings --

    MR. CHIANG: For my simplification.

    MS. MANDEL: Right. That's why I tried to split them up before. Closed hearings is one. The Board Member contact is another one. His third one is --

    MR. GOLDBERG: Sales tax.
MS. MANDEL: -- access to the information that the Board has in front of it on sales tax cases because traditionally the taxpayer confidentiality in a tax matter where the Board administers the tax versus the Franchise Tax Appeals -- Franchise Tax Appeals everything was public information that got filed with the Board.

On the sales tax case it's still the confidential taxpayer matter so nothing was available, as I understand it. And what the proposal is has to do with hearing summaries, and at some point in that interested parties process I have this recollection of having asked that some kind of sanitized example of a hearing summary be provided to people like Mr. Goldberg, because in the discussions -- you know, people who haven't handled sales tax matters or perhaps who hadn't worked for a Board Member, didn't necessarily know what these words meant when they were being thrown around the room. What's a hearing summary? We're going to see a hearing summary. Great, what's that? What else does the Board have?

So, his third issue is if the Board Member gets it for the hearing, even though it's a sales tax matter where traditionally you didn't -- things were held confidential, he thinks the public should get it. And he's not sure whether what's in the proposal covers that or not, because he's not really sure what those things are. Right?
MR. GOLDBERG: Well -- right. It doesn't -- my understanding is that it doesn't get -- the hearing summary does not get sufficiently to all the information that has been ostensibly put on the record when it comes as a meeting here. I do understand that when you're in an administrative process, and I followed -- tried to follow the Barnes and Noble case very closely -- that when it was in an administrative process there was no -- no ability to get information from -- it was a long audit process. The public shouldn't be getting private information there, although my clients had a very strong interest in what was going on there.

However, when that case came to the Board -- when the issues came to the Board, there was still no information available. And that's where that information, when it comes as part of an adjudicatory or appellate process needs to be presented to the public and to interested parties equally.

And -- and the question becomes does the hearing summary sufficiently cover that. In the cases we heard today, do we have a sense of the full -- does the public have a sense of the full implications of a -- of what a decision one way or the other might be?

MR. CHIANG: Okay.

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JOSHUA GOLKA

MR. GOLKA: Good afternoon, Mr. Chair and Members of the Board. Joshua Golka with SEIU Local 1000.

We also appreciate the time and effort and energy that staff put into developing these proposed rules. Unfortunately, and we must agree with the -- the statements made by -- not unfortunately, I guess isn't the way to do it -- we would align ourselves with the comments made by Mr. Goldberg. Rather than repeat all of them we'll just stand on those.

We did withdraw our alternative which is listed as Alternative 3. But that did not indicate an intention on our part to acquiesce to -- to the rules as you see them here. We -- our understanding was that there would be a further dialogue on the issues. And we hope that that will take place. So, we're asking you today to reject the request today so that we can have a further discussion on the issues that Mr. Goldberg raised.

Thank you.

MR. CHIANG: Okay.

MR. EVANS: We have one more speaker. Mary Hernandez.

---oOo---
MARYHERNANDEZ

MS. HERNANDEZ: Good afternoon. Mary Hernandez. California State Council for Service Employees. I'd also like to reiterate the points made by Mr. Goldberg. We think that this proposal ought to be rejected pending further discussions on the matters.

MR. CHIANG: Thank you.

Okay, questions or comments?

MS. YEE: Mr. Chairman.

MR. CHIANG: Yes.

MR. LEONARD: Mr. Chairman.

MR. CHIANG: Betty, then Bill.

MS. YEE: I have a couple of concerns here. One, relative to the process and how the proposed rules in this current form before us got to this state without, I guess, some more dialogue with the parties that have been involved in the process.

So I -- I do want to pose that question to the staff. But, secondly, another question to the staff, and that is with all the alternatives that had been put forth, had there been any kind of analysis on them that brought you to the conclusion that is now embodied in the rules as we see them today?

MR. LAMBERT: You're speaking with respect to which of the three issues we've been talking about?

MS. YEE: Actually, I'm speaking more generally to the entire process, because there were suggestions brought forth. I think some of them were less
controversial in the earlier parts of the -- of the rules, but certainly with respect to parts 4 and 5.

MR. LAMBERT: We've continually been having discussions and communication and analyses. It's -- I don't think it's the case that the staff ever has and does not now necessarily take all, you know, alternative proposals or language they hear in an interested parties meeting and present it to the Board at a hearing.

For instance, if the staff feels that there's not a sufficient quantum of support among the interested parties for a certain proposal, if they feel that the alternative language is unworkable or prohibitively expensive or just unrealistic, or if they think that the alternative proposal is unsupported by law and there's no really legal basis for it --

MS. YEE: I guess --

MS. MANDEL: I'm -- I'm sort of -- I guess I'm a little perturbed by that, because the interested parties process as set up -- certainly the way it's run through the -- the committees that have handbooks on how to handle things, typically it may be the case that in the course of those discussions somebody is brought to an understanding that what they are -- what they think ought to be proposed fails a whole host of things and then the person winds up saying, oh, yeah, you know, I am not going to take that issue to the Board, I'm not going to push that issue, but that the -- that as a general way of dealing with interested parties that
we've had through the committees, a full package goes and people are asked whether they have -- there is an issue or something that they want to take to the Board and what's their alternative language so it can be -- be presented.

And it -- and it -- you know, it may be, you know, you have some outlier who says, "I still want to do," you know, whatever. And for the most part on the substantive types of issues that we've had, there's been, you know, for lack of a better word, sort of a taxpayer side and perhaps an assessor side on property tax and -- and they try to be, you know, coherent on their one side.

But as we saw this morning, we had, you know, four different sets of language that came out of an interested parties process.

So, I -- I'm not sure that that's, you know, totally accurate that we go through an interested parties process and then staff just doesn't present proposals if staff feels that it doesn't meet certain criteria.

MR. LAMBERT: Of course this was a pretty massive project and there were a lot of interested parties meetings. I think with respect to the three outliers, if that's the word, with respect to the constituent communication issue, I think staff believed that the union essentially had withdrawn their objection. Rightly or wrongly, I think staff believed
that.

    MS. MANDEL: Well, and he -- he says they had withdrawn that --

    MR. LAMBERT: Right.

    MS. MANDEL: -- language.

    MR. LAMBERT: Right. I think we had -- I think there were discussions at an interested parties meeting with Mr. Goldberg where he had expressed some of the thoughts he expressed today, but we never received an alternative proposal from him until this week.

    With respect to the Chief Counsel at the FTB, I think that we found that -- that proposal lacking in some respects and we thought -- thought it was unworkable and not really supported by law.

    Specifically, it was -- it was citing a -- an old rule of professional conduct that had been superseded to make it clear that the Board Officers -- Board Members are not judicial Officers. So, we found that lacking legally.

    I think those were among the reasons the staff chose not to bring that to the Board, although they did put it on the web site and they did send it to -- you know, put it in their matrix and they did provide it to the Board Members.

    MS. YEE: I guess the step that's missing that seems to be creating a lot of problems is what happened between the time that the alternatives were proposed and the conclusion that you all came to that's embodied in
the rules today before us.

And I know our office short of asking the specific questions, we didn’t really see kind of a detail of the analysis that went into the conclusion that you all drew. And I think that’s what’s been problematic, is that there’s not been a discussion nor anything that’s tracked how we got to the proposals as we see them today.

MR. LAMBERT: I see.

MR. GOLDBERG: If I may, on process, I had assumed that by speaking at an interested parties meeting those ideas became part of the record in some form or another. And I apologize for not having written up full-blown proposals.

MR. CHIANG: Betty, were you still --

MS. YEE: I’m trying to figure out how to resolve this gap. The -- I think my suggestion would be to figure out what public forum we can institute to at least get current on the dialogue about what happened to each of the --

MR. LAMBERT: Can I add a point of clarification?

MS. YEE: Yes.

MR. LAMBERT: We -- our staff did communicate with the FTB, with the Chief Counsel and with the union with respect to their -- their issues.

MS. YEE: No, I understand that.

MR. LAMBERT: We did discuss that with them.
MS. YEE: No, no, and I appreciate that, that you went back to the originating parties.

MR. LAMBERT: Right.

MS. YEE: But in terms of the entire process and all the participants in the process, I think there are some who are kind of in the dark about what's happened.

And it -- but I think it deserves that kind of airing and public process. It could be an interested parties process. It could be a special order on the next Board meeting agenda. But I think there are a lot of gaps and I'm not sure that -- I mean, I'm not prepared to vote on these today.

MR. CHIANG: Do you have a recommendation?

MR. LAMBERT: Might -- might I add if we are going that direction, may I just take one second and inject something?

I believe we are down to one paragraph that's not -- well, there's possibly more given the disclosure rule -- issue. But if we're talking about the constituent communication matter, that's one paragraph that's uncross-referenced. You could theoretically adopt the rest of Chapter 5.

MR. PARRISH: Which is -- yes.

MR. LAMBERT: Pull that paragraph and deal with that later if that's going to be more time consuming.

MS. MANDEL: Well, I -- you know, I'm not prepared to do that today, either, because I haven't
seen the final-final with all the changes in it and I know there were changes coming even this week. And if we're going to move into formal rulemaking we should certainly have the best drafted product that we can have.

MS. YEE: I also don't sense kind of why the urgency. I mean, I think I really would like to be sure that we're --

MR. LAMBERT: Fair enough.

MS. YEE: -- getting it back out to a public dialogue --

MR. LAMBERT: Fair enough.

MS. YEE: -- with respect to how we got here and be sure that people understand what it is that's before us.

MR. PARRISH: Mr. Chairman.

MR. CHIANG: Yes, Mr. Parrish.

MR. PARRISH: Okay. There's been I don't know how many months of hard work by the staff. There are items 1 through 5. We do -- I would -- I would hope that before I leave and -- that we would be able to resolve or at least approve the good work that's been done.

Now, with respect to item 5, I think today we could approve item 1 through 4. But what has been talked about and what some of the speakers talk about is they don't think that the elected representatives of the Board should be able to talk to their constituents.
Now, this has been through -- several bills in
the Legislature attempted to do just that. But the
Legislature in their wisdom decided that we do have the
right to speak to our constituents, and those bills by
the several authors all failed. And than there's no way
to satisfy some of the people -- or one individual
speaking, they'll never be satisfied, and they will --
they will continue with delaying tactics unending that
will prohibit these -- these -- this fine work to be
implemented based been the fact that they -- now, I'm
not putting any words in their mouth because it's on the
record. They think that this Board should be operated
as a Court of law.

This is not a Court of law. This is an
administrative procedure. We are not Judges. The
Legislature looked very carefully at the bills that
would eliminate our contacting our constituents and the
bottom line is if you want a Court of law you have to
pay to play. That's the way it is. And the Legislature
decided that, yes, if you want Court proceedings and you
want the judicial -- whole judicial ball of wax, then
the taxpayer has -- has that right. And then, when --
but they must pay the tax first.

What you're advocating here is the taxpayers
don't have to pay, but they get a Court. And that is
not anything that the Legislature will ever accept.

So, with that having been said, I do make a
motion, Mr. Chairman, to approve the -- the Rules of
Practice that have been worked on, and everybody had
months and months and months and months to put their two
cents in, and nobody was held out and nobody was held to
three minutes, and they certainly weren't held to three
minutes today, and they certainly are able to contact
the Board Members, and I think that enough is enough and
we ought to end this endless debate and -- you know, the
new legislative session is coming up again. And maybe
the Legislature will decide that we want taxpayers to go
before a Court of law but without having to pay the tax.
But I doubt it, seriously.

So I make a motion that we accept the -- go
forward with the new Rules of Practice.

MR. CHIANG: Okay, very good. We have a motion
by -- by Mr. Parrish.

Is there a second?

MR. LEONARD: Second.

MR. CHIANG: There's a second.

Please take roll.

MR. LEONARD: Can I ask a question?

MR. CHIANG: Certainly.

MR. LEONARD: This is a motion -- the staff
recommendation and the motion is to publish. And it's
how many days? What's the notice period on the --

MS. RUWART: 45 days.

MR. LEONARD: 45 days. And then we're required
to have a public hearing --

MS. RUWART: Correct.
MR. LEONARD: -- after the end of 45 days. My support for the motion is actually to further Mr. Goldberg's point. I'm concerned that there's a chance there's only insiders on this process, and that by publishing we'll get a better and a greater circulation of all five chapters that may bring out a whole host of new issues because, frankly, it's -- it's the real interested parties who have been at these meetings and have talked these things through and through, but not necessarily everybody in the State.

So, I think it's important that we move on at some point, and I'd urge today, to the next step to get a wider circulation of all five chapters and -- and then -- because as I understand it, we're free to amend the proposal at the next public hearing. It may require republication or not, but we're free to amend it.

So, we're -- we're not barred by accepting new ideas, discussing them. I think there's been a healthy debate today and -- and because such a large volume, as Mr. Parrish points out, of all five chapters appears to be consensus, I'd like to run that test by a much greater circulation and would move to publish.

Second Mr. Parrish's motion.

MR. CHIANG: Thank you. 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: No.

MR. EVANS: Mr. Chiang.

MR. CHIANG: No. Motion fails.

Is there another motion?

MS. YEE: I'll move to -- actually, what I'd like to have staff do is maybe have one more interested parties meeting to try to fill that gap between what happened with the alternatives having been withdrawn and the proposals that we see here today.

So, if we could have that and maybe have the rules and -- and then also give the opportunity for any Board Members that continue to have concerns -- I know I still have a couple of concerns -- after seeing the language, to submit those, too, and have the matter agendized back, what -- for the November meeting?

MR. CHIANG: Okay. We have a motion by Yee.

Is there a second?

MS. MANDEL: Yeah.

MR. CHIANG: Is there a second?

MS. MANDEL: Yeah, I'll second that.

MR. CHIANG: There's a second. Please take roll.

MR. EVANS: Mr. Leonard.

MR. LEONARD: No.

MR. EVANS: Mr. Parrish.
MR. PARRISH: No.

MR. EVANS: Ms. Mandel.

MS. MANDEL: Aye.

MR. EVANS: Ms. Yee.

MS. YEE: Aye.

MR. EVANS: Mr. Chiang.

MR. CHIANG: Aye. Motion passes.

Yeah, Brad.

MR. HELLER: Mr. Chair, just one clarification.

As we move forward through the process, do we have direction to go ahead and continue -- or to reinclude those alternatives for that one section dealing with communications so that when we come back to the Board in November that they should be included regardless of what happens, or that we should --

MS. YEE: I think the interested parties discussion will guide you. I mean, part of -- we haven't had the conversation with everyone involved.

MR. CHIANG: You guys have done a great job.

MS. YEE: Yeah.

MR. CHIANG: We trust you. Just do what you think best.

MS. YEE: Yeah.

MS. MANDEL: Yeah, and if somebody -- you know, it's just, you know, run -- run it the sort of regular straight way we run it and we'll get to a right place.

MR. LAMBERT: Aye-aye.

MR. CHIANG: Thank you.
MS. YEE: Thank you to the staff.

MR. CHIANG: Next item, please.

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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 September 27, 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 37 pages constitute a complete and accurate transcription of the shorthand writing.


__________________________________________
BEVERLY D. TOMS
Hearing Reporter