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

REPORTER'S TRANSCRIPT
SEPTEMBER 28, 2005

BOARD MEETING
RE: RULES OF PRACTICE

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

For the Board of Equalization:  
John Chiang  
Chairman

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

Board of Equalization Staff:  
Brad Heller  
Tax Counsel

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<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>4</td>
</tr>
<tr>
<td>PRESENTATION BY MR. HELLER</td>
<td>7</td>
</tr>
<tr>
<td>SPEAKERS RE: COMMUNICATIONS</td>
<td></td>
</tr>
<tr>
<td>BRUCE LANGSTON</td>
<td>33</td>
</tr>
<tr>
<td>LENNY GOLDBERG</td>
<td>33</td>
</tr>
<tr>
<td>DAVID R. DOERR</td>
<td>36</td>
</tr>
<tr>
<td>SPEAKERS RE: DISCLOSURES</td>
<td></td>
</tr>
<tr>
<td>LENNY GOLDBERG</td>
<td>38</td>
</tr>
<tr>
<td>TERESA CASAZZA</td>
<td>39</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 1</td>
<td>41</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 2</td>
<td></td>
</tr>
<tr>
<td>LENNY GOLDBERG</td>
<td>42</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 3</td>
<td>43</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 4</td>
<td>44</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 5</td>
<td></td>
</tr>
<tr>
<td>DAVID R. DOERR</td>
<td>45</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 6</td>
<td></td>
</tr>
<tr>
<td>LENNY GOLDBERG</td>
<td>46</td>
</tr>
<tr>
<td>DAVID R. DOERR</td>
<td>47</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 7</td>
<td></td>
</tr>
<tr>
<td>BRUCE LANGSTON</td>
<td>48</td>
</tr>
<tr>
<td>SPEAKERS RE: ARTICLE 8</td>
<td></td>
</tr>
<tr>
<td>LENNY GOLDBERG</td>
<td>51</td>
</tr>
<tr>
<td>BRUCE LANGSTON</td>
<td>51</td>
</tr>
<tr>
<td>SARAH ZIMMERMAN</td>
<td>52</td>
</tr>
</tbody>
</table>
Sacramento, California

September 28, 2005

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MR. CHIANG: Thank you for attending the first of four public meetings on the Board of Equalization Rules for California Tax Administration and Appellate Review. The rules discussed today and in upcoming meetings will regulate the administrative procedures for appeals, refunds and Board hearings for the 25 Tax and Fee programs that this Board oversees, as well as govern how this Board interacts with the public it serves.

In the last five years taxpayers have filed nearly 20,000 administrative appeals. Of these appeals, 10,000 have been resolved by this Board at Board hearings and 1,300 of the taxpayers in these appeals have received an oral hearing before this Board.

This Board recognizes that it is imperative that every taxpayer be given full and fair access to all administrative rights and that their grievances and contentions be heard and responded to in a timely and efficient manner throughout the appeals and refund process.

To ensure that this occurs, this Board understands the necessity to periodically modify our administrative procedures in order to incorporate new technologies to better serve our respective constituents and to adjust for workload demands.

On behalf of the Board we look forward to
hearing your comments and suggestions on how to improve
and update our administrative procedures and ensure that
these procedures are accessible to each and every
taxpayer.

Debbie, if you'd call the next item on the
agenda.

MS. PELLEGRINI: Good morning, Mr. Chairman and
Members. If you notice this morning we did not have a
sign-in sheet for you to sign in to make public comment.
We are going to begin by passing around a sign-in sheet.
Please sign in. This will ensure that we have the
proper spelling of your name, if you make public
comments, and also who you represent. This will also
enable us to provide you additional information as the
rules work through the process.

There were four handouts that were in the foyer
this morning. We had the meeting agenda. We have
additional copies of the rules. We have a copy of
Mr. Heller's power point presentation so that you can
follow along. And we also have the yellow informational
sheet that provides the future meeting dates, and also
contact information. And if you are interested in
receiving a transcript or an audio of this presentation,
who to contact. The transcript will be placed on our
web site in approximately three weeks.

If you did not receive any of these handouts
and wish a copy, if you'll just raise your hand, staff
will provide you a copy.
Mr. Heller will begin by overviewing the proposed regulations. Thank you.

MR. HELLER: Thank you very much. Good morning, Mr. Chairman and Members of the Board. Can everybody hear me properly?

No? Is this a little better? No. Sorry. Make sure everybody can -- is this better?

No. Okay.

MS. PELLEGRINI: It's --

MR. HELLER: Perfect.

MS. PELLEGRINI: You need to raise the one on your neck. I think that's the one that's not --

MR. HELLER: I don't think so.

MS. PELLEGRINI: -- is our audio.

MR. HELLER: Pardon me. Is this better now? Can everybody can hear me now?

Thank you.

Once again, thank you, Mr. Chairman, Members of the Board. Good morning. Before I begin I wanted to go ahead and thank the Board for all their interest in our program and for putting this meeting together.

I think it's a great step forward for taxpayers. Also, I'd like to thank the team that helped put this all together. Our Chief Counsel, Kristine Cazadd. Our other tax counsels, Carol Ruwart, Reed Schreiter and Ian Foster. Our assistants, Diane Also. Philip Spielman, Arlo Gilbert and Bill Kimsee. And our technical assistants from Chris Rees, John Pratt,
Michael Lebeau and Randy Silva, all -- this presentation would not be ready this morning without all of their help.

Basically I'm here to introduce the Board of Equalization rules for California tax administration and appellate review, which I'll be referring to as the proposed rules throughout this presentation. I'll begin by providing background on the intent and purpose of the rules, and then I will guide you through the rules from the beginning to end while noting some of the more interesting and important provisions.

I will conclude by providing more information on how you can.

Continue to participate in the Board's review of the proposed rules.

The proposed rules are designed to encompass all of the Board's procedures applicable to the Board's administrative review processes for all of its programs.
They contain detailed procedures applicable to the Board's review of petitions, claims for refund, requests for administrative review, requests for relief of penalties for all of the Board-administered taxes and fees.

They also contain detailed procedures applicable to -- to the Board's review of petitions and applications for all of the Board-administered property tax programs.

They also contain the Board's procedures for
hearing appeals from actions of the Franchise Tax Board -- excuse me.

The proposed rules are intended to make the Board's procedures more transparent and accessible so that the Board can be more responsive to the public in all of its functions.

The proposed rules promote transparency by providing a single source everyone can turn to for all of the Board's procedures, providing more detailed information on the Board's procedures than the Board previously made available, and reorganizing all of the procedures into a more logical and easily accessible order.

Increased transparency and accessibility should also promote voluntary compliance -- excuse me, promote voluntary compliance with California's tax laws by increasing public trust.

More specifically, the proposed rules will make the Board's procedures more transparent and accessible by creating a single source, replacing numerous procedural regulations, operations, memorandums and publications; replacing and augmenting current property tax regulations; providing new streamlined procedures for income tax appeals; and providing new more detailed Board hearing procedures.

The overall reorganization of the Board's procedures should improve everyone's access by taking information from multiple resources, putting it all into
one place, and reorganizing all of the information based
upon the applicable tax program and the chronological
sequence in which it is needed during the administrative
review process.

The pros -- the proposed rules also address
specific concerns raised with the Board, such as the
appropriateness of communicating with Board Members
outside of hearings; the need to further define and
expand upon the information that becomes public --
publicly disclosable after the Board hears a case during
an open meeting; the need for the Board to provide the
more -- provide more information to the public regarding
its decisions.

In order to be more clear and understandable,
the proposed rules are divided into five parts; one for
each major subject matter area.

Part 1 contains the statement of intent and the
title for the proposed rules.

Part 2 provides the rules for review of
business taxes and fees.

Part 3 provides the rules for the
administrative review of the Board-administered property
tax programs.

Part 4 provides the procedures applicable to
appeals from the actions of the Franchise Tax Board.

And Part 5 contains all of the Board's general
hearing procedures.

The section numbers within each part correspond
to the part number. For example, Part two begins with 
sec -- excuse me. Part 1 begins with section 1000.
Part two begins with section 2000, and so on.

So by looking at the first number of a section 
you can automatically tell which part it belongs to.

However, everyone should know that the proposed 
rules will be renumbered during the formal rulemaking 
process even though they will retain their organization.
And for those of you who are familiar with the 
organization of our current rules, basically most of 
them are in the 5,000 sections, and that's where most of 
these rules will probably end up being placed when 
they're organized. But for the current -- for our 
current purposes they've been all grouped together and 
numbered sequentially so that everyone can understand 
them much better

Excuse me. Okay. Beginning with Part 1, Part 
1 contains the Board's intent for the proposed rules and 
sets the tone for the rest of the proposal.

In the Statement of Intent, the Board 
recognizes that tax administration is the most sensitive 
point of contact between taxpayers and their government. 
And that access to Board Members and all of the Board 
staff, combined with clear, well-organized and concise 
procedures, will not only ease tensions, but will also 
promote positive feelings towards the Board.

Part 1 also declares that it's imperative for 
the Board Members to remain accessible to their
constituents, subordinates and other governmental agencies at all times in order to carry out their constitutional and statutory duties to oversee the administration of taxes throughout California.

This is a theme that will be continued throughout the presentation.

The -- Part 1 also demonstrates the Board's intent to fully address the nature of Board hearings and prescribe more specific rules for the issuance of decisions and the publication of opinions.

Part 2 contains the procedures applicable to the administrative review of business taxes and fees. Article 1 explains that Part 2 is applicable to petitions, late protests, applications for administrative review, claims for refund, requests for relief of -- for all of the Board-administered business taxes and fees. So it essentially creates a one-stop shop for all of your procedures.

In -- excuse me. In order to get a feel for the scope of Part 2, I have listed most of the business taxes and fees for you. Some of the more familiar ones would be the Sales and Use tax, the Cigarette and Tobacco Products tax, the Diesel Fuel Tax which is in the news quite a bit late -- lately. And as you can see -- let's see, Part 2 also applies to several other additional fees, including recovered Electronic Waste Recycling Fee, the re -- the Tire Recycling Fee, Marine Invasive Species Fee, Natural Gas Surcharge -- excuse
me, and the Water Rights Fee.

Article 2A contains the procedures applicable to petitions for redetermination. Article 2A identifies the persons who may file a petition, provides all the applicable Statute of Limitations for the various business taxes and fees, which if you've ever tried to figure out one for a specific fee, it can be very difficult.

And what this -- what this article does is actually combine all of those different Statute of Limitations into one section and make it much easier for people to determine when things are due. It provides -- it also prescribes the contents of petitions and identifies specific information applicable to petitions for each particular business tax or fee. So, if something special is required for a plain -- or a petition for review for a diesel fuel tax, it will describe those special documents that might be necessary.

It also provides the appropriate addresses for sending each type of petition and explains the initial review process.

Article 2A also provides petitioners with the ability to amend their petitions after they're filed; explains that filing a petition does not stop the accrual of interest; and prescribes the scope of petitions filed with regard to four programs for which the Board shares administrative authority with other
agencies. And they're all listed there on the bottom of the slide. There's the Hazardous Substances Tax Law; Childhood Lead Poisoning Prevention Fee; Covered Electronic Waste Recycling Fee; and the Water Rights Fee Law.

Article 2B memorializes the Board's long-standing policy of exercising its discretion to accept untimely petitions as late protests. It explains that late protests will be reviewed like petitions -- excuse me, like petitions in accordance with Article 2A except that the Board retains discretion as to whether to provide an Appeals Conference or an oral hearing.

And I think if you've ever tried to find the -- the statute or the regulation explaining how we handle late protests, you probably were unsuccessful just like I was. So, I hope that this will provide more guidance to the public.

Article 2C addresses petitions for redetermination and applications for administrative review of jeopardy determinations. It prescribes the contents of the petitions and applications. It prescribes the time period within which they must be filed.

Article 2C also explains the scope of administrative review of jeopardy determinations and describes the procedures to be followed in the review process.

It also identifies the need to deposit
security with the Board to prevent the seizure and sale
of property pursuant to a jeopardy determination. Since
jeopardy determinations are -- are final upon issuance,
the Board can begin collection actions unless it does
receive security within ten days.

Article 3 applies to claims for refund.
Article 3 identifies those persons who may file a valid
claim and even goes so far as to identify third parties
who may file a claim where -- where statutes allow it.
It sets forth the applicable Statute of Limitation for
each business tax and fee, and explains the filing
time -- excuse me, explains that failing to file a
timely claim waives the claimant's right to a claim.
And it also -- excuse me. It also prescribes the
contents of properly completed claims.

Article 3 also provides the mailing address for
filing claims under various business taxes and fees;
describes the entire claim review process; warns
claimants that their refund may be credited or offset
against other liabilities which may or may not be a
shock to some -- some claimants. And this is an effort
to advise them in advance. And also defines the scope
of claims filed under certain business taxes and fees,
which are similar to the provisions on the scope for
petitions for redetermination.

Okay. Article 4A provides the procedures
applicable to requests for innocent spouse and other
equitable relief.
Article 4A identifies those spouses that are eligible for relief; explains how they can prepare their request for relief; provides a mailing address where they should file their request, and explains the Board's process for reviewing such requests.

Article 2 -- excuse me, Article 4B prescribes the procedures applicable to successor's request for relief from penalties imposed on their predecessors pursuant to the Sales and Use Tax Law.

As you can see, all of the Article 4s, 4A and so on are -- deal with requests for relief.

Article 4B prescribes -- excuse me, allows such requests to be included in the successor's petitions for reconsideration. So if you have a successor who's requesting relief of a penalty because they're not related to their predecessor and also is requesting -- is filing a petition for redetermination, they can include their request for relief right in the petition.

It also requires that all such requests be in writing and that they be signed by the successor under penalty of perjury.

Article 4C applies to other requests for relief based upon reasonable cause, unreasonable error or delay, reasonable reliance on written advice from the Board staff, and the concur -- the occurrence of a disaster.

Article 5 incorporates the Board's current procedures with regard to claims of incorrect or
non-distribution of local taxes. And it really makes no
substantive change in that area and really doesn't
modify hardly any of the procedures, either. But it's
been included so that the entire set of rules will be
comprehensive.

Article 6 provides the procedures applicable to
Appeals Conferences and the Appeals Division. Article 6
provides the procedures applicable to the scheduling of
an Appeals Conference; explains the functions of the
conference-holder, provides the time periods for
submitting evidence; describes the persons who will be
present at the Appeals Conference, and recommends ways
to expedite the scheduling of an Appeals Conference.

Most notably, Article 6 prescribes the contents
of the Decisions and Recommendations issued by the
Appeals Division. So there will actually be a --
requisites for a Decision and Recommendation so that
taxpayers and practitioners can ensure that they're
complete upon issuance.

Article 6 also explains that Board staff cannot
request oral hearing before the Board to contest the
recommendations of the Appeals Divisions. So if the
Appeals Division does issue a favorable recommenda --
Decision and Recommendation to a taxpayer, Board staff
will not request an oral hearing before the Board and
contest the Appeals Division's decision. The Appeals
Division's recommendation will be submitted to the
Board.
Part 3 addresses the Board's administrative review of the Board-administered property tax programs. Part 3 contains all of the procedures applicable to the administrative review.

Article 1 provides the procedures applicable to petitions for reassessment of State-assessed property and private railroad cars. It explains that the underlying data the Board uses to assess such property will be available to the State assessees after May 31st of each year. And it prescribes the procedures applicable to an assessment factor hearing.

Article 1 of Part 3 also provides the time periods in which the State-assessee must file a petition for reassessment. It prescribes the contents of such petitions. Describes the Board's entire review process from beginning to end. And explains the Board's decisions on a petition -- explains that the Board's decisions on a petition for reassessment become final immediately after its issuance.

Article 2 contains the procedures applicable to petitions for equalization of government-owned property. It explains how to file petitions for review, equalization and adjustment of assessments of publicly-owned property, and provides a time period in which they must be filed.

Article 2 also provides County Assessors with guidance for answering petitions; explains the Appeals Division's function in the review process; and
guarantees equal access to information to petitioners and County Assessors.

Article 3 of Part 3 provides the procedures for petitioning the staff finding of ineligibility for a welfare exemption. Article 3 identifies the period in which petitions must be filed; prescribes the contents of such petitions; requires that petitioners attend a pre-hearing conference with the Appeals Division; prescribes the applicable briefing schedule; describes the information and documents that will be distributed prior to the Board hearings, and provides that Board decisions on such petitions are final once issued.

Article 3 also -- oh, excuse me. Article 3 also identifies the applicable Statute of Limitations.

Article 4 provides County Assessors with the procedures applicable to the administrative review of the Board's Property Tax Assessment Sampling Program. And contains the procedures applicable to a County Assessor's petition appealing appraisals made by the Board's County Property Tax Division.

Article 4 -- excuse me, Article 4 provides the time period for filing petitions and prescribes their contents.

Article 4 also describes the processes -- process for reviewing the successor -- for reviewing a successor's petition. That's correct. Excuse me, for reviewing County Assessor's petitions, excuse me. And
it provides all the procedures from the acknowledgement
of the petition through the pre-hearing conference, a
briefing of the issues, specific preparation for the
Board hearing, and the actual oral hearing, itself.

Part -- excuse me. Part 4 contains the
procedures applicable to appeals from actions of the
Franchise Tax Board.

Article 1 of Part 5 provides a clear, concise
statement of the Board's jurisdiction, including
jurisdiction to hear appeals from notices granting or
denying innocent spouse relief.

Article 2 of Part 5 prescribes the contents of
an appeal; provides appellants with the ability to
perfect incomplete appeals; and states a time period for
filing a timely appeal. And none of those are
actually new procedures in and of themselves. We've
already -- always allowed appellants to -- to cure
incomplete -- incomplete appeals, but we have added more
detail to all the provisions.

Excuse me. Article 3 describes a briefing
process and contains the briefing schedules for four
different types of appeals. It contains a general
schedule similar to the Board's current briefing
schedule. It contains a new briefing process and
schedule for innocent spouse appeals, which is
innovative in the fact that it allows the non-appealing
spouse to participate in the appeal process.

It creates a separate briefing schedule for
homeowners and renters property taxes appeals. And it also has a brand new, streamlined elective briefing process for small tax appeals which is based upon the United States Tax Court's elective small tax case procedures. This procedure would apply to appeals where the amount at issue, exclusive of accrued interest -- excuse me, exclusive of accrued but unpaid interest, does not exceed $5,000.

So, basically, in determining the amount at issue we would look at penalties that are imposed and actual tax at issue, and if it was a claim for refund the amount of interest that was paid. But for purposes of like an appeal from an unpaid amount, we would not look at accrued but unpaid interest in determining the $5,000 amount since the interest can easily drive the amount at issue over $5,000, and that was certainly not the intent. The intent was to provide a streamlined procedure for taxpayers with smaller cases.

Article 4 contains rules requiring requests for oral hearing to be submitted in writing.

Article 4 also contains new procedures allowing the Appeals Division to request additional briefing to clarify fact and issues presented in the appeals before completing its hearing summaries.

For those of you who have experience with Franchise and Income Tax appeals, it's frequently the case that we have at least one or two issues that are not completely developed by the time that the case is
scheduled for an oral hearing. And often the Franchise
Tax Board or the appellant are asked to provide
additional information or prepare to -- or be prepared
to answer certain questions at the hearing.
And this new procedure is designed to allow the Appeals
Division to go ahead and request that information in
advance and obtain that before preparing its hearing
summary so that all the information is available to the
Board at the start of the hearing. And we're hoping
that this will make the hearings much more efficient.
And Article 4 also contains a requirement
requiring the Appeals Division to submit its hearing
summaries 30 days before each oral hearing.

Let's see. Article 5 describes three types of
decisions the Board may issue in an appeal and describes
their precedential effect. It describes letter
decisions, which have no precedential effect. Summary
decisions, which provide more information than letter
decisions but also do not have a precedential effect.
And formal opinions, which do create precedent and
typically contain a detailed application of the facts
and to -- excuse me, detailed application of the law to
the facts provided and the conclusions reached by the
Board.

And Article 5 also incorporates a new
innovative procedure that would allow a descending Board
Member to include a dissenting opinion providing his --
his or her rationale for opposing the adoption of a
formal opinion in cases where the Board does adopt a formal opinion.

So, if the majority of the Board decides to publish a precedential opinion and another Board Member disagrees with that opinion or the -- the adoption of a formal opinion, they can now go ahead and adopt a dissenting opinion and convey their -- basically, send a message that can be heard by taxpayers everywhere and future Board Members as the Board changes over periodically.

Article 6 concludes Part 5 by explaining when Board decisions become final, giving notice that the Board may hold its decisions in abeyance before they become file -- excuse me, before they can become final and providing procedures for requesting and granting a rehearing on a decision.

Part 5, which we're all here to discuss today, not just me, contains the Board's General Board Hearing Procedures.

Part 5 provides the Board's current procedures -- excuse me, improves the Board's current procedures by arranging them in their chronological order.

Part 5 does not apply to appeals from Franchise Tax Board actions where the more specific provisions of Part 4 take precedent. For example, the briefing schedule in Part 5 would not apply to a small tax appeal where the taxpayer elected the briefing schedule for
small tax appeals.

Article 2 of Part 5 is divided into three chapters. The first two chapters explain how the Board adopts its annual meeting calendar and then schedules individual cases for hearing at Board meetings.

Article -- Chapter 3 identifies and describes the three main pre-hearing documents. The Power of Attorney form. Contribution disclosure form. And the hearing summary. It provides a description of the upcoming hearing, which I think will be valuable to -- to taxpayers who are attending a Board hearing for the first time.

And it also explains how time will be allocated at the hearing.

Chapter 3 of Article 2 also contains one of the most important now provisions in Part 5. That's section 5015.1 which we'll be taking comments on in a few minutes. And this section carries out the Board's intent, which I discussed earlier, to be accessible to its constituents, subordinates and other governmental agencies by expressly authorizing such persons to contact Board Members at any time, even while a case is pending before the Board.

The authorization contained in this section also specifically mentions members of the Bar in an effort to dispel the effects of a non-binding advisory opinion issued by the State Bar in 1984, which may have led some attorneys to refrain from contacting Board
Members in the past.

And that provision basically is designed to --
to inform everyone, all practitioners and tax and fee
payers and representatives of other State and Federal
agencies that they are authorized to contact the Board
at any time if -- when the necessity arises.

Let's see. Let's see, where am I? Okay.

Part 3. Pardon me. Article 3 of Part 5
explains how the Board prepares its agenda for a Board
meeting and issues its public agenda notice at least ten
days before a Board meeting.

Article 4 provides the information that parties
need to know in order to feel comfortable when they
arrive at their Board hearings.

Article 4 explains when you arrive; explains
how to sign in for a hearing and submit last minute
documentation, including contribution disclosure forms;
and specifically states that staff from the Taxpayers
Rights Advocate office will be available to help answer
questions at every Board meeting.

Article 5 describes the manner in which Board
meetings are conducted.

Article 5 provides references to all the
applicable laws, like the Bagley-Keene Open Meeting Act,
and explains the order in which cases are called.

Article 5 also preserves the applicable right
to address the Board on an agenda item.

Article 6 explains that a quorum must be
present for the Board to render a -- a decision. It also provides a detailed description of the manner in which the Board votes on motions and explains the effect of each type of motion.

Article 7 requires the Board to provide written notice of its decision and explains when decisions become final.

Article 7 also contains the procedures for requesting and granting a rehearing.

Article 8 concludes Part 5 and contains the most innovative provisions in the proposed rules. These are two sets of alternative provisions governing publicly disclosable information.

The first alternative, which is at Section 5033 and is labeled "First Alternative," provides rules that only allow the public to attain -- obtain the hearing minutes, transcripts and any exhibits incorporated into the hearing record for almost all of the Board's programs except appeals from Franchise Tax Board actions. These basically mirror our current rules and do not provide for the disclosure of most information necessary to understand the decisions and complex business tax and fee cases.

Alternative 2, the second alternative, provides a much broader public record. It begins by saying that hearing minutes and transcripts and exhibits incorporated into the hearing record are still publicly disclosable records.
This -- then Section 5033.1 explains that tax
and fee payers grant the Board a limited waiver of their
right to confidentiality by requesting oral hearings.
This limited waiver only applies to information that is
directly relevant to their hearings and does not include
certain personal information.

Up until this point there has been -- there has
always been some sort of limited waiver that applied
when a taxpayer requested an oral hearing before the
Board since the Bagley-Keene Open Meeting Act requires
that the meeting be open and that basically provides a
right for any person to attend the meeting and record
either orally or by video any of the proceedings.

So, there's clearly some sort of waiver and
this procedure actually tries to set forth the scope of
that waiver for the first time.

Let's see. The limited waiver does not become
effective until the Board issues its public agenda
notice for the Board meeting at which the tax or fee
payer's case will be heard. So by just simply
requesting an oral hearing when you file a petition or
claim for refund, the taxpayer will not have waived
their rights to confidentiality in any respect. It
will -- that waiver will only arise once the -- once the
Board issues its public agenda notice for the upcoming
hearing.

So, it's generally about ten days before the
hearing, so there's plenty of time for taxpayers to
decide whether or not they want to go forward with their oral hearing and subject themselves to the limited waiver.

The tax or fee payers may request that certain harmful information be protected from disclosure pursuant to Section 5033.2, which is in addition to the protection of certain personal information such as like home mailing addresses and Social Security numbers.

And section 5033.2 provides the actual procedures for protecting harmful information. If a tax or fee payer requests that certain harmful information be protected from disclosure, the Board will rule on the request at least five days before the limited waiver becomes effective.

So this would be at least five days before we issue the public agenda notice. And this advanced notice will allow the tax or fee payer to decide whether or not to waive its oral hearing if the Board rules -- ruling unfavorable.

So, if the Board -- if a taxpayer is requesting that certain information be kept confidential, regardless of their Board hearing, and the Board determines that that information will still become disclosable, then the taxpayer will still have time to decide whether they want to waive their oral hearing or accept that the limited waiver would apply.

Let's see here. Conclusion.

This concludes today's introduction of the
proposed rules. The Board has not yet made any
decisions to adopt any of the proposed rules and will
not do so or begin the formal rulemaking process until
it has received input from the public over the next
several months.

In just a few minutes the Chair will invite you
to make comments regarding Part 5, General Board Hearing
Procedures, which I just finished discussing. The Board
will also hold additional interested parties meetings to
discuss the rest of the proposed rules in the near
future.

You should have received a handout on your way
in containing all the dates of the upcoming meetings.
And those meetings -- the October meeting will -- will
provide an opportunity to discuss and comment on Part 2,
business taxes and fees.

And the November meeting will provide
opportunities to do the same for Part 3, Property Taxes.

And the December meeting will address appeals
from actions of the Franchise Tax Board, and also
provide a second opportunity to discuss the Board's
general hearing procedures, which we'll be discussing in
just a moment.

Our goal is to begin the rulemaking process
sometime in January or February, and that's probably the
first time that a rulemaking package will be available
for the Board Members to decide upon.

Please visit our web site at boe.ca.gov for
more information. It will be constantly updated as new
information becomes available, and it should include a
copy of this power point presentation, and will
eventually have the -- a transcript of today's meeting
posted, as well, for your future reference.

And I want to thank you all for attending
today. And I'll return the attention back to the Chair.

Thank you, Mr. Chiang.

MR. CHIANG: Thank you very kindly.

Debbie, next item, please.

MS. PELLEGRINI: Okay. We will now begin
taking public comment. As announced in the public
agenda notice, we will begin with Part 5, which is the
General Board Hearing Procedures. When we conclude
taking comments on this part, we will open it up to any
other comments that you have regarding our rulemaking
process, what we are doing on these rules.

We are going to begin with using a structured
process to get your comments. We are going to begin
with Communication with the Board Members, which is
Section 5015. That's a portion of Article 2. We'll
follow that with the Disclosure, which is Section 5033.
That's the one that Mr. Heller just completed.

From that point forth we'll just start with
Article 1 and continue through Article 8.

You will notice that we have a microphone -- a
free-standing microphone in the center aisle. What we
will be doing is, as I announce the item, I will ask you
to step forward to the microphone. We're asking that no more than three or four people approach at a time. Don't worry, I will keep saying, "Is there anyone else that wants to make comments on this particular topic?"

When you do approach the microphones, we do not have sign-in sheets, even though you've signed the other one -- it's going to be very important for you to state your name for the record, who you represent and if you can identify a particular chapter or section that is related to your comments.

And, again, we're going to ask that you make a comment on the article only once, but you will be provided many opportunities to come forth for each article that you want to make comments on.

And, lastly, again, we will open it up to general comments afterwards. When we finish each article, I will turn it back over to the Board Members, if they wish to discuss the item or if they do want any additional comments.

So, the first item that we are going to take is Communication with the Board Members. That is Section 5015, a portion of Article 2. And if you're interested in speaking, if you will please come forward to the microphone.

Oh, and -- excuse me, there is a time limit of three minutes each for -- on each article that you're addressing.

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COMMUNICATIONS

BRUCE LANGSTON

MR. CHIANG: Good morning, and welcome.

MR. LANGSTON: Good morning, Mr. Chairman and Board Members. My name is Bruce Langston, from the Franchise Tax Board, Legal Staff. I have a specific comment on this section, and I will have general comments later on some of the other ones.

On this one, specifically, the Franchise Tax Board's Chief Counsel, John Davies, has directed us to urge that this provision not be adopted, but that if it is adopted, if ex parte communications are to be allowed, that FTB should be notified and included in any meeting or call, and each ex parte discussion should have a public log available as to the case or matter discussed, and the names of all individuals meeting with the Board Member and/or his or her staffs. Thank you.

MR. CHIANG: Thank you, Bruce.

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LENNY GOLDBERG

MR. CHIANG: Lenny.

MR. GOLDBERG: Lenny Goldberg, California Tax Reform Association. I have spoken on this issue before. This Board really needs to make a distinction between what are -- and I'll use the terms that are used at the Public Utilities Commission -- quasi-legislative proceedings and quasi-judicial or judicial proceedings. And rulemaking is quasi-legislative. There is no
question that there should always be interaction with --
with decision-makers, anybody can talk a whole wide
ranging degree of discussion. On a -- if -- if this
Board is -- continues to say it is the judicial, and I
know some people, Mr. Parrish, has said we're really not
acting in a judicial manner, but in -- in these cases,
in these hearings you're acting as -- in a judicial
manner. The notion of absolutely free interchange among
all parties is one that should be unaccepted --
unacceptable to a judicial process with regard to ex
parte communications.

Now, at the PUC, when there are ex party
communications as -- as you just heard there, there are
notices of exactly what was discussed and in fact
Commissioners are now holding all party meetings rather
than having serial ex parte communications. They will
hold all party meetings with all members and all issues
will be discussed openly in front of the members.

There -- there's -- there are two issues here.
One is the ability to seek favor from a particular
member in a judicial proceeding and provide information
that is not a matter of the public record.

The other, which -- the way this language is
written, implies that a Member of the Board of
Equalization at all staff and administrative and
prehearing levels can be involved, interfere, if you
will, have discussions about the taxpayer's issue even
before it gets to the Board.
And a corollary, not only should all ex parte communications be disclosed, there should be opportunities for all open -- open meetings if you're going to continue ex parte communications on judicial, but at least a corollary of this rule should be to say that in no way may a Board Member get involved at the staff level with a tax -- particular taxpayer's case until it comes before them at the hearing level.

And I know from talking to auditors and others, there's really questionable activity with regard to the Board interfering early on behalf of the taxpayers. So, there should be no involvement by Board Members with any subordinates, any staff, with the taxpayer as that issue is being -- working its way through the administrative process.

At that point then you face the issue of ex parte communications with public reports. But I suggest on the -- on the quasi-judicial where you have -- particularly as it's something -- and we've had discussions of this, as it's coming close to the period of time that there be a period in which there's absolutely no communication between the taxpayer and the Board.

There are a lot of -- I'm -- I'm throwing out a lot of issues here because there are a lot of variations on the theme that if you don't fully exempt judicial proceedings from ex parte communications, there are still other steps that you can take.
But the -- the corollary should be that in no way should a Board Member ever communicate with staff or subordinates on a -- on a taxpayer issue as it -- before it's to be coming to the Board. Thank you.

MR. CHIANG: Very good.

Dave.

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DAVID R. DOERR

MR. DOERR: Dave Doerr with CalTax. I think I have to agree with my good friend, Mr. -- disagree with my good friend, Mr. Goldberg, on this issue.

Frankly, we have confidence the Board has the integrity to hear people's opinions and then decide a case on its merits. Which I guess Mr. Goldberg doesn't really have. But we think that this goes to a fundamental issue of fairness, is that -- that one side of the case is the tax agency, and the other side is the taxpayers. And tax agency staff always has access to the Board.

I mean, if you cut off tax staff access to the Board, then it would be impossible for the Board, itself, to run the -- the agency.

So, -- and the taxpayers then should have equal access. We further think that there's a general rule embedded in the Constitution of the right of the people to petition their government and seek redress of grievances. And we think that the process should be opened and people can come and be able to talk to their
elected representatives on -- on issues.

So, we think that the proposal is a good one.

MS. PELLEGRINI: Any other comments on communication with Board Members?

Mr. Chiang.

MR. CHIANG: Thank you.

MS. PELLEGRINI: Next item.

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DISCLOSURE

MS. PELLEGRINI: The next item is Disclosure Section, and this is 5033 through 5033.3. And this is where there were two alternatives that are being proposed.

Anyone wishing to address the Board on these?

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LENNY GOLDBERG

MR. GOLDBERG: For the record, Lenny Goldberg, California Tax Reform Association. I would just say at this point, from looking at them, we appreciate Alternative 2. We believe that there -- that often in the -- again, trying to make an analogy to a Court or judicial proceeding, in a judicial proceeding in a tax matter you see a great deal of information about -- that is on the record, that the taxpayer knows when they are going to Court that they will have to make information public in a judicial process when it is -- when it is an appellate process.

And -- and in that way you find -- you can -- the public can see a lot about how the Courts handle tax matters and what -- what the factual basis is, what the legal basis is, for those decisions.

We appreciate that in Section 2 -- or Alternative 2 that there is some information that will be on the record that will be available to the public. So that as you are making your -- your adjudicatory decisions that there is -- that the public can
understand the basis for that.

I would say, however, that the phrase as I read it "harmful to the taxpayer" is -- needs to be much more clearly defined.

Does that mean harmful in the sense that their competitors will know their operations? Is it harmful in the sense that disclosing it would be legally problematic or would be embarrassing to them?

I think there's -- it's -- there's a lot of broad generality in the phrase "harmful" in -- in Alternative 2.

So, we definitely prefer Alternative 2 and think that that language needs further definition.

Thank you.

MR. CHIANG: Thank you.

MS. PELLEGRINI: Any other comments on Disclosures?

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TERESA CASAZZA

MS. CASAZZA: My name is Teresa Casazza, with the California Taxpayers Association. We do have some concerns. The Alternative 1, I think it was portrayed that Alternative 1 was mirror of current law. And the third point that was mentioned about the documents distributed to Board Members, we had a little concern that that is not current law.

We do have concerns about Alternative 2. Our members are very concerned about the confidentiality of
their business plans, marketing plans, other issues, that it's not very clear what is actually going to be disclosed or not. And the confidentiality issue is the biggest one.

In looking at how Alternative 2 will be implemented, it seems like it will have a chilling effect on appeals, because if businesses don't want to disclose what they are doing from a confidential nature, as far as they're concerned, then they will frankly lose their right to appeal, which I don't think is something we would like to see.

Thank you.

MR. CHIANG: Thank you.

MS. PELLEGRINI: Any other comments on Disclosures?

MR. CHIANG: Next item, please.

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ARTICLE 1

MS. PELLEGRINI: The next item -- we're going take now the articles in numeric order and it would be Article 1, Application of Parts and Definitions, which is Section 5001 through -- and 5002.

Any comments?

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ARTICLE 2

MS. PELLEGRINI: We will now move then to Article 2, which is the requirements for scheduling Board hearings. Section 5003 through 5015.1.

Any comments?
Okay, we are now then --

MR. CHIANG: Debbie, one moment.

MS. PELLEGRINI: Thank you.

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LENNY GOLDBERG

MR. GOLDBERG: I'm sorry, I'd just like -- I would just like -- Lenny Goldberg, California Tax Reform Association. A general comment throughout this, which you know, they've -- you've done a very good job on putting all this together, but it would be very helpful to know where -- where rules are being changed. You know, when you have normal regulatory process, you say, "This is what we're changing."

So as you do -- I know it's a big document but it would be helpful as we go through this exercise to know what's new and what has been changed.

Thank you.

MR. CHIANG: Thank you.

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ARTICLE 3

MS. PELLEGRINI: Okay, we are now an Article 3, which is the hearing agendas and the public agenda notice, Section 5016 and 5017. Any comments?

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ARTICLE 4

MS. PELLEGRINI: The next would be Article 4, arrival time and sign-ins.

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ARTICLE 5

Article 5, the conduct of board hearings.

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DAVID R. DOERR

MR. DOERR: Dave Doerr of CalTax again. I think this issue came up earlier in the year and I recall we commented on it. I think Mr. Parrish raised the issue that in certain complicated cases we should -- the Board should have the authority to grant more than ten minutes.

And looking at this I don't see that option in this proposal of ten minutes, ten minutes. So we'd like to see that -- I think the Board took some action on Mr. Parrish's proposal, but I could be wrong.

But, anyway, I think the ideas that he had originally were good ones and maybe could be incorporated here, as well.

MS. PELLEGRINI: Any additional comments? ---oOo---
ARTICLE 6

MS. PELLEGRINI: Article 6, which is the quorum voting and decisions. 5023 and 5024.

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LENNY GOLDBERG

MR. GOLDBERG: Yes, Lenny Goldberg, California Tax Reform Association. For most constituted bodies and frequently, if you say Board of Supervisors, Public Utilities Commission, the requirement for final action on a -- on an item is a majority of the Board, not a majority of those present in the voting. And I know there have been cases here there were two-to-one votes that were considered final votes by the Board. We believe that may take -- it may require statute, but we believe that of the five members -- a five-member Board is constituted, a final decision of the Board should require three votes, not that -- a two-to-one vote with a three-member quorum should not be acceptable as a matter of final decision.

And I don't believe that any -- certainly, the -- on amendments the Legislature will do that, but for -- but committees of the Legislature, member -- County Boards of Supervisors, elected bodies all over the State -- City Councils, you have to have a majority of the membership to take final action, not a majority of those present voting.

Amendments are different. Temporary measures which are majority of those present and voting. But, we
think that with regard to the quorum question there 
really should be three members of the Board to make a 
final decision.

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DAVID R. DOERR

MR. DOERR: Dave Doerr with CalTax again.
Again, I think we have to disagree with Mr. Goldberg.
One of the problems on this issue is the statute that I 
think Mr. Goldberg had support in the Legislature 
requiring the Board to recuse itself on matters where 
there's contributions of a -- a certificate amount. So 
a taxpayer needs to get a decision, and when the people 
are -- have to abstain because of the statute, you have 
to have a fewer number of Members voting on -- on 
proposals.

So, clearly, in order to get a decision the 
majority of quorum would appear to be appropriate.

MS. PELLEGRINI: Any other comments on Article 
6?

MR. CHIANG: Let me offer something in response 
to Dave. Just technical clarification, 
non-participation, not an -- not an abstention. 
Abstention is participation.
Thank you.
Next item, please.

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ARTICLE 7

MS. PELLEGRINI: Would be Article 7, Notice of Decisions, Petition for Rehearing, Decisions on Petitions for Rehearing, Rehearings and Suit in Superior Court. This is Section 5023 through 5030.

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BRUCE LANGSTON

MR. LANGSTON: This is Bruce Langston again, from Franchise Tax Board. You know, I apologize, I didn't have my comments organized this -- specifically by code section, but this looks like the ones that most of ours will fit under, so I'm just going to give them to you now and hope they're in the right place.

Just as a general comment, Franchise Tax Board staff has over the years worked with the State Bar and Board of Equalization staff for two major objectives. One, to propose changes in law and procedure; to make the process for the different taxes, Income Tax, Sales Tax, Business Taxes, much the same for practitioners so it's easy for them.

And also to conform somewhat to Federal tax Court and other Federal areas that practitioners are familiar with.

Another general comment that applies here, and all along, is we have a statewide e-government policy that we want to make sure is taken into account.

The State is directing us wherever possible to go towards electronic transmission of documents,
elimination of paper, use of new technology. And we want to work with the Board staff to make sure that is included. We have a lot of -- the proposed regulations still talk about the paper, filing new paper and mailing things. And to the extent that we could modernize those, we'd like to work with that.

We've found some technical conflicts with the new regulations, especially in the specific area where the old regulations talked about the burden of proof being on the taxpayer except in certain circumstances. That's not in these, and it -- we think it should be.

The post-hearing briefing situation where, as you know, the Board can decide a decision at a Board meeting, we get the decision sometimes quite a while after that, but the deadline for filing our petition for rehearing starts when the Board decides the decision.

That's a problem for both the State and the taxpayer. Right now we can file some sort of a pro forma petition for rehearing and supplement it later if the decision comes out with something, you know, that -- that we feel we need to do a petition for rehearing.

We're concerned about using the service by mail provisions. Again, that's inconsistent with some recent statutory changes. Also, it's somewhat inconsistent with the e-government provisions. We'll work with the staff and submit written comments on that.

We are concerned about considering jurisdictional and tax issues at the same time. Most
judicial forums you consider your jurisdictional issues first. First you decide if you are properly before the forum, and only after that you get to the substantive tax issues.

We think that is a good model to follow. It saves both the taxpayer and the State a lot of time. You don't have to go through factual development, go through briefing of complicated tax issues until you've decided that you're properly in the forum.

The other thing is we want to make sure that we provide for reasonable extensions and deferrals for extraordinary events. You know, we -- right now we have situations where there are disasters, there are military. We have -- sometimes things needed to decide the appeal are outside the FTB's or the Taxpayer's control. For example, there -- we have a lot of appeals awaiting, pending court decisions, asking the IRS for Federal documentation. And we just want to make sure that is also included.

So, those are sort of some general comments that I think more -- most properly fit in this area.

Thank you.

MR. CHIANG: Thank you.

MS. PELLEGRINI: Any additional comments on Article 7?

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ARTICLE 8

MS. PELLEGRINI: And then the last Article of this Part 5 is Article 8. That's mailing address for correspondence, timeliness of documents, public records and disclosures, subpoenas, transcripts and fees. This is Section 5031 through 5034.

That concludes then our -- the comments and the Articles in Part 5.

We now open it up to any other comments on any of the other parts or the regulations in general.

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LENNY GOLDBERG

MR. GOLDBERG: In general I'll reiterate my comments about showing changes and new things. I just do want to make a comment on statement of intent, and I -- you know, this may be a little bit far afield, but the phrasing of delicate balance between revenue collection and freedom from government oppression.

Government oppression is a broad and philosophical political much-debated term. I would -- I would think that this body might use -- might substitute that phrase, arbitrary and capricious treatment of the taxpayer. I think you're running a little far afield and a little bit broadly in the general statement of intent. And that's my only other comment.

Thank you.

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BRUCE LANGSTON
MR. LANGSTON: Thank you. Bruce Langston again. One more comment. I would like to compliment the staff on their work. They did a lot of work in a short amount of time and we're -- we're very appreciative and and we plan to work with them a lot.

One kind of overriding comment that Franchise Tax Board staff is concerned about is if the Board is going to go to a more adjudicatory proceeding, we want to make sure there's some kind of equal treatment between FTB and the Taxpayers in appeal proceedings.

That is situations where briefing is cut off, currently FTB is not allowed to request an oral hearing. There are circumstances where something is raised in the last brief, FTB is not able to reply. That we'd like some sort of ability to at least answer something that is raised for the first time.

That's been an issue. And just in general we -- we believe the timeframe should be the same for responding. If taxpayers get 90 days, Franchise Tax Board should get 90 days.

Thank you.

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SARAH ZIMMERMAN

MS. ZIMMERMAN: Hello. My name is Sarah Zimmerman. I'm the Region Policy Director at SEIU Local 1000. And I'm looking at this hearing as the beginning of a process.

We've a lot of members both at the Board of
Equalization and at the Franchise Tax Board. They're looking forward to participating in this process and working with us.

We have been looking over the past few months at a lot of the issues that are being raised here. We're very interested in continuing in discussion looking at the appeals process, looking at the FTB appeals process in front of the Board, looking at -- I know there needs to be a balance of publishing information and not setting precedential decisions, and that's another piece of the conversation that we're very interested in participating in.

We're also interested in looking at the issues around ex parte communication. And recusement. And looking at models of other agencies in California that have a balance between free communication of the rulemaking and looking at some limits to the communication in judicial and quasi-judicial settings.

So, we see this as a lot of useful information that we are going to be reviewing and coming back to you in the next few months as we have a little more time to digest this information that we were exposed to for the first time in writing a couple of days ago.

So, we really appreciate this process and are looking forward to working more closely with you over the next few months.

MR. CHIANG: Thank you.

MS. PELLEGRINI: Any additional comments?
I would like to remind everyone that we passed around the sign-in sheets so we could make sure you could receive additional notices. If you came in late and did not sign in, they are still in the foyer.

The other thing is please note that the next meeting is October 26th. Each of our next subsequent interested parties meetings follows a Board meeting day. They are here in Sacramento. The next one is on Part 2, which is the Sales and Use Tax, Timber Yield Tax and Special Taxes and Fees.

And with that, the meeting is adjourned.

MR. CHIANG: Very good. Thank you very kindly.

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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 28, 2005 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 54 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: October 12, 2005.

BEVERLY D. TOMS
Hearing Reporter