INTERESTED PARTIES MEETING
RE: RULES OF PRACTICE

OCTOBER 18, 2006
SACRAMENTO, CALIFORNIA

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October 18, 2006

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MR. LAMBERT: Good morning. Thanks for participating in the interested parties process for the nth time today on the rule -- Board of Equalization Rules for Tax Appeals project.

Your participation is appreciated and we hope we can improve the Board's regulations.

This morning we're here to discuss the Board's Rules for Tax Appeals as a result of a 15-month long effort to compile the Board's current procedures for handling all types of appeals, make them more efficient and understandable; addresses various procedural issues and determine which procedures are best suited for being promulgated as regulations.

I'm not going to recount the various chapters again here, but I will say today we have -- I guess now there's five handouts and there's a couple more.

We have the rules in their present form. The written comments submitted by Mr. Lenny Goldberg. Written comments submitted by Mr. Joseph Vinatieri. Staff responses to the interested parties' comments. And redacted -- other than the written comments being distributed today for the first time -- and redacted hearing summary prepared for the Business Taxes oral hearing just to give you an idea of what's included if you don't -- haven't seen one before.
There's also another document -- can I see
that? It's a letter on Board Member Betty Yee's
letterhead dated October 18, 2006 with various comments.
And they're making copies now so we'll have
those in a few minutes.
The specific -- we're going to discuss all the
matters which are -- which have been raised by -- by
people today. And if anyone wants to raise any new
issues, we'll discuss them. However, the primary thing
we are here to discuss is the rules with respect to
communications with Board Members and disclosure and
related topics.

First, I think we ought to introduce ourselves.
We'll start with the people at the table. And my name
is Robert Lambert. I'm the Acting Assistant Chief
Counsel for the Tax and Fee Division of the Legal
Department.

MR. VINATIERI: I'm Joe Vinatieri with Bewley,
Lassleben & Miller in Whittier.

MS. MANDEL: Marcy Jo Mandel, State
Controller's office.

MR. DAVIS: Kenneth Davis, staff of Franchise
Tax Board.

MS. BORGMAN: Susan Borgman, staff of Franchise
Tax Board.

MR. LANGSTON: Bruce Langston, Franchise Tax
Board.

MS. RUWART: Carole Ruwart, Board's Legal
Department.

MR. HELLER: Bradley Heller, Board's Legal Department.

MS. WAGGENER: Michele Wagggener,

PricewaterhouseCoopers.

MR. KAMP: Steve Kamp, of Board -- Board Member

Betty Yee's office.

MR. LO FASO: Alan Lo Faso, Board Member Betty

Yee's office.

MR. SCHUTZ: Chris Schutz, John Chiang's office.

MR. MANCIA: Fran Mancia, MBIA.

MR. BOYD: Doug Boyd, HDL Companies.

MR. CUNNINGHAM: Jim Cunningham, Kahn, Soares and Conway.

MS. ZIMMERMAN: Sarah Zimmerman, SEIU 1000.

MR. GOLKA: Joshua Golka, SEIU 1000.

MS. KINKLE: Sherrie Kinkle, SBE - Property Taxes.

MS. LANDEROS: Rebecca Landeros, Board Proceedings.

MS. RICHMOND: Joann Richmond, Board Proceedings Division.

MS. WURST: Catherine Wurst, Board Proceedings,

MR. ASAY: Jim Asay, Sempra Energy.

MR. MICHAELS: Peter Michaels from Cooper, White and Cooper.

MS. CASAZZA: Teresa Casazza, with Cal-Tax.
MS. PENNINGTON: Margaret Pennington, with
Board Member Bill Leonard's office.

MR. FILLMAN: Donald Fillman, Board Member Bill
Leonard's office.

MR. GOLOMB: Abe Golomb from Sales Tax
Reduction Specialists.

MR. LAMBERT: Is anybody -- is anybody there on
the -- via phone yet? Hello.
I guess not.

MS. RUWART: Do we know that that --

MR. LAMBERT: Yeah.

MS. RUWART: -- phone connection is live?
Okay. Thank you.

MR. HELLER: With that, once again my name is
Bradley Heller. I'm an attorney in the Board's Legal
Department. And just to remind everybody, we're -- we
do have -- we are transcribing the -- the discussion
today. And so, if you can introduce yourself when you
speak and also speak clearly so that we can clearly
record your -- your comments, we'd appreciate that.

And as Mr. Lambert said this morning, we're
going to begin by discussing communications with Board
Members and then disclosure, and then we can move to
additional topics -- I believe there were some that were
raised by Mr. Vinatieri. And then any other additional
topics that anyone would like to comment on.

Our goal today is to try to finish up by 12:30
if at all possible. I believe there was interested
parties that really didn't appreciate our last interested parties meeting that ran past lunchtime. So, our -- we're trying to accommodate that if that's at all possible today.

However, we will stay later if we need to, and I'm available by -- for written comments, also telephone, e-mail after the meeting and for several weeks to come, as well, if you have additional comments that you don't have time to submit today or that you think of later, as well.

With that, on the communications with Board Members issue, staff has proposed codifying the Board's long-standing policy of permitting communications with Board Members at any time. That's Section 5000.5015.1 of Chapter 5.

And at the September 27th Board meeting, Mr. Lenny Goldberg of the California Tax Reform Association made some comments on that provision and suggested -- and has submitted one of the handouts today, which is his comments on the provision where he suggests that we add language that would direct the Board Members to refrain from private discussions with the parties in cases about matters pending to the case, and endeavor to make sure that all information and issues under adjudication are a matter of public record and subject to public scrutiny. And there's a few other additional requirements.

But, essentially -- if -- if there's someone
here from the California Tax Reform Association, I would
like to address those comments before -- before I
can respond. This would be an opportunity.

MR. LAMBERT: Anyone else, for that matter?
MR. HELLER: We'll move right ahead. Staff has
provided responses to Mr. Goldberg's comments from the
September Board meeting in the comment matrix that was
provided this morning. And also responses to
alternatives that were originally submitted for the
same -- same section by the Franchise Tax Board's Chief
Counsel. And also SEIU Local 100.

MS. MANDEL: Starting on page 19.
MR. HELLER: Public comments.
MS. MANDEL: I think so.
MR. HELLER: Let's see, is that correct?
MR. VINATIERI: Should be 19.
MR. HELLER: Yes. The comments -- or the
comments and responses begin on page 19 of the handout
with response to comments matrix.

And -- but moving ahead, essentially staff
did -- did review the law and doesn't believe that
communications with Board Members are prohibited by law
and also determined that implementing any kind of
restrictions like that would be very difficult to do.
And does not intend to recommend that the Board adopt
any restrictions like that.

Really, beyond responding in that respect, if
somebody would like to comment on -- on Mr. Goldberg's
suggestions at all at this point, this would be a good
time to do so.

    MR. LAMBERT: Or our responses.

    MR. HELLER: Or our responses. Or if anybody
has additional comments or suggestions regarding that
provision.

    MR. MICHAELS: Just -- just one point of
clarification. Would this extend likewise to staff and
to Board lawyers and to --

    MS. MANDEL: You mean --

    MR. MICHAELS: It says "parties. Does that
mean everybody?

    MR. VINATIERI: Are you referring to -- to Mr.
Goldberg's comments --

    MR. MICHAELS: Mr. Goldberg's proscription
here, does that mean that Board staff is foreclosed from
having contacts with Board Members?

    MR. HELLER: Well, I think -- I can't speak for
Mr. Goldberg.

    MS. MANDEL: Maybe somebody could --

    MR. LAMBERT: Maybe the union --

    MR. HELLER: -- would like to?

    MR. LAMBERT: -- representatives today could
address that. Or the FTB.

    MS. ZIMMERMAN: This is Sarah Zimmerman, SEIU
Local 1000.

    My understanding is that Mr. Goldberg is in
Asia right now, which is why he wasn't able to be here
today, which is why he submitted his comments in writing.

You know, it's obviously up to this -- this process, I'm sure after he sees other comments that come out of today's meeting there will be more submitted -- he would submit more, to that effect.

I think part of the discussions that we had on this language is there has been a lot of back and forth. I think some of it has moved to a little bit of a theoretical on some of the problems, potential problems with the suggestions on both sides. And that there's been some discussion about actually looking at regulations in -- from other agencies that have attempted to address this issue, and it hasn't -- there was some suggestion about looking at, for example, PUC regulation or other regulation, and I haven't seen that move forward, at least in looking at some other examples with -- where some of this has been implemented before rejecting it wholeheartedly for this Board.

So, one suggestion I have would be for staff and other interested parties -- I would, you know, offer that we would submit some language, as well, from the other agencies so that there could be one more concrete discussion about what some regulations like this might look like before it was rejected wholeheartedly on the basis of being unwieldly in the abstract as opposed to looking at other agencies where it's actually been implemented.
MR. HELLER: Well --

MR. MICHAELS: And so, where are you about contacts with staff?

MS. ZIMMERMAN: I think that in the previous discussion we've had on this there was a definition that related to that that had to do with -- depending on how they were acting, there was some discussion about a lawyer, lobbyist or staff and they were acting on behalf of the Member as opposed to answering like technical questions or things like that.

So, I think in this room my recollection was that there was that level of interpretation of what staff would be -- but then it was -- there was some -- again, I think it would be useful to look at other policies.

MS. MANDEL: Sarah --

MS. ZIMMERMAN: Can I look at my notes?

MS. MANDEL: I think what Peter -- Peter is trying to figure out -- this is Marcy -- I think Peter is trying to figure out from this language that Mr. Goldberg submitted where he talks about adjudication of tax disputes, that -- that there would not be any private discussions with the parties in the case; he's trying to figure out, for example, in a Sales Tax case, would that -- in a Sales Tax matter -- excuse me, I don't want to use the word "case" -- in a Sales Tax matter that's coming to hearing before the Board, does this -- or if you don't know, what is your view of
whether the -- the length -- the preclusion of a --
would a private discussion, whatever that is, include
a Board Member or Board Member staff discussion with
Board of Equalization staff on that --

MS. ZIMMERMAN: Uh-huh.

MS. MANDEL: -- Sales Tax matter. That's what
you're asking, right?

MR. MICHAELS: Exactly.

MS. MANDEL: Yeah. So --

MR. MICHAELS: Or any matter. It doesn't have
to be Sales.

MS. MANDEL: Right.

MS. ZIMMERMAN: And I --

MS. MANDEL: He's just wondering if it's a
two-way street, I suppose, would be the --

MR. MICHAELS: Precisely.

MS. ZIMMERMAN: And I remember a -- a short
discussion you had previously where we were concerned
that there might be -- on the taxpayer's side more work
created for a lobbyist. It couldn't be the taxpayer,
him or herself, it could be a lobbyist. On the Board
side it would be a Board Member or staff when acting
directly on behalf of the Board Member as -- you know,
on a substantive issue as opposed to a technical issue.

But I think that again it's important to look
at other examples with elected officials or with
appointed officials where staff my or may not be acting
on their behalf about these particular regulations.
MR. LAMBERT: You have a question?

MR. GOLOMB: I'd like to respond if I may.

MR. HELLER: Please do.

MR. GOLOMB: I've been doing this type of work representing -- I worked for the Board for 12 years and I used to write --

MS. RUWART: Would you -- give your name, please.

MR. GOLOMB: Oh, I'm sorry. Abe Golomb. I'm with Sales Tax Reduction Specialists. I worked for the Board for 12 years. And part of my job I worked at headquarters. I wrote Board hearing summaries. And I've been representing taxpayers for over 20 years before the Board.

And this is the absolute worst suggestion that I've ever seen put forth. I'm shocked that a union representing employees would be supporting something like this.

In fact, one of my clients was a union that had tax trouble. Basically, in this agency as relates to Sales Tax, Special Taxes, the process is entirely within the agency. You have an Appeals Conference held by a Board employee. A Decision and Recommendation is generated. If the taxpayer does not agree with that or their representative does not agree, they go forward to an oral hearing before the Board of Equalization.

The staff of the Board Members receive from the Board staff copies of the D & R and a Board hearing
summary. In other words, the staff, itself, provides the information to the Board Members to explain the case. And because the staff, itself, is doing this, there's always going to be bias entering into this process in favor of the staff. It cannot help but enter into it.

Putting into codification, oh, the summary should be neutral. These are written by real people. Real people have biases. And it's very easy to have your biases enter into these summaries. I wrote them. I know how to do it. It can be done. I can make it appear that it's impartial, yet favor the staff.

The taxpayer and their representative, unless they submit a brief, the only time the Board Members will hear from them is at a Board hearing. They will get a total of 15 minutes to present their case, to overcome all the information that has previously been provided to the Board Members and their staff who evaluate the case for the Board Members, from the staff itself.

If the taxpayer or their representative does not have the ability at least to interact with the Board Members and their staff, and at least explain some of the information regarding their case, the ability for that taxpayer to receive due process will be severely limited.

And the whole purpose of this is to provide the taxpayer due process to resolve their dispute. We are
not here to hold tax. My sense from reading Lenny Goldberg's suggestion is he's interested in holding tax. He's trying to say that if a taxpayer or their representative somehow interact with a Board Member that will prejudice the Board Member or the Board Member staff in favor of the taxpayer.

I'll tell you honestly, I wish it were true. Because I've interacted with the Board Members and their staff. They listen to me and they don't always follow and vote in my client's favor. In fact, in most cases they don't.

But at least I have the opportunity to explain to them our point of view. Under this proposal that will be completely foreclosed. The staff will have the bulk of the information provided to the Board Members. And if you believe that the staff does not interact with -- the Board of Equalization staff does not interact with the Board Member staff, because they're in the same building here, as you're coming down an elevator it's very easy to chit-chat about a case.

I've spoken to former Members of the Board staff administration and they point blank told me they would many times get calls about cases, "Well, what's going on in this case?" from Board Members or their staff, giving the staff an additional opportunity to lobby the Board Members or their staff.

But that does not occur with taxpayers or their representatives. On occasion, I'll get a phone call
asking me for some information regarding a case I have pending. But that does not occur frequently.

So, basically what this whole process will do is limit the taxpayers and their representatives from having complete due process and being able to provide to the Board Members and their staff all the information necessary for the Board Members to make an informed, intelligent decision.

MS. CASAZZA: Teresa Casazza with Cal-Tax. I have to really express my frustration at this meeting for the lack of representation by Leonard Goldberg and the California Tax Reform Association.

At the Board Meeting it was because of his determination and his decision that this interested parties meeting was called and then he doesn't show. I understand --

MR. LAMBERT: In fairness to him --

MS. CASAZZA: Yeah.

MR. LAMBERT: -- immediately concluding that meeting he said he had already booked tickets and he couldn't make it.

MS. CASAZZA: Okay.

MR. LAMBERT: So, he did explain it immediately --

MS. CASAZZA: Okay.

MR. LAMBERT: -- that he had a problem with this exact date. It was too late to change it.

MS. CASAZZA: Well, is this the current
letter --

MR. LAMBERT: Yes.

MS. CASAZZA: -- that he provided?

MR. LAMBERT: That's correct.

MS. CASAZZA: There is no new suggestions here.

You know, he alluded at the Board Meeting that he did
not have adequate time to express his positions. We
thought there would be something new here.

This is old stuff, and it's just very

frustrating. And I -- I --

MS. MANDEL: Well, he has finally actually
written language, whether it's good language or not --

MR. LAMBERT: Right.

MS. CASAZZA: About he brought this up at

the -- at the last --

MR. LAMBERT: Give the devil his due.

MS. CASAZZA: And so, I just have to express my
frustration, this is old stuff. This is nothing new. I
feel this is a stalling tactic and I think we should
just move on.

The Board has said -- excuse me, the staff has
said what their view is. Everybody has expressed their
opinions on this matter. And I think it's time to move
on.

MR. LAMBERT: Anybody else?

MR. HELLER: Any other comments?

MS. ZIMMERMAN: One more comment. We had -- we
discussed at prior meetings the possibility of a small
taxpayer exemption. And I know there was some
discussion about the difficulty of defining what a small
taxpayer, a small business or a small -- you know,
individual might be that might have an exemption on some
of these processes on the hearing side and the -- you
know, some of the communication side.

So, I was just wondering is there an ability to
have some staff time or ask, you know, when we can
certainly try to submit some definition, but there also
might be some expertise on the staff side to look into
that and at least put forward some possible definitions.
If they were to move forward at some of these and there
was an interest in looking at small taxpayer, small
business exemption.

MS. CASAZZA: You know, if I can just comment
on that. Again this is Teresa Casazza with Cal-Tax.
This is the 8th interested parties meeting. You know,
this isn't the time to be stalling on what we're doing.
I'm very frustrated with trying to stall this process.
The staff has done excellent work, and I'm just
frustrated by -- by bringing up something like that at
this point. And I would really recommend we move on to
another topic.

MR. LAMBERT: I am --

MR. BOYD: This is Doug Boyd. Elected Board
and open communication with constituents kind of go
together. And I think that's the direction we were
headed in and I think staff has done a great job.
And that we probably hashed this out to death.

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MR. HELLER: Thank you. Bradley Heller with the Legal Department.

Just to respond to your comments, Sarah, you know, staff and the interested parties -- we did actually discuss, you know, trying to define maybe Rule 1. We actually discussed and we did create, at least possibly, based on the John Davies suggestion, to create restrictions on communications in appeals from the Franchise Tax Board. We did discuss the possibility of creating exemptions from that restriction for small tax cases, possibly homeowners and renters assistance. Basically, just out of the recognition that there were certain areas where having these restrictions certainly wouldn't benefit anybody and would only continue to create additional confusion.

However, staff really looked into the ideas themselves and the idea of implementing any type of restrictions. And we really felt that we don't -- we wouldn't accomplish any of the goals that the restrictions are set out to accomplish if we created a regime whereby staff here at the Board privately looks at individual cases and makes its own determinations over who the Board Members can speak with and who they can't speak with. And it then gets into arguments with the public over how we made the determinations that they think -- in these exemptions, when -- when that's not really our goal is.

Our goal is to smooth out the process, make it
easier for everybody, as opposed to creating some new litigation grounds.

So, we didn't really think it would be fruitful after looking into the issue further to start trying to -- to try to say blanket the entire process at the Board of Equalization and then try to carve out individual areas. We figured that that would be a process that could go on into -- into probably until I retire, if we really wanted to honestly identify every individual and then properly define each one of those classes of taxpayers.

So, with that, though, if there are any --

Mr. Langston?

MR. LANGSTON: I have one comment. It's actually a question.

This is Bruce Langston from Franchise Tax Board.

You know, given the controversy about this subject has staff considered deleting it from the regulation? It was not in the original regulation. This is one that was made up as part of this process. And one of the issues that was brought up at the last Board meeting is that the needed changes -- we have done a lot -- we have done a lot of work, we have done a lot of technical changes, we've done a lot of good, legitimate changes -- shouldn't be derailed, necessarily, because of this issue.

And so, one option that might be considered is
simply from -- is simply deleting this whole section
from this regulation and proceeding with it separately
if think we want to proceed.

MR. LAMBER: Is that an official recommendation
or request?

MR. LANGSTON: That's a suggestion. That is
just an interested parties comment.

It's not official suggestion, but it is a
possibility. I think Franchise Tax Board would not
object if it was deleted entirely and the regulation was
silent on this issue.

MR. LAMBERT: Okay.

MR. VINATIERI: Yeah, Joe Vinatieri, just a
couple of quick comments on this issue.

I think Mr. Boyd's correct this thing has been
hashed out.

MR. LAMBERT: Before you do that, can I ask a
question?

We just were handed a proposed revisions to
closed session, provisions 2.

MR. LO FASO: That's not relevant, that's part
of the Betty Yee attachment.

MR. LAMBERT: Oh, I see, okay.

Got it, I'm sorry.

MR. VINATIERI: Quickly, first of all, what
we're talking about here is the essence of
representative government and the fact of the matter is
that this is America. We have an opportunity to talk to
our elected officials. And I find this to be undemocratic.

Second of all, as elected officials -- elected officials are responsible to their constituents and to their constituents only. And that's the beauty of the California system -- unlike any other system in the United States of America,. We have elected officials here and there is a reason for that that was put in the constitution back in 18 whatever the day the year was, to treat Board of Equalization constitutional officers differently than legislators, for that matter, who a constituent has the right to see a legislator; to treat them differently than an assessor, who is an elected official; to treat them differently than a local government official, which I am now and I'm wearing a different hat and I see that.

Whatever the situation is, the elected official has a responsibility to those constituents. And those constituents have the right to be heard.

I think Mr. Golomb has made a good point about the fact that when there is a summary put together that -- because it's put together by human beings, there is always inherent bias. I remember as Deputy State Board of Equalization Member Mr. Dronenburg one time on a Franchise Tax Board appeal, we had heard the case and the Franchise -- or the Board of Equalization franchise tax staff had a view of how the law should be developing in a particular area. And the head of that group at
that time, since retired, came to me and said, "Here's
the opinion that we're going to propose to the Board
Members. How do you feel about it?"

I said, "This is completely contrary to, I
think, the comment you heard Mr. Dronenburg make during
the time that hearing took place. It's contrary to the
way that we think that the law should develop in this
area."

My point in saying this is that was back then,
that was probably about 1982, '83, somewhere around
then, but the point is that -- that the the Board staff,
in that case the State Board staff had a particular way
they wanted to see things go and we ended up being in
the minority on that particular case. And there wasn't
a provision at that point for doing dissenting
opinions -- as we will be talking about later today.

So, my point is that that -- that things do
happen, where there are differences of opinion on the
part of staff and it's important that taxpayers have an
opportunity to come forward and present the other side
of the situation.

Notwithstanding that, I think the staff here
has done a wonderful job and I agree with the staff on
this one. And the fact of the matter is this issue has
been under the carpet for a long time, people
have grumbled about it for many years, certain people
have brought this issue forward now, have said, "You
know what, we want this out."
And now that it's out, the staff has made a
determination -- and a lot of us now agree with the
staff determination and I would suggest that we need to
go forward with it, not try to sweep it back under the
carpet again, but put there and go with it way the it
is.

MR. LAMBERT: Okay. I would like to address a
few -- a couple of comments to the union
representatives.

You had mentioned a requested or thought that
it might be a good idea to -- for either the ear staff
or some interested party to look into the regulations of
other administrative agencies that handle appeals and
see what rules they have.

I cannot guarantee that staff will be that.
However, we have a PAN date of the November 9th --

MS. MANDEL: That's the Public Agenda Notice.

MR. LAMBERT: Right. And if you want to
provide -- thank you -- provide for those some --
technical talk here, I guess -- if you would like to
provide us any of that information, we will look at it
and comment on it.

And if you get us any information before the
meeting date of November 21st, the Board Members will
see it.

So that is your time constraint on that. And
if that's all there is on that topic?

MR. DAVIS: Ken Davis.
In reviewing the chart of -- of submissions and responses, Brad, I noticed that -- this is more for clarification or actually just to -- maybe you want to amend the record on this, but we noticed that the Chief Counsel's submission for the Franchise Tax Board John Davies, has made two submissions -- one in December 13th and the other was on February 28th.

And the February 28th one dealt with the -- how the San Francisco Bay Area Conservation and Development Commission operates and it had two opinions, one from the Attorney General's office and one from a law firm.

You may want to include that in your record and staff response.

MR. HELLER: I will.

MR. LAMBERT: Thank you.

With that, I think there's some disclosure items you wanted to clarify.

MR. HELLER: Thank you, Bob.

Bradley Heller with the Legal Department again.

Real briefly, there were also comments made regarding disclosure. MR. Goldberg essentially -- essentially suggested that that all of the Board's information with regard to all of the tax matters be disclosable to the public, I believe, was the language that he recommended.

MR. VINATIBERI: What rule are we looking at?

MR. HELLER: We are now dealing with Sections 5000.5033 through 5000.5033.2, those are the
disclosure provisions.

MR. MICHAELS: Looks like Mr. Goldberg's has this on the back side of his one page?

MR. HELLER: Yes. What he says is,

"The provision for waiver of confidentiality in Franchise Tax Board cases should apply for cases called for in (b)," which is all cases, basically.

And in response to that staff has -- has essentially tried to perform a balancing or weighing of competing interests on disclosure issue and looked at, you know, what the law allows the Board to disclose.

And the Board has historically and consistently concluded that taxpayer information in the other programs is confidential until there is a waiver of confidentiality from the taxpayer. That the Board can't just decide, we're going to disclose things because it would be more convenient or even if we just decided that the public interest in seeing it really was paramount to us, it can't just be disclosed.

And we have looked into the waiver issue and staff does believe that we have authority to conclude that the hearing summary prepared for an oral hearing for the Board could -- the taxpayer can waive confidentiality with regard to that summary and that we provided procedures to create that waiver.

So, the taxpayers will do that knowingly and in an informed way. And we have also provided other
procedures for them to either submit their matters
without an oral hearing for decision or to request a
closed session to hear confidential trade secrets so
that their -- their interests are still protected.

However, the public's -- we would balance the
public's need to understand what happens during the
meetings that are conducted and during a public -- or
conducted during open session.

So, we think that that provides only the
information that pertains to the hearing, doesn't go any
broader.

Then, in addition, staff even went beyond that
to see if there was some way to look to -- to pick up
all of the relevant information and found that it would
be impossible for staff to go through an entire file,
say from the beginning of the audit in a sales or use
tax case, all of the way up to the Board hearing and
redact everything and make sure it only pertained to
information relevant to the hearing.

So, we think this is an efficient way to
accomplish both goals.

MS. MANDEL: Can I ask you a question because I
have had this -- I have the question.

This is -- I know I had asked a long time ago
that people who aren't familiar with how the Board works
get redacted copies of hearing summary and D & R so they
know what we're talking about and I'm glad that you have
provided this.
On the waiver of confidentiality, where it's
the hearing summary, that's going to be this this
hearing summary piece, right?
MR. HELLER: Correct.
MS. MANDEL: Not the D & R?
MR. HELLER: Just the hearing summary piece.
MS. MANDEL: I wanted to make sure.
MR. HELLER: That's correct.
MS. MANDEL: Okay, thanks.
MR. HELLER: It does not apply to D & Rs and it
would not be a redacted one.
This is redacted because currently there is no
waiver of confidentiality and we're even identifying the
taxpayer, so --
MS. MANDEL: And the hearing summary -- by
having that confidentiality waived as to the hearing
summary, that provides all of the information of what's
really going to be -- that provides the information
about what's going to be at issue at the hearing.
And so, if some -- if somebody saw something on
the public agenda notice and wanted the hearing summary
for a particular case, they'd be able to walk into the
Board road and have read the hearing summary and,
perhaps, follow the discussion better than had they not
read the hearing summary?
MR. MICHAELS: Peter Michaels.
The public disclosure would, I suppose, also
extend to the possibility of web site postings of the
hearing summaries?

MR. HELLER: That there would be -- confidentiality would be waived so they could be posted.

MR. LAMBERT: No reason not to.

MR. HELLER: We don't necessarily have a plan to implement something like that right now, it hasn't been suggested as of yet.

Because we're really not trying -- they don't represent any of the Boards decision or anything, so, they're not necessarily a good reference tool or anything but --

MR. LAMBERT: Right.

MR. HELLER: -- maybe we could look for that as a way to make sure that they're disseminated to people who need it.

MR. LAMBERT: Again, the content of the things on the website are things that people can look at and rely upon.

So, I think this is -- may be contrary that.

MR. MICHAELS: I would be concerned. A lot of times the appeals summaries are not entirely reliable, just as a lot of times the petitions are not entirely --

MR. LAMBERT: I'm shocked, shocked, shocked shocked to hear you say that.

MR. MICHAELS: I think it would be -- personally, I was -- I think it would be a -- personally a mistake to have some blanket policy of posting these hearing summaries without people's knowledge and
consent.

MR. GOLOMB: They signed a waiver, I assume they understand.

MS. MANDEL: No, they don't.

MR. LAMBERT: The point is, it wouldn't be on the website because it's not something that someone should be relying upon.

MS. MANDEL: And you're not -- they're not --

MR. LAMBERT: It's not authoritative, it's not something that someone should rely upon.

MS. MANDEL: Abe, they don't sign a waiver, right?

MR. HELLER: No written waiver.

MS. MANDEL: It's just the function of --

MR. LAMBERT: An appeal --

MS. MANDEL: -- having their case to an oral hearing before the Board.

So, you know what kind of people have all these sales tax cases, what they understand or don't understand?

I mean, they'll get something in writing that explains that to them, but --

MR. VINATIERI: Right

MR. LAMBERT: It's an interpretation of law that there is -- there are taxpayer -- taxpayer information confidentiality statutes, you know, and then to the extent to their need for confidentiality exceeds the public's need to know, it becomes a privilege.
However, the privilege can be waived when you file an appeal, particularly when you have a public hearing on that appeal and the information is disclosed publicly.

So -- but it's a legal interpretation.

MR. HELLER: Exactly.

MR. VINATIERI: But the point -- I'm sorry, this is Joe Vinatieri:

But the point of concern is a person's right and opportunity to be heard, which is guaranteed, versus their right not to have information publicly disclosed that would be of a detrimental nature to them or to their business.

So we have this --

MR. LAMBERT: Obviously.

MR. VINATIERI: -- conflict.

MR. LAMBERT: Right.

MR. VINATIERI: And so, what we're trying to do here is we're trying to balance that.

MR. LAMBERT: Right. But there's, nevertheless, a public hearing requirement

MR. HELLER: This is Bradley Heller for Legal Department.

We think by balancing -- we didn't just jump to, we're going to do more disclosure, because that's not balancing.

What we did is we said, if we're going to -- if we're going to look at, you know, really defining the
scope of the waiver, then we need to look at protecting
the taxpayer's -- what you said, like right to be heard,
so, that is, a law providing the ability to submit
things on the record without an oral hearing still gives
them one ability to still be heard without -- without
disclosing their information to the public and also
providing that opportunity to have a closed session to
discuss confidential trade secrets and also gives them
an actual ability to -- if that's the type of
information involved -- to actually get an oral hearing
in the matter that does not involve the -- that could do
that -- the waiver of confidentiality as to that
information.

So, we think that actually it improves approves
the process, although it's really not exactly a change
in the law, it's more just defining the scope of the
waiver that's been out there.

MR. VINATIERI: I assume -- this is Joe
Vinatieri again.

I am assuming that we will be talking
specifically about the ability to close a hearing with
respect to trade secrets; is that correct?

MR. HELLER: Exactly, and if --

MR. LAMBERT: Is that one of the items in your
letter?

MR. VINATIERI: Not in mine, but I --

MR. HELLER: Turn to the next -- perhaps we can
discuss that at that time.
MR. VINATIERI: We can discuss it.

MS. CASAZZA: We're talking about, you know, publishing it, publishing the appeal process summary, right?

That --

MS. RUWART: The hearing summary.

MS. MANDEL: The hearing summary.

MS. RUWART: Maybe I should just -- just for the --

MS. CASAZZA: It's not something you can rely upon, but -- and, so, it's misleading to publish.

MR. LAMBERT: We're not going to -- I don't think -- I can't speak to that, but I doubt that we would recommend that it would be on the website.

It's invasive a little bit, it's private and it's not reliable.

So, there's no purpose. It's not a memo or memo opinion, so I think - I can't imagine staff would do that.

MS. RUWART: Well, actually -- can I explain what my understanding of what would be published.

You have this redacted attachment. It has 12 pages, it ends on page 12 of 12, but just to decode it for everybody, the first four pages are what's called a summary for Board hearing.

What that represents is by the time it's finally come to hearing, the Appeals Division's understanding of the remaining issues only that are in
dispute.

These are usually less or are often less than the number of issues that were originally brought to the Appeals Division at the time there was an appeals conference. For administrative convenience, presumably, when we do these electronic files we've been attaching an electronic copy of the decision and recommendation, which the appeals conference holder prepares relatively very much earlier on in the process.

The taxpayer has an appeals conference and the decision where they bring up all of the issues with their audit or their matter and then the appeals conference holder prepares a decision and recommendation that covers all of those issues. Because of the time lag between the hearing and also because of sometimes the holding of the appeals conference holder, many of the issues that are set forth in the D & R end up falling out.

What the staff is proposing to publish in some form prior to a hearing -- prior to making available prior to a hearing, would be the first four pages of the twelve and not the last eight pages of the twelve.

It's a little confusing because right now, for convenience, because it's an only internal document to Board Members and their staff, we just attach them all.

So, it looks like a twelve page document, but this also may or may not give some kind of indication of the difference between a decision and recommendation and
a hearing summary.

Hopefully, that's a little helpful.

MR. GOLOMB: This is Abe Golomb.

There's -- that document you have just referred to, the Board hearing summary, is written by a Board of Equalization staff person other than the appeals conference holder.

And when I was a Board employee, I used to write those. And what -- what the intent of that was when I was writing them was to provide to the Board Members and their staff a summary of the disputed issues, the taxpayer's position or the representative's position and the Board staff's position.

That is taken, basically, from the decision and recommendation. And I can say that over the years in representing taxpayers I've found a number of these Board hearing summaries to be in error. And I've brought it to the attention of the writers because their name appears on it. I have also brought it to the attention of the staff of the Board Members.

So, this is just intended to clarify for the Board members and their staff the issues that will be discussed at an oral hearing.

It is not always perfect and many times it is not perfect, depending on who writes it, how good a writer they are or how good an analyst they are. You may get all of the information you need or you may not.

So, these documents have been created to assist
the Board Members, but the key point I think also that
is somehow being missed is an oral hearing before the
Board is de novo. In essence the Board members should
be looking at everything. They shouldn't just be ending
up looking at a summary because the law that this
hearing is based on calls for it to be de nova, i.e., a
new hearing.

So, these summaries are all well and good, but
they have severe limitations because of the fact that
they're summaries and that people -- Board staff people,
who have not been involved in the case, coming at the
end of the process trying to summarize these issues.

They may do a good job, they may not. So, some
of these documents have severe limitations and until
you're aware of that, it's really easy to fall into the
trap that these are all of the issues.

MS. MANDEL: Or these are all of the facts.

MR. GOLOMB: Or these are all of the facts.

MS. CASAZZA: You know, it's -- Teresa Casazza
with Cal-Tax, along those lines too, a lot [*|of]
times too it's my understanding that the tax reporting
services, like CC & H and others pick these letters up
and then they get published. And then there becomes
that misleading -- you know, deal that --

MR. LAMBERT: Are you talking about letters or
are you talking about summaries?

MS. CASAZZA: The summaries.

MR. HELLER: This is Bradley Heller of the
Legal Department.

We are aware of several publishers that have picked up decisions of the Board. I know that they have published letter decisions that we issue in appeals from the Franchise Tax Board, which might have some similar flavor to these.

I don't -- I know we do prepare hearing summaries for appeals from the Franchise Tax Board, but I'm not aware --

MR. LAMBERT: Does not --

MR. HELLER: -- of them on GH or Lexis or anything like that at this point.

MS. MANDEL: What I have heard is the decision documents, which are adopted by the Board, and sometimes they have gotten hold of an actual letter that has come out from Board -- that's come out when the Board has voted on something, it wasn't a summary decision prepared for the Board's adoption and I don't know what --

MR. HELLER: A letter decision?

MS. MANDEL: Yeah, I don't know where they --

MR. LAMBERT: Letter decision?

MS. MANDEL: I don't know where they -- I don't know where they got that.

MR. LAMBER: PRA request.

MS. MANDEL: Maybe. And the only issue that I heard about recently was on one of, actually, the Board's formal opinions, which you can rely on as
precedent, the two services, GH and the other one, one
showed it as precedential and one didn't have that
reference.

MS. CASAZZA: Distinction.

MS. MANDEL: And so, the person was, you know,
confused about whether it was formal, but I don't know
that if you have the hearing summaries --

MR. LAMBERT: No, they don't.

What they publish, there's two kinds of --
other than memo opinions on the FTB matters, there's two
kinds of decisions.

When the Board decides, there's a hearing
decision, which is very brief and essentially is burden
of proof, usually, because the Board normally does not
state a rational.

Then there's a memo decision, which is a
written only thing, which the Board prepares and is
adopted by it. Those are picked up, even though they're
not precedential.

MS. MANDEL: But your point would be if -- to
the extent that these then became more readily
available, there would be risk?

MS. CASAZZA: Right, right.


Staff does not intend to create a like
repository of hearing summaries or some place like a
surgical database that the public can go looking
through.
Our goal here really was to address specific concerns that we heard about people who want to attend public hearings and understand what the Board's actually -- what the arguments in front of the Board and how they're voting, what that means to them as part of the public.

MR. LAMBERT: And under certain rules in the FTB, the hearing summaries are available to the public. And I've never seen any issues come up because the FTB document, as soon as it hits the public file, it's public record.

MR. HELPER: Currently.

MR. LAMBERT: So, they are available, I've never seen one.

There are hearing summaries similar to this for FTB matters.

MR. LANGSTON: I have a couple comments on that.

I mean we -- there are a couple that I believe by mistake got picked up by the tax services.

Also we have one case in litigation now where the plaintiff has introduced a hearing summary into evidence because, you know, and one of the problems is, obviously, the hearing summaries are summaries of the law, they're not -- you know, they're not official publications of the -- of the Department.

They are -- and it can be misleading to the public when they do get out because they're not the
final statement of the law.

    Again this is probably -- just to be fair,
though, if you do a Lexis search or if you do a search
on one of the other tax services, you might be surprised
how many of those there are.

    MR. LAMBERT: Yes.

    MR. LANGSTON: And, again, I don't know how
they're getting them, I don't know how they get the
documents or the information, but every once -- when we
find them we tend to notify, you know, we have a process
to notify them and say, "Look, this is not the decision,
it's the hearing summary."

    And -- but it has -- and that's going to happen
every time you have something that's a handout or public
there is -- there's the modern world, I mean once
something is a public -- handed out to the public, it's
likely that it will somehow get out there.

    MR. LAMBERT: Fair enough.

        ---oOo---
MR. HELLER: And so, anyway, to follow up, staff does not have any intention of trying to get these things published by a service, either, however anybody could request them once they -- once the waiver applies. And so, we would have to just track somebody if they did start publishing them to make sure that they weren't misused.

But it's definitely --

MS. MANDEL: No, I'll just talk to you later about it. I was just kind of wondering if -- if the --

VOICE: I'm sorry, I couldn't hear you.

MS. MANDEL: I was going to talk to him later.

I was just kind of wondering if -- if we ought to consider some type of legend on documents.

MR. LAMBERT: That's a great idea.

MS. RUWART: Yeah. Making it very clearly --

MR. LAMBERT: Yeah --

MS. RUWART: -- of this is not the decision.

MS. MANDEL: I mean, we do I think on the summary ones, or at least we used to. It used to have a legend that says --

MR. LAMBERT: Yeah, the hearing summaries do, but FTB ones.

MS. MANDEL: No -- like the summary decisions.

MR. HELLER: Yeah, they do.

MR. LAMBERT: Yeah, the memo -- yeah, the memo decisions.

MS. MANDEL: They had some sort of legends in
MR. LAMBERT: The memo decisions, yeah.

MS. MANDEL: I mean if -- if these --

perhaps they're -- I don't know what the --

MR. LAMBERT: Maybe we never thought it was

needed because it's obvious; but it's not so obvious,

huh?

MR. HELLER: Right.

MR. LAMBERT: That's a great idea.

MR. HELLER: Makes perfect sense.

MS. MANDEL: Then if you're going to -- if it's

going to be publicly available, then at least it has

something.

MR. LAMBERT: And the one that says it is the

memoranda decision that's adopted by the Board on the

nonappearance calendar. Because that's the one that

could be mistaken. It looks like an opinion but it's

really not.

MS. MANDEL: Summary decisions.

MR. HELLER: Summary decisions

MR. LAMBERT: Summary decisions.

MR. HELLER: Perfect. With that we're going to

continue discussing disclosure but we're going to move

to a slightly different topic within disclosure, and

that is the ability to close -- to hear certain

information during a closed session with regard to

certain Property Tax matters and Business Taxes and Fees

matters.
MR. MICHAELS: And which section are we looking at?

MR. HELLER: We are now in Section -- I believe this is 5000.5033.2. And it deals with requests for a portion of a hearing during a closed session.

MR. VINATIERI: I'm sorry, 5033 --

MR. HELLER: Yeah, .2.

MR. MICHAELS: And you have a comment from Board Member Yee and comments from Mr. Goldberg and comments from several sources --

MR. HELLER: Correct.

MR. MICHAELS: -- about that.

MR. HELLER: Yes, and I'm quickly going to just point out Mr. Goldberg's comments and staff's brief response, and then I don't know -- would you guys like to address these comments? I'll let Ms. Yee's staff address those comments.

And -- but, really briefly, basically staff -- the Board does have authority to hear confidential taxpayer information during a closed session. And staff tried to define -- to utilize that authority in a way that -- that's narrow so that it doesn't allow an entire hearing to be closed just because there may be one or two trade secrets or something that need to be discussed. And we wanted to provide some sort of definition for what -- for the type of material that would qualify to be heard in a closed session. And we wanted some -- some -- to put at least definitive
parameters on that.

So, we looked to the Code of Civil Procedure and borrowed the language taken that's used for the -- the California Courts to issue protective orders. I believe this particular provision relates to discovery requests.

And so we actually took the exact same language that applies to the California Courts and the same standards that they can apply, although it's slightly more narrow than the -- the California Courts because, you know, there were definitely areas in there that we thought would be objectionable.

But we basically drew that exact same standard and said when there's that kind of information that the -- that a California Court could prohibit from being disclosed to the public, then the Board could hear that information and only that information during a closed session if necessary to protect the taxpayer's right to confidentiality.

And so, we essentially created that provision and in -- in addition there's a -- quite a few procedural issues that come up with trying to hold a closed session. And the fact that the Board -- in order for the Board to make decisions they do need to meet as -- with a quorum, with a regularly noticed meeting and everything.

So, we've set it up so that the chair makes the initial determination as to whether or not to close --
to hold a closed session. If the Chair decides to hold a closed session, then at the beginning of that closed session the other Board Members have the opportunity to make a motion to have that hearing during an open session, if they disagreed with the Chair. Then there will be -- that will be a regularly noticed meeting and the Board Members could then vote on that motion. If it succeeds then the -- the hearing will be rescheduled so that's held during an open session.

MR. MICHAELS: And then --

MS. MANDEL: And the reason would be that you could not -- why it would have to go then to another meeting to be noticed for closed session, the reason is --

MR. HELLER: Well, at this point we would not have had a notice for this portion of the meeting being conducted during an open session. So, I believe it would have to be --

MS. MANDEL: No, I mean, I just want to close that loop because there was a question about why it had to go to a subsequent Board meeting.

MR. HELLER: Well, basically, there was actually two different things. One, is it needs to just -- to provide notice to the taxpayer that they're having a hearing during an open session and give them time to prepare.

MS. MANDEL: Okay, you've -- you've flipped.

MR. HELLER: All right.
MS. MANDEL: Okay. If the --

MR. HELLER: Okay, I'm sorry.

MS. MANDEL: Okay, maybe I flipped them. If the -- so, your rule is if the Chair -- if the Chair says it should be closed, then -- then it's on the Public Agenda Notice as part of it will be closed.

MR. HELLER: Correct.

MS. MANDEL: And if the Board makes a motion, no, huh-uh, and we want it to be open, you're saying then it -- it would have to go to another meeting.

MR. VINATIERI: Get renoticed.

MS. MANDEL: And the reason it would have to be renoticed --

MR. HELLER: Yes.

MS. MANDEL: -- is -- why would it have to be renoticed? I mean, I guess I was thinking that you would have part of it open and -- you're saying if the entire hearing was closed, it would then have to be renoticed, that would be in open session.

MR. HELLER: Well, the portion -- the way that it's set up is it's designed -- the taxpayer -- we want to make sure that the taxpayer has a right to -- to waive that oral hearing if they get a contrary determination on their request for a closed session.

MS. MANDEL: Or to reconstitute their --

MR. HELLER: Correct.

MS. MANDEL: -- evidence in a way that they could feel comfortable having it in an open session.
MR. HELLER: Right. So, what --

MS. MANDEL: So that's --

MR. HELLER: -- we would do then is say now we're going to re -- we're going to reschedule it for an open session for the entire -- for the entire hearing. There will be new PAN date. There will be an opportunity to waive that hearing if the taxpayer doesn't want to go ahead now and discuss things during open session. And if that's the case, then there -- they would not be waiving their right to confidentiality with regard to that hearing.

MS. MANDEL: And the one time that I had the issue we had to reconstitute the evidence in a way that the company was comfortable with it being in an open --

MR. MICHAELS: So, if --

MS. MANDEL: -- review.

MR. MICHAELS: If the -- Peter Michaels -- if the Chair's recommendation is approved or the Board supports a closed session, then the hearing would take place right then and there?

MR. HELLER: Right. During that meeting there's a --

MR. MICHAELS: The way you draft that, the parties would -- would during that segment of the hearing go -- either go closed -- ask the public to leave or go into a separate room or some such, so -- so, if the Chair's preference is honored, the case goes forward. If it isn't, then the taxpayer comes back?
MR. HELLER: Correct.

MR. MICHAELS: Okay.

MR. HELLER: In that way the taxpayer doesn't show up on a day and then have their information disclosed.

MS. MANDEL: Chris has a question, behind you.

MR. SCHUTZ: With Property Tax hearings it would have to be -- all closed sessions would have to be in November. So, you would have at least December --

MR. LAMBERT: You'd have a --

MR. SCHUTZ: You have the idea, I'll flip it over.

MR. KAMP: Steve Kamp with Betty Yee's office. If I'm not mistaken, I think State assessees provis -- hearings are the ones that are subject to December 31. But I believe State assessees hearings are outside the scope of the closure rule.

MR. VINATIERI: Correct.

MR. KAMP: So -- yeah, I think they are.

MR. HELLER: Yeah, that's correct. State assessees --

MR. MICHAELS: But they are not outside the Government Code, I don't think.

UNIDENTIFIED VOICE: No, they're in it. They're definitely in agreement.

MR. HELLER: Yes, State assessees hearings are required to be conducted at a public meeting. So that's --
MR. MICHAELS: Otherwise have you -- there are a lot of similarities between how local assessment appeals are conducted -- hearings are conducted and how the Board during -- an Assessment Appeals Board conducted itself. Have you compared -- because the local meetings are routinely closed to the public for, you know, this period of time when there's confidential information only.

Has the staff done any comparative analysis with local AB clerks to see whether these rules would track or differ?

MS. RUWART: A little bit. A long time ago, I had to go back and look at my notes, we did have a specific statute and we have a different timeframe for State assessees.

MR. VINATIERI: Okay. But -- this is Joe Vinatieri. So, and I wanted to take you guys back to what Peter is saying, because we did this on a fairly regular basis on local property tax matters, where you have a local Board of Equalization or Assessment Appeal Board, and I believe this is covered. And I'm concerned to the extent that you can, I'd like to see symmetry between the State Board and the local Boards. Whether it be local Boards or Property Tax, this would be -- obviously not Property Tax, because as I understand it --

MS. MANDEL: You just mean in terms of -- of leaving aside the State assessees thing --
MR. VINATIERI: Right.

MS. MANDEL: -- just how the rules are set up
on how -- what gets closed and how it gets closed and --

MR. VINATIERI: That's -- that's --

MS. MANDEL: Just -- just the process?

MR. VINATIERI: Yes, that's correct. And --
and you can find it in the Property Tax rules on trade
secrets, and it's also covered in several counties. I
have local rules, and I would just say as a general
matter what they do is you have to make a showing per
the -- I think it's State Board of Equalization Property
Tax rule -- it's not 305, it's right around there. And
it says specifically that if you are going to have
information that you consider to be trade secret
information, it has to meet the definition of the Code
of Civil Procedure, which you have done here, which I --
I like. And you have to make that showing prior to the
hearing, and then you'll get a response back from that
particular County.

Because what they do then is they take it to
their Board in a session that you're not at.

MS. MANDEL: That was one of the questions I
had.

MR. VINATIERI: Right. And then they make a
determination, and if it turns out that the
determination is inconsistent with what you want, then
you either have the right to go to Superior Court and
attempt to get a protective order, or you come into the
Assessment Appeals Board --

MR. LAMBERT: That's the reason for the delay. They'll give you a chance to go get a protective order.

MR. VINATIERI: Right. Right, exactly. Or you come back to the Assessment Appeals Board for the day that it's noticed for hearing, and you try to talk them into why they're wrong, or you reconstitute your -- your evidence.

MR. LAMBERT: Got you.

MR. VINATIERI: And it's very clear, however, and this is important for -- for advocates of open government -- it's very clear that the period of time that the hearing is actually closed is very precise, because it's very narrow, very limited, and you have to make that showing in that CCP application as to what the trade secret is and -- and what you anticipate.

And usually the trade secret is confidential financial data. And it's closed, and the transcript is sealed, as are the documents that are -- that are entered into evidence for that period of time. They are sealed documents. So, you essentially at the end of the hearing have two different sets of documents and two transcripts; one for the open portion and one for the closed portion.

And that's to protect you for purposes later, of course, because we all know that there's no de novo in local Property Tax cases unless there's a question of law. That's to protect you for purposes of making sure
you made your record if you're going to Superior Court
on a valuation issue.

And usually the financial secrets, trade
secrets, relate to valuation, using income approach.

So, I just -- I throw that out because I see
symmetry here, which I think is very good, and to the
extent that we can continue or even improve upon that I
think that's -- that's important from -- because it's
one tax system.

MS. RUWART: Steve Kamp.

MR. KAMP: Steve Kamp and Alan Lo Faso here
from Board Member Betty Yee's office. We just
circulated this morning in -- in a letter which we have
some proposed changes to Article 2 of the rules, because
I don't see that here -- a few proposed changes to the
closure procedures in Chapter 5 of the rules.

The first, we -- point we want to make is that
we think a standard should be narrowed. I think the
point that Mr. Vinatieri made about the initial showing
that's required of trade secrets has a significant
limitation on what could be kept out of the public
domain. But we think that -- and we think the reference
to the -- the Civil Discovery Act -- the closure
provision is -- is good.

But we ought to note there is -- the taxpayers
ought to have the burden of proving that there is a
trade secret. And why the disclosure would be
embarrassing. But also why the Board could disguise the
non-portion -- non-closed portion of their tax case
without public disclosure of the information they wish
to keep confidential.

This is not really that much different than
what's in the rule now, but it tightens it and makes it
very clear as to who has the burden of proving closure.

The second point we would like to make is we
believe the full five-member Board should decide whether
to close a portion of the hearing rather than --
than having this dual voting procedure where the Chair
makes the determination, then the Board can un -- can
make a different determination in closed session.

We would rather have a full five-member Board make
the termination about closure and have the Public Agenda
Notice also state that -- that a portion might go into
closed session. And then in closed session, if the
Board wanted to change its mind, a quorum could vote to
bring it back into open session.

That way all the hearing would be conducted on
the same day, instead of having a procedure where you
have it on one day, then it gets put over again.

And we also think since we have five elected
Board Members, they're the ones who ought to make the
decision about whether to close a hearing.

And then this goes back to the point I just
made, that we don't believe the Board is required by the
Bagley-Keene Act to postpone upon the conclusion of a
hearing to a future meeting. If you just do the notice
right, you could actually have the remainder of the
hearing on the same day.

MS. MANDEL: Yeah, I think that's true, but
they -- they had their reasons of why --

MR. KAMP: We --

MS. MANDEL: -- to kick it.

MR. KAMP: We understand that.

MS. MANDEL: To kick it.

MR. KAMP: But if you go to a full Board
decision on closure rather than just having the Chair
have that authority --

MS. MANDEL: Right.

MR. KAMP: -- you can do that.

MS. MANDEL: That can be a separate issue on
whether it's just the Chair or -- or just bring -- bring
it as a motion to the Board.

MR. HELLER: Yeah.

MS. MANDEL: But the two issues that Brad
identified of giving -- making sure the taxpayer has the
opportunity to waive an oral hearing so that if he
cannot or does not want to reconstitute his evidence
into something that he feels would be appropriate for
open session, he can waive the hearing and not have that
confidentiality waiver.

And, alternatively, he can go back home and
say, "Maybe there's a way I can reconstitute my evidence
and not have my trade secret problem that they're not
going to let me have a closed session."
Those would be the two reasons for -- even if
the full Board made a decision to hold it in open
session rather than the Chair, to kick it to another
meeting. Those -- that's the balance that staff was
talking about.

MR. LO FASO: And -- and I guess we didn't
fully appreciate that balance, but --

MS. MANDEL: Yeah. I just --

MR. LO FASO: -- but I wanted to explore it
with -- so, the issue is the subsequent meeting is
generally to allow the taxpayer a little more time to
consider the consequences of not having their request --

MS. MANDEL: Yeah, I -- Brad -- Brad made the
points and I don't want to get in a discussion with all
the Board staff here, but only just tell you what
happened the one time that I had this, and it was a
State assessee matter many years ago when the Board was
first making the decision that it would not -- could not
hold State assessee matters at any point in closed
session.

We had information to substantiate our opinion
of value that was quite detailed and that the company
felt very strongly was trade secrets, and would qualify
for closure. We -- we submitted it under -- under a
request to keep it confidential, et cetera, et cetera.

The Board at a time we weren't notified
actually considered whether it would close and decided
not to. We asked for all that information back on all
of the companies that were involved, asked for their
information back. We did have quite an amusing mess
because Board Proceedings sent our client's information
to a different law firm, but we straightened that out.

But what happened then was because we had to
support our valuation, the company came up with a more
simplified way of presenting the information that the --
that the company felt comfortable with. The company
wasn't going to have a, you know, brain hemorrhage if
that information was released publicly in that format.

And so, -- but that -- that maybe wasn't -- you
know, maybe they would have really preferred to have the
first information because it was more detailed. But,
you know, they weren't comfortable with that in open
session.

So, if you -- unless people are going to be
ready at that meeting, that first meeting, to -- I have
Version A, which is like really confidential and Version
B, which if I have to I'll live with -- but, you know,
what we were able to do by the time of the hearing was
come up with Version B and -- and put that information
in.

And I think, you know, the result actually when
we got to Court was we got everything sealed, as I
recall. The Courts were willing to seal it but the
Board was not willing to seal it.

But we were able to reconstitute -- now, if the
client had not been able to reconstitute the
information, they might have said under that circumstance, "Send me the information back and we'll just go without it and see what the heck happens and deal with it later."

But that's just the example of someone being able to rejigger what they were going to put in. They weren't as happy with it as evidence from their standpoint as the original staff, but the Board was not going to keep the original stuff under seal. So, they had to come up with, you know, Alternative B.

MR. LO FASO: So, just as a response to my question I was trying to ask --

MS. MANDEL: Sorry.

MR. LO FASO: -- I will just cut to the chase. Rather than having a hardwired requirement that we're always supposed to know, if our proposal was predicated on a -- we would craft it whether it was a Bagley-Keene requirement (inaudible) perhaps rather than hardwiring that it always works this way, should we instead just have a process where the taxpayer can say, well, time out as opposed to it always being that way?

MR. MICHAELS: That -- Peter Michaels, and the option there strikes me as a fair middle ground.

I had an experience where I wanted a closed session and was told forget it, and I said, "Well, you know, at the moment I feel really handcuffed and foot-cuffed because I can't make my argument."

And they said, "Well, go ahead and make your
argument, anyway." And I did and lost.

    Had I the opportunity, I would have talked with
the people I represent and said, "Look, it's going to
cost a lot of money to come back up here. It's going to
cost a lot of money to go back to the drawing board on
our case. Do you want to go ahead without the central
argument or do you want to spend the money to come back
here?"

    But, you know, it's a tactical and an economic
choice, and I did think it was unfair for them to say at
the time, tough luck, you know, if you don't want to
talk about it that's your problem, but you're on and you
got ten minutes and that's life.

    MS. MANDEL: Yeah. I mean we -- we had the
benefit all those years ago because it was the first
case where the Board was going to decide it, not to hold
something closed. So, we had that benefit where they
made that decision well in advance of the hearing. It
was the first time.

    MR. MICHAELS: Well, the --

    MS. MANDEL: Pete, your -- your issue gets
taken care of there's a process in the -- in the rules,
then you know what -- then you know -- then you know
what the game plan is and you can plan accordingly.

    MR. LAMBERT: You can prepare accordingly.

    MR. MICHAELS: Yeah, I -- I was told that
either you're going to have to keep the secret and drop
your case or tell the secret and disappoint somebody.
But in life sometimes you just have to break your word,
I was told by a Board Member during the hearing. So,
we -- that's not a very fair choice, I don't think, on
the spot.

MR. LAMBERT: Is that Mr. Andal?

MR. MICHAELS: No, it was Mr. Klehs.

MR. VINATIERI: I was going to say, Mr. Klehs.

MR. MICHAELS: Sometimes you just have to break
your word.

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59
MS. RUWART: I had a question -- I only had an opportunity to briefly scan this, but what have you -- have you considered for a same day hearing, particularly, what is the interplay of your proposal if the early disclosure, ten days in advance, is adopted? Because presumably you're talking about a case where some information will be desired to be closed and the Board may or may not decide that.

What do we publish ten days before that?

MR. LO FASO: I'm a little unclear as to what --

MS. MANDEL: Could you explain that a little?

MS. RUWART: I'm sorry.

MS. MANDEL: Explain the -- because the waiver of confidentiality and all the information --

MS. RUWART: Applies.

MR. Heller: Well, staff set up -- staff's proposal sets up a two-step process.

I think your language wants to combine it down to been a one-step process.

Let me just really quickly how we think -- at least what I'm hearing and then we can clarify it so we can all be on the same page.

But I think -- what we were envisioning was that the taxpayer, long before there is a waiver of confidentiality, can request a portion of their hearing in closed session and get a response back from the Chair before the date comes for -- for the waiver to apply and
be necessary.

    MS. MANDEL: And the waiver applies when?

    MR. HELLER: It applies as of the Public Agenda Notice date for their scheduled hearing.

    MS. MANDEL: Okay.

    MR. HELLER: Okay. So, basically it's designed so that under our proposal the Chair would give them notice of whether they granted or denied the closed session before the Public Agenda Notice goes out, ours says at least five days before that.

    Then that taxpayer would have five days to decide, "Do I want to still go forward with my hearing or not?"

    We have the notice. Now, my understanding from your proposal is to not have the Chair rule on the proposal, but the comments from your office is that we want to not have the Chair make a decision, just we want to have the Board do it.

    And I think what everybody is not clear on is is the Board going to do that in advance?

    Because you're talking about if the Board decides against the taxpayer, they'll just go to hearing that day.

    That doesn't sound like an advance decision.

    MR. LO FASO: I think -- well, it will just boil down -- I don't understand what the disclosure things are because I see this -- I don't understand how this applies -- but that notwithstanding, two simple
principles, Board decides, not Chair, principle No. 1.

   MS. MANDEL: Right.

   MR. LO FASO: No. 2, why put things over if we
don't have to?

   If -- if the taxpayer wants to assert a right
to protect themselves, that's a fair thing, but why if
we don't have to?

   MS. MANDEL: Then what he -- you need to go
through is the waiver of confidentiality, which would
happen with the Public Agenda Notice on any case, and
this information that the taxpayer is going to ask the
full Board to take in a closed session when that Public
Agenda Notice comes out, under the way it's set up, has
that information -- the confidentiality --

   MR. LAMBERT: Cat is out of the bag.

   MS. MANDEL: By virtue of being on the Public
Agenda Notice for hearing that it's eviscerated right
then, so that's --

   MR. LO FASO: 5033.1 to say --

   MS. MANDEL: That's the --

   MR. LO FASO: -- that if you have requested the
process under .2 you have been deemed waived.

   MS. MANDEL: Okay, go ahead.

   MR. HELLER: Our goal here was not to create a
loophole where everyone who wants to request this
process then doesn't get their stuff disclosed in
advance.

   That's what would happen.
MS. MANDEL: That was --

MR. LO FASO: I'm confused.

(Unintelligible -- several people speaking.)

MR. HELLER: Here's my -- I think if I could just go back, I think I can still build this up because I don't think we have any disagreement, I think we're just still trying to understand the same process.

Here's my thinking now, let's say we take out the Chair on the that initial determination and put the Board in, I think that's the main -- the main thing that your office wants.

MR. LO FASO: That's correct.

MR. HELLER: It's not what happened.

So, we put the Board in there.

MR. LO FASO: More importantly, you have the Board in there.

MS. MANDEL: Yes.

MR. HELLER: Right, right.

There's no disagreement here on why that might be a good idea.

MR. LO FASO: Yes.

MR. HELLER: We're just talking about the procedures of it all.

So, if we have the Board do that in advance again, so that we have notice to the taxpayer in advance, before the waiver applies -- which is what you keep talking about -- that's the whole purpose of getting this done in advance so that they can have a
knowing waiver or not.

And so we have the Board do that, the whole Board does it, then why would the Board then want to rush into a hearing? The Board would then decide, right, the full Board --

MS. MANDEL: So, it would be like a motion practice?

MR. HELLER: -- and schedule the hearing --

MR. LAMBERT: Yeah, right.

MR. HELLER: -- in the future, I think, basically, which would be scheduled the way the whole Board wants it scheduled, right?

Then at that point we have that meeting scheduled, why would we want to then have the Board go, "Oh, we just changed our mind on you taxpayer and now we want to go directly to a full, open session."

MS. MANDEL: Chris has something he wants to say.

MR. SCHUTZ: This is Chris Schutz.

If it goes to all five Board Members when he makes a request, then that would have to go to an agenda just as being a request.

And before it even has a hearing, you just have, "Oh, this is a request out there."

And I don't know where it would go, maybe to Chief Counsel matters as a request for closed session.

You would have then Board Members, all five Board Members, get to decide, "Okay, we want to have a
closed session."

Otherwise you'd always have to have it on as a
closed session agenda item and an open session agenda
item so that if the five Board Members decided that they
wanted to have a closed session, it would go to closed
session. Otherwise, it's not agendized for closed
session.

MS. MANDEL: Right.

MR. LAMBERT: So, I think our response is that
it gets so complicated?

Is that what you're saying in terms of --

MS. MANDEL: Well, but the simple one that Alan
was suggesting was that if the problem is that when you
issue -- the PAN would still have show -- if you did it
all on the same day, the PAN would still have to show
everything.

But if the problem with their -- because
you have -- you can't take something -- if you agendize
for open session, you can't then -- they're saying under
Bagley-Keene -- you can't then just say, "Okay, we're
closing this part of the hearing."

You have to have something that says, "closed
session."

MR. LO FASO: That's our proposal, we know
that.

MS. MANDEL: And with respect to waiver of
confidentiality of this information that would otherwise
occur under the way staff's written the basic rules on
waiver of confidentiality, what I heard Alan saying was
then couldn't you put in the waiver of confidentiality a
little, "except with respect to materials that they have
requested this process under what the other rules are?

MR. LAMBERT: And how would you prepare the
summary?

If there were two summaries -- there would be
two summaries.

MS. MANDEL: Yeah.

MR. LAMBERT: One summary with Version A and
one summary with Version B?

MR. LO FASO: Well, no, I mean -- let's dig
deeper.

I'm unclear as to --

MS. MANDEL: I thought there --

MR. LO FASO: -- as somebody who doesn't always
feel he understands the underlying facts in the hearing
summaries, I guess it's not a given for me that the
hearing summary is actually even going to make reference
to it in a way that would disclose it improperly.

That's why I'm stuck on the -- on that
question.

MS. RUWART: All I'm saying is it could happen.
It could be possible not to be able to write a hearing
summary that is at all coherent without specific
reference to the information that the taxpayer wants to
keep secret.

In that very tiny case, my question becomes --
or my concern becomes, I guess, a potential loophole.

If we are saying that the hearing -- that the Board wants to both make that determination with respect to the secrecy and decide the matter on the same day, then I believe that the -- that the Board staff now has to decide, you know, do you publish the hearing summary -- which in the ordinary course would make some, you know, minimal, but some reference to that secret or -- and here my question is, so you redact it because the taxpayer has requested redaction.

Board staff -- the Board staff preparing the hearing summary certainly has made no determination as to the legitimacy of that request. Is it possible that a taxpayer could use that as a loophole to avoid exposing information which the full Board will then deny the closure request on, but the public has been denied access to that information unless the Board then goes out and republishes Version B of the hearing summary.

MS. MANDEL: Okay, here -- their two main points were they want the full Board to decide the closure issue and they want no unnecessary postponements, so, no necessarily automatic hearing postponements or whatever.

And maybe, considering the reasons that Brad gave of why they set it up that way, whatever, maybe you guys should work together on what language you would -- whatever suggest because we're going to need language at some point.
MR. LO FASO: I certainly agree that we might not -- we wanted to put this out, sorry we put the letter in ten minutes before --

MS. MANDEL: No, that's fine.

MR. LO FASO: Sorry But maybe because you've heard the reasons why they gave and maybe -- and then with whatever -- because if you have -- I mean your points, the rest of the Board may feel a certain way or not, but certainly having language that works all around and they can help you with that, whatever

MR. SCHUTZ: You know, it's just a matter of course because it's out there and they could do it now -- request a closed session.

So, you might have, you know, agendas, you know, you have a half a dozen cases that are closed that are agendized for the closed session and open session and the Board has to decide --

MS. MANDEL: Right.

MR. SCHUTZ: -- on, you know, every case.

MS. MANDEL: Which may suggest doing it more like a motion to practice in advance, but I don't know. That's why maybe they should get with staff.

MR. MICHAELS: What have you thought about -- it's not uncommon for there to be four rather than five people sitting up there on that dais.

What if it's a tie? Is that a decision? If there's a two-two split, the two Republicans and the two --
MR. LAMBERT: There's a motion made -- there's a motion made by the taxpayer. If it's -- if they don't win, they lose.

MR. MICHAELS: So, a tie actually is a loss?

MR. LAMBERT: Right.

MR. LO FASO: Well, it's not a majority of the quorum.

MR. MICHAELS: That's right.

MR. HELLER: And your -- your point's not directly on point to what we're talking about.

Although it's --

MR. MICHAELS: Full Board -- a full Board can be four people.

MR. LO FASO: Understood. This is -- this is very instructive because, you know, a lot of -- this is -- our office is asked a lot and it's of sort of a functional analysis of these things -- whether it's going to be -- you know, there's gamesmanship's opportunities or whether -- if it's going to be once in a blue moon.

This is really important for stuff for us to be talking about.

MS. MANDEL: Yes.

MR. MICHAELS: And it does strike me -- and I heard what Bob said I know how the Board interprets ties -- seems inevitable that there are going to be ties and it seems --

MR. LAMBERT: You guys --
MR. MICHAELS: -- unfair for a tie go to the
home team, seems like you should get a tie broken.

MR. LO FASO: If the Chair favors nondisclosure
and the Board is split, if the Chair makes an additional
call, the results will be nondisclosure.

On the other hand, if there is no Chair initial
decision and the Board is split, the rule -- the result
will be not in favor of the nondisclosure.

I appreciate the preliminary indication, it's
not what I spent a lot of time thinking about.

MR. MICHAELS: A tie is not a decision in my
mind.

MR. KAMP: The notion that if you don't get --
if you have a tie vote on a motion, the motion fails.
That's Robert's Rules of Order, basic parliamentary
procedure.

It's nothing unusual, you know.

MR. HELLER: I want to quickly notice and add
on to her point, I think it's slightly germane, is that
staff -- you know, staff, when we first looked at this
we did consider having the entire Board decide and we
definitely recognize that this was an extremely
important issue that would be -- you know, hinged --
really would be the linchpin on whether, you know, a
very large taxpayer goes before the Board on a multi
billion dollar cases or even a large group of taxpayers,
so, we definitely took it extremely seriously.

But we looked at the procedural issues and our
feeling was that if we do it for the whole Board -- if there's a decision by the whole Board, then we're going to need to -- to get them basically bring the entire Board up to speed on whatever is going on in the case that is necessary to determine this issue, probably notice this for closed session as well, because if the Board Members are going to discuss it at all, then they'll be discussing the trade secret or the potential trade secret and they can't do that during an open session without possibly disclosing the trade secret itself.

This would defeat the purpose of having -- we're going to have to schedule all of these for closed session every time there is a request to be done.

Every one of these will have to be properly noticed as a closed session item so that the Board Members are all there, they do have the ability to -- you know, they need to discuss it and ask staff additional questions about why is something there or why it's germane to the case and those kinds of things.

And they're also going to be exposed to the substantive issues in the case as well. And I don't know how much the, like, public is going to feel confident in not -- in either being admitted to that closed session to argue their position now or --

MR. LAMBERT: That would kind of defeat the purpose.

MR. HELLER: I understand, but I'm just trying
to understand how -- the policies.

MR. LO FASO: I will say that staff is
articulating an initial disagreement with the Yee
proposal and I'll say that this is a process whereby a
Board Member's office is trying to articulate this and
to put you a proposal out and that I will absolutely say
that we should take Marcy up on her suggestion to just
follow the constitution.

MR. HELLER: We don't disagree, let me just say
that.

We can do that, I was only explaining why we
thought -- why we waited.

MS. MANDEL: We can do that.

And I really would suggest that if they want to
going forward with their thing, they can sit here with the
staff and work out language so that if we're going to
vote, we have something to vote on.

MR. VINATIERI: Can I comment?

MS. MANDEL: Please.

MR. LAMBERT: Right.

MR. VINATIERI: Joe Vinatieri, and, you know,
make sure -- I want to put in the two cents worth on
behalf of the taxpayer.

Depending upon how you all are looking at this,
if turns out that you are going to have a closed session
among the Board Members and the staff to determine
whether this should be -- the hearing should be the
portion related to the financial trade secret
information should be closed or not, then I think you
need to make sure that you have the taxpayer there also
because they have the burden of proof, i.e., along the
lines that you're talking about if you're going to make
it a motion.

    MR. LAMBERT: That's not --

    MR. VINATIERI: They're going to have the
burden to prove that, why this is trade secret
information and why it's damaging or potentially
damaging if it becomes public.

    MR. RUWART: Can I ask a question, Joe?
Did you say before that under your local AAB
rules that the AAB makes the decision without the
taxpayer being there?

    So how would that be symmetrical?

    MR. MICHAELS: No, it doesn't, no.
The local AAB -- I'm not Joe.

    MS. RUWART: Okay.

    MR. VINATIERI: I did say that.

    MS. RUWART: I might have misheard it, but --

    MS. MANDEL: That's what he said.

    MS. RUWART: He did say that.

    MR. MICHAELS: I was not listening well.

    MR. VINATIERI: No, I did say that.

    Because what you do in local practice is you
have to make the CCP showing in advance of the hearing.

    Normally that Board gets together and makes the
determination whether it's closed or not. They then
come back and they tell you, "Well, we agree with you or
disagree. So, when you come back for your hearing,
we're going to do this portion closed, the rest of it is
going to be open."

Sometimes we have situations where we've said,
"Hey, this, this and this needs to be closed." They
say, "No, we agree with this and this, but not with
this."

So when we come back, we then have a discussion
of that and what the -- what the reason why we felt the
way we did over and above what we put in writing.

If we didn't not like it at that point in time,
then we either went to court or we reconstituted the
information.

What I'm concerned about here, why I'm saying
this here is, under -- under the practice of many
counties they will look at a taxpayer's request for
closure on a relatively -- I don't want to say liberal
basis, but their view is if there's any chance that, in
fact, this information could be detrimental and cause a
substantial detriment to that taxpayer's business, then
benefit of the doubt goes to the taxpayer.

And they look at it that way.

Now is that I codified? Is that written down
somewhere? The word is no.

But that is my experience in Santa Barbara
County. It's been my experience in Los Angeles County.
I am trying to remember where else I have had it.
But because of the potential down side of what could happen, benefit of the doubt goes to the taxpayer in those situations.

MS. KINKLE: Carole?

MS. RUWART: Yes, Sherrie?

MS. KINKLE: Sherrie Kinkle, property taxes.

I happen to have another hat besides this one, I'm the liaison from our Board to the local Appeals Board and I work with the clerks of the boards.

And I was also very much involved with promulgating the Local Rules of Practice, including the one that Joe is talking about.

One of the other things that we put -- we instituted at the same time that we put the definition of the trade secrets in the procedures associated with that is that we instituted pre-conference hearings. And that's one of the things that's determined in a pre-conference hearing.

Now I know that's -- that could not work in the same way with our Board because you have -- you have your Board sitting in a hearing and just the stuff that you've been talking about, you have the problem [*|of] you have a hearing before the hearing to determine what they might say.

But in the local counties they do -- they have pre-conferences and the trade secrets -- if there are any involved, well, that is one of the issues that is determined and we have encouraged -- we being the
Property Tax Department -- have encouraged the --

MR. LAMBERT: Talking about a motion?

MS. KINKLE: -- Appeals hearings to err on the side of the taxpayer in all instances.

It's -- it just doesn't make any sense to -- to harm the taxpayer in any way if there are trade secrets involved.

But I don't understand -- and, of course, this document just came in so I didn't get a chance to really look at the document from Miss Yee's office -- but I don't understand what the concern is if the Board Chair makes the preliminary decision -- determination, if you want to call it that, that it's going to be closed.

From what I read and what I understood is that when they have the hearing the other four Board Members or the complete Board could make a recommendation to overturn that.

Is that correct under our current procedure?

MR. HELLER: Yes.

MS. KINKLE: So, in essence, the full Board always has the decision to make that decision.

MS. MANDEL: Well --

MR. MICHAELS: Can they turn it the other way around?

So that if the Chair said no, they could say yes?

MR. LO FASO: If I may respond, we could adopt that logic we could have the Chair make the additional
call on all of our decisions and then submit it to a
ratification by the Board.

It's a different process. As Peter points out
it's a different mechanical potential for result, it's
different.

MS. KINKLE: But the problem is that someone
needs to make -- it seems -- a preliminary decision,
which is what this can be considered -- so that they --
there can be a public agenda notice so that it can go
forward.

Otherwise you have the problem where do you put
it? Is it closed? Is it not closed?

MR. LAMBERT: What are you going to do about --
MR. LO FASO: I guess that it's not that clear
to us and, hopefully, we'll have a thorough discussion
and that we will --

MS. MANDEL: That's why --

MR. LO FASO: -- agree with that, but it's --
we got some we time to talk about it.

MS. MANDEL: That's why I said something about
motion practice.

MR. LO FASO: Right.

MR. LAMBERT: So, it's a post conference
pre-hearing with a potential for a motion to the Board?

MS. MANDEL: Okay, you can talk to them.

MR. LO FASO: To be -- since I am -- I am
actively active right now because they're responsive to
our office -- what our office put forward.
But to be engaging to Joe's comment, Joe, I understood that the Bagley-Keene law favors public disclosure and, generally speaking, the burden is against -- against not meeting the public.

And when you say that there is a benefit of doubt in favor of the taxpayer, I am trying to reconcile my --

MR. VINATIERI: Well, Bagley-Keene doesn't apply to local property tax, but --

MS. MANDEL: It's the Brown Act.

MR. VINATIERI: -- the Brown Act does.

It's similar. And a decision -- a decision was made -- Sherrie, thank you for reminding me -- because the decision was made as part of the balancing that we're talking about here, talking about the right of the public to know versus the right of the taxpayer to have a hearing, a meaningful hearing and not be detrimented by disclosing certain information that is absolutely confidential.

In that balancing there was a discussion when we did the property tax rule along the lines you're talking about and it was determined that in those situations that benefit of the doubt would go to the taxpayer.

But that's why, on the other hand, it's very narrow in terms of the amount of time -- very specific on the amount of time that that closed session takes place.
In other words, the Chairman of the Assessment Appeals Board is very, very clear and the Board is very clear in their order that said, "This is what you want to put in and we're going to make a decision yes, it's confidential, but here's the parameters: You are only going to be able to talk about that. The minute you start talking about something else, then we're going to open hearing."

That's within the discretion of the Board. I think that's a similar situation here.

I don't see that to be all that different.

MR. LAMBERT: Would you call staff afterwards?

We'll try to work up some language.

MR. LO FASO: Absolutely. We'll have --

MR. LAMBERT: Again --

MS. MANDEL: He's just trying to understand a lot of everybody's points, because he's going to take it back and back explain it to someone else.

MR. MICHAELS: Alan, just one footnote, Bagley-Keene does have a provision in it for closed session and you're probably familiar.

MR. LO FASO: Yes.

MR. MICHAELS: And it cross refers to another Government Code section that also is about closed session.

So, there is Bagley-Keene language that appears to be expressly on point.

And I think that supports a lot of what we're
saying.

MR. LO FASO: And we'll take it.

MR. MICHAELS: We'll have to talk off-line.

MR. LO FASO: Absolutely, absolutely off-line.

MR. VINATIERI: I like that off-line, it's very techno.

MR. HELLER: With that real quick -- Bradley Heller from Legal Department again.

Just to wind that up, I guess I'll just note that that was also one of Mr. Lenny Goldberg's comments from the September meeting was also in there on the definition of what a trade secret is.

That's contained in his comments as well.

MS. RUWART: And asks for any other --

MR. MICHAELS: That language is his?

MR. HELLER: I believe he actually has language.

MS. RUWART: Yes, he does.

MR. HELLER: Staff did look at it and it --

MS. RUWART: Actually, he did not provide --

MR. HELLER: We're not totally clear on how that definition would exactly work, but it doesn't look like it would not -- or no financial information could possibly be considered a trade secret under this definition.

And then we don't think that that's going to work for the Board since we typically do have financial information and that is what people are arguing --
MR. VINATIERI: That's correct.

MR. HELLER: -- so, we don't think that we'll be able to work with that language as it currently is proposed.

But I just wanted to point out that it was there.

If there are any other comments on disclosure, please feel free to share them.

Otherwise, we'll go ahead and move on to another subject.

MR. KAMP: Steve Kamp from Betty Yee's office.

We actually have a pamphlet previously from settlement discussion disclosure standards, it's 5033.2 subdivision B and I think you should -- if you're going to look at Mr. Goldberg's suggestion, you should look at our suggestion as well -- in addition to what the staff has already proposed.

MS. MANDEL: Could you explain "the specific explanation of the taxpayer's position why the issues presented ... may be resolved in open hearing without reference."

I'm not sure I understand.

Can you -- do you have a --

MR. MICHAELS: What does that mean?

MS. MANDEL: What would you contemplate a taxpayer would say or do for that?

MS. RUWART: Is there a "not" missing in this sentence?
MR. KAMP: I think --

MS. RUWART: I think what you're saying is that the taxpayer should be required to demonstrate why the Board can't have an open hearing without referencing the confidential information?

Is that what you really meant?

MR. KAMP: Well --

MS. RUWART: So, in other words, in that third line,

"The taxpayer position may not be resolved in open hearing."?

MR. KAMP: In fact, if you look at the memorandum we circulated, we also say that the taxpayer should bear the burden of proving why the Board can decide -- it's not -- non-disclosable to -- on the tax case without public disclosure of the information confidential.

MS. MANDEL: Yeah, I don't think the "not" is missing.

MS. RUWART: I'm sorry.

MS. MANDEL: I think what they're saying is if I have part of my hearing closed, the Board agrees.

Now when the Board makes the decision on my case, they have to make a decision in open session and so they're saying as a taxpayer asking for closure, assuming you got the closure, you would have to demonstrate how the Board is able to decide your case in open session without revealing any of the stuff from
closed session.

Is that what you're saying?

MR. KAMP: Yes.

MS. RUWART: Oh, I see.

MS. MANDEL: Brad's making the same --

MS. RUWART: It's almost -- it's almost like you provide the Board the motion of how you can -- you wouldn't really do that, but tell the Board how they can say it -- how they can say the deciding of the case without revealing the information?

Am I just really not getting it?

MS. MANDEL: That's why I asked -- because that's how I understood the words that were here, which is that the taxpayer would have to show how the Board could make a decision on the matter in open session without revealing any of the confidential information, which would -- I guess what you are saying is that the Board would be restricted in its discussion of the evidence because this would always be evidence when it comes time to -- you know, somebody makes a motion, they make a motion that the -- that X is the answer in the case. And it gets seconded for purposes of discussion.

And then someone says, "Why are you making that motion?"

And the reason the guy wants to or the gal wants to make that particular motion is --

MS. RUWART: Based on the confidential --

MS. MANDEL: -- based on the confidential
stuff, then maybe they have to go into closed session.

Is that what you're talking about?

MR. KAMP: What we're -- what we're asking the

closure proponent to demonstrate that -- why the

material that they are trying to put in or keep out of

the public domain is not essential to deciding the tax

case.

In other words, if you've got real trade

secrets that relate to valuation or something, you can

decide it without actually publicly revealing that.

MS. MANDEL: Okay, but -- but -- is it a why?

Because -- because it sounds to me -- I

mean it's hard, you know, in the vacuum of not having

particular facts in front you to always try to figure

out how these things will work, but it sounds like the

way it could come up, just seeing how the Boards have

operated -- and who knows how a future Board would

operate -- is that somebody makes a motion for a certain

thing.

And then it -- then -- because that's when

they're making the decision, right?

And if that motion goes and it's the motion to

grant or a motion to deny, the motion goes, it seems

like it would be -- if there was actually the Board

engaging in discussion of the case -- that you would

have the issue -- I remember we had one Board meeting

where we did receive some information that was

confidential, not in the case, but it had to do with
something we had to adopt, there was information that
the law requires be confidential, and a Board Member
tried to talk about what was in the paper.

    And everybody was going, "It's confidential!
It's confidential!"

So, it seems like it would come up if there was
discussion. And I am just trying to figure out how a
taxpayer -- how this would work.

MR. VINATIERI: In the context of local
property tax what happens in that situation is, first of
all, you're requesting findings of facts and conclusions
of law, which become your basis for going to superior
court.

    MS. MANDEL: Right, but we don't do that here.

MR. VINATIERI: I understand that, exactly.

    So, there is -- you have that as an issue. But
specifically if you do have something like a memorandum
opinion that the Board chooses to adopt, what would
happen in the local property tax context is if there is
a specific point and they determine a value based upon
the income approach and they say, "We believe," or they
say, "Here's our conclusion, it's based upon X number of
dollars of revenue and adjustments made for
depreciation, economic obsolescence, blah, blah, blah,
predicated on this," which is closed, then they refer to
the document -- we're getting overly technical here --
but they refer to the document that was marked
Assessor's Sealed 1 or Applicant's Sealed A -- and that
way it would refer to it in the public document of the
findings of fact and conclusions of law, but you
wouldn't really know unless you are able to get to that
sealed document

MS. MANDEL: So, any -- any written -- if you
were to make this motion on your case and this were the
rule, what is -- what is in this submission from the
office, you would be able to say -- you could decide my
case, if you did anything in writing, by doing these
things and if then -- and you could decide my case and
if you were going to be discussing it in open session by
going into closed session to discuss any reasons or
anything that was based on --

MR. VINATIERI: That's it.

MS. MANDEL: -- the confidential?

MR. VINATIERI: Right, those specific --

MS. MANDEL: You'd have to --

MR. VINATIERI: -- those specific documents
relating to -- that were specifically proscribed as
confidential and narrowly --

MS. MANDEL: It's easier to do in writing, when
it's a written thing that comes back -- harder to do
when the Board Members are sitting there unless we all
have little rubber bats to, you know, stop each other
from -- "Don't talk about that until we go back into
closed session to talk about that reason."

So, they would be running in and out of the
room for something if they had to talk about the
information?

MR. VINATIERI: Yes, like I said, it's overly technical.

I think we have to be careful on doing things on an expedited basis, but at the same time balancing the public's right to know versus the taxpayer's right to be heard.

MS. MANDEL: So, I was just trying to figure out what the taxpayer -- what they thought the taxpayer explanation --

MR. VINATIERI: I would just indicate -- I think we've had a pretty good discussion of this issue and I think staff understands.

I want to make sure from the taxpayer's standpoint that they understood the concerns of the taxpayer.

Why don't you all go back and see you what can hash out?

MR. LO FASO: Yeah, I'll call.

MR. VINATIERI: Any time.

MR. HELLER: Absolutely. And staff's absolutely --

MR. VINATIERI: And, Brad, I'm not asking that I be there as you guys talk about it on behalf of taxpayer, but it can be like a closed session.

MR. LO FASO: It will be off-line.

MR. VINATIERI: Thank you.

MR. HELLER: Anyone else who would like to
share a comment after the meeting or in the next couple
of weeks on something like this or any proposed language
can submit it to staff as well.

And if they really -- if anybody feels that
they really really need a personal meeting with staff,
we can try to arrange that.

MR. LAMBERT: We can make it off-line, sub rosa
or even ex parte communication.

MR. VINATIERI: I never want to do that with
you.

MR. LAMBERT: I have no decision making
authority, that can't happen.

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MR. LAMBERT: Okay, turning to the next thing.

MR. HELPER: Turning to the next thing, I think -- I think we covered the issues that have been raised for today on disclosure. No more issues to raise there and on communications with Board Members, and with those we're going to move forward.

Mr. Vinatieri submitted a few written comments. I was going to ask you if there was any of those you wanted to discuss orally with the interested parties today; we can go through those right now.

MR. VINATIERI: I did. I'd like to go to -- and by the way, let -- let me just indicate that -- that when this started last September of 2005, as we all know there was an awful lot of differences of opinion. And I was one of the major -- how should I say it, on-line persons with difference of opinion.

So, this -- I appreciate the fact the staff has done what it has done and there seems to be a lot of consensus. So, this just represents the last that I had, and in fact most of my comments that I'd done previously one way or another were assuaged.

These are the ones where I till have concerns. Let me just start with this first one, 207(b)(2). And this, of course, relates to the situation that's been hanging around the Board here with the childhood lead appeals. And I think -- and it's been a -- it's been a bit of a -- a difficult situation for everyone.
MS. MANDEL: This is on the first page of the staff comments? This is the same thing? 2017.


MS. MANDEL: Okay. And so --

MR. VINATIERI: And I had asked that there be language in there for the situation where on these tri-apartheid taxes, whether it be DTSC or DHS, and there's probably some others that I'm not even familiar with, where you have -- the Board has an absolute responsibility under the fee appeals procedures under Section 40-- whatever it is, that applies to all these -- these -- these taxes or fees, excuse me, that are actually billed by the Board of Equalization but the other agency is -- is responsible for the -- the substantive aspects.

I have a real problem that the Board has been told by the -- by the Legislature to provide the appeals process, but in certain circumstances the Board -- because the way the tax is set up or the fee is set up for exemptions and things like that you have to go to the -- that particular agency. And if that agency doesn't respond, which is what happened on the childhood lead cases, then the Board of Equalization says, well, we can't go forward on our appeals procedures.

So, the taxpayer -- the feepayer, is in Catch 22. And so, the -- the staff has said -- staff declined due to lack of statutory authority. I -- I don't agree with that. I think you have your statutory authority
when the -- the Legislature gave the authority and the responsibility and the obligation and whatever other word you want to use, to provide a meaningful appeals procedure for feepayer.

So, I -- I suggested in my comments to that instead of putting a timeframe on it, which is what I did initially, I just said if after a reasonable period of time the State Department of Health Services -- and I would say this for DTSC or any other situation that's similar, that after that reasonable period of time that particular department has not acted, then the case shall be heard by the Appeals Division.

Which gives you -- I mean, obviously, I would like to have 30 days, 60 days, 90 days, 120 days, whatever the date might be. I'd like some -- some -- something in concrete, but if you're not comfortable with that, then I'm just asking that at least put something in there that says after a reasonable period of time, maybe six months, maybe eight months, nine months, whatever -- whatever the staff in their deliberation thinks is appropriate in their discretion, then --

MS. MANDEL: Have you ever taken a --

MR. VINATIERI: -- they do that.

MS. MANDEL: -- taken a writ against the Department for not acting on your thing?

MR. VINATIERI: Well, that's what's happening on the --
MS. MANDEL: And trying to force them to act?

MR. VINATIERI: That's what's happening on all the childhood lead cases. They actually decided — I think Bolero started and said — they filed a lawsuit in Federal Court and said, a, the Department of Health Services is wrong because this is a tax, it's not a fee.

MS. MANDEL: Yeah, yeah, yeah, about the —

MR. VINATIERI: And, secondly —

MS. MANDEL: -- you're not acting on my thing.

MR. VINATIERI: Secondly, we have not had due process of law because it's been sitting there for three years.

MS. RUWART: And what was the result —

MR. VINATIERI: It's —

MS. RUWART: -- ultimately when it went to —

MR. VINATIERI: They got put off and now that's part of the Shell litigation that's going on right now.

MS. MANDEL: I mean —

MR. VINATIERI: That's the Shell litigation.

That's —

MS. MANDEL: Because once — once we put something in — I mean, if it said reasonable period of time in our thing then, you know, then you're suing us for what's a reasonable period of time, when —

MR. VINATIERI: Well —

MS. MANDEL: -- if the Legislature wants them to act first, how do we -- how do we -- how does the Board -- how does the Board hold a hearing if the
subject of the hearing is the law says that they have to
decide a certain issue?

    MR. VINATIERI: They -- the law says on
exemption issues that they have to decide. And -- but
that doesn't say -- that is not to say that the Board of
Equalization can't decide other issues that are related
to that. Or dissimilar from that.

You put the -- the problem is you put the
taxpayer, the feepayer, right in the middle of Catch 22.
So, what's the point of having an appeals procedure that
the Legislature has given you if the Board of
Equalization is just going to defer indefinitely while
this other agency sits on something for three years?

I mean, it's -- it makes no sense.

    MR. LAMBERT: We may not have jurisdiction.

And that will be a contrary argument.

    COURT REPORTER: I can't hear you.
    MS. RUWART: Oh, she can't hear you.
    COURT REPORTER: I didn't hear you.
    MR. LAMBERT: Oh, I said the contrary argument
would be the Board doesn't have jurisdiction until
there's a denial.

    MR. VINATIERI: I don't think the law says
that. It doesn't say that. It --
    MS. RUWART: Is there anything in this comment
that is new from your prior comments on this issue?
    MR. VINATIERI: Yes.
    MS. RUWART: Or you just -- okay.
MR. VINATIERI: Yes. Last time I -- I put down -- I believe I put down 90 days or six months.

MS. RUWART: No -- not in terms of the language, but in terms of your rationale for why the Board should do this.

MR. VINATIERI: No, I've gone from a specific date to a more fuzzy date.

MS. MANDEL: Okay, let's go -- okay.

MR. LAMBERT: The rationale is the same, let's go.

MS. RUWART: Okay.

MR. HELLER: I appreciate that. Just quickly comment that staff appreciates the number of --

MR. VINATIERI: Right.

MR. HELLER: -- puts taxpayers in.

MR. VINATIERI: Okay, 2050(C)(3) is the same thing as we just discussed.

Let's move into 402.5. This is under the Franchise Tax matters and you can see there was a --

MR. HELLER: Misnumbering.

MR. VINATIERI: Yeah, it was a misnumbering.

MR. HELLER: Yeah, we picked that one up.

MR. VINATIERI: Okay.

MR. HELLER: The next draft should hopefully correctly number that.

MR. VINATIERI: And on 4042.5 --

MR. HELLER: 4042.5.

MR. VINATIERI: -- (B)(2) I -- I just point out
to you as a -- in a general way, now that we've had this
discussion about confidential trade secret information,
you have put a specific provision in the Franchise Tax
appeals rules for prehearing conference. I think that's
a great idea, and I think that it wouldn't be
inappropriate at all to have that just in general. Such
as the situation we're talking about on -- on trade
secret information.

I was telling Bob as you were talking here, I
said I know that prehearing thing is in here somewhere.
i couldn't remember where it was -- where it was. So,
you might take that into account when you all are
talking about trade secret information about the -- the
ability of the staff to have a prehearing conference
to -- to work through those things.

MR. SCHUTZ: Since everything else has a --
like an appeals conference except for the Franchise Tax
Board --

MS. MANDEL: That's what this is.

MR. SCHUTZ: -- it would be just to bring it up
to -- that if you want to have a closed session, that
you view it as a -- a taxpayer bring it up at the
appeals -- appeals level so that it -- then Appeals can
draft -- look at the information and then either make a
comment or recommendation to the Board about whether or
not --

MR. VINATIERI: That -- that would work, Chris,
I mean, on the -- on the surface. The problem is that
the Appeals Conference -- say it's a Sales Tax matter
and you're doing a trade secret thing. In Appeals
conference that's all going to be confidential, anyway.

        MR. SCHUTZ: Right.

        MR. VINATIERI: So it doesn't even -- it
doesn't -- that issue doesn't arise because then if the
county-holder or the Appeals Division comes up with
a decision that goes contrary to the taxpayer, and now
there is an issue that you're going to have to bring in
front of the Board, that at that level had been
confidential but to bring that same issue up in front of
the Board is going to be confidential, now you have an
issue after the Appeals Conference.

        MR. SCHUTZ: But if you raise -- if you raise
that, look, this is information I'm giving you, Appeals
Conference-holder, but if this goes any further it needs
to be confidential, and then -- and then the Appeals
Conference-holder will comment on, "Yeah, I've looked at
it," you know, "I don't -- I don't think, you know, this
needs to -- it's required to be in closed session."

        MR. VINATIERI: I don't know, that might be a
way of dealing with it. I'm -- yeah.

        MS. MANDEL: Assuming --

        MR. VINATIERI: In any event, let's -- let's --

        MS. MANDEL: -- they know the information with

the --

        MR. VINATIERI: Yeah, let's go back to this.

My only -- my concern here, I had -- I had a question
about 15 days, and I wanted -- I thought it would be appropriate to give it 30 days, a little bit more time. That was the first thing.

MR. MICHAELS: 30 days is for --

MR. VINATIERI: It says here, "The requesting party may make a written request for prehearing conference," and by the way, you know, I think these are really good ideas and I would hope that we would encourage this type of thing on Franchise Tax appeals, because it --

MS. MANDEL: Okay, but what's your specific comment?

MR. VINATIERI: 30 -- 30 days instead of 15 days. To request.

MS. MANDEL: To request --

MR. VINATIERI: It's on page 18. Oh, you're not going to have it on that.

MS. MANDEL: Yeah, I do.

MR. VINATIERI: So that -- that's the first issue.

I had a question, and -- and this is not -- you know, I don't feel that strongly about it, but it says, "The Appeals Decision may deny the request with the approval of Chief Counsel if the Appeals Division determines that a prehearing conference is likely to be unproductive and a misuse of administrative resources."

Now, if we're talking about the staff here is concerned about tax protesters, if that's really what
we're talking about here, I understand that.

However, I would certainly not like to be in a situation where on behalf of a client I request one of these prehearing conferences and I'm told -- and I'm not dealing with a tax protester, they're not a client, and I'm told, "Well, that's unproductive, it will be unproductive or it will be a misuse of -- of administrative resources."

I mean, what the heck does that mean? I understand what it means in the context of tax protester, but outside that context it -- it's problematic to me.

So, I -- I -- I just basically said -- I said drop or delete "misuse of administrative resources." I probably should have said, well, "unproductive" is also an ambiguous word or term. But I think we all know what we're talking about here. But I want to make sure it doesn't go too far the other way, either.

MR. LANGSTON: I think another -- another situation would be where it is a case that involves routine application of well-established law with uncontested facts.

You know, you're -- you're in the universe of the large complex cases but there's also a broad universe of the relatively straightforward cases where the facts are clear, we believe the law is clear. At that point then the staff should have the discretion to -- to say, well, you know, what -- what purpose would
it serve to have a conference.

    I mean, I think that --

    MR. VINATIERI: You're talking about like Head
of Household or --

    MR. LANGSTON: Yes, basic Statute of
Limitations cases, Head of Household. Just application
of -- I don't know, you know, your -- your
run-of-the-mill cases, single issue, basic facts,
well-established law, the -- the majority of -- a lot of
the very small cases.

    So that I think also would sweep in some of
those. I -- I don't think the intention was, though,
for the large complex cases that this would ever, you
know. I think the --

    MR. VINATIERI: Right.

    MR. LANGSTON: -- the tend -- the tendency
would be if it's a factually intensive case, if there is
a subtle legal -- undeveloped legal issue, you
know, then -- then I think the -- the expectation is,
yes, there would be a -- a conference, if requested.

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MR. VINATIERI: Okay, I'm empathetic with that. I mean I don't want to waste FTB's time or Board staff's time, but I don't want to get in a situation where I have a client or there is a taxpayer who's got something that's, quote, unquote, "legitimate" and gets denied because -- and this is a good way to keep stuff away from the Board, get things resolved so they don't end up having to go in front of the Board.

So, let me just suggest, in terms of the language, I had -- I had suggested the deletion of the words, "use of administrative resources," as ambiguous and the same.

We can use -- we could leave the word "unproductive" in there and we all understand what we're talking about here.

My concern is we're not always going to be all here -- hopefully not 25 years from now.

MR. LANGSTON: What if we said, "In any staff's opinion the hearing -- the hearing would not aid in the resolution of the case," something like that?

Just -- you know, because I kind of agree that the words, "unproductive and misuse," is pretty prejudicial to a case.

You know, someone requests a hearing and we think, you know, that sort of gives you an impression that the staff isn't -- isn't behind you.

MR. VINATIERI: It's completely objective.

MR. LANGSTON: Maybe we could find some more
neutral phrases to indicate --

MR. VINATIERI: You know, I don't know with the
language is, do you understand what the concern is?

MS. RUWART: Yes.

MR. VINATIERI: Yeah.

MS. RUWART: We have some ideas about that.

MR. VINATIERI: You can come back with
something else.

MS. RUWART: Yes.

MR. VINATIERI: Okay.

MR. HELLER: Okay, less ambiguous and just more
defines the scope so that you won't be surprised if
somebody comes back and says --

MR. VINATIERI: Thank you.

MR. HELLER: "This is that, I'm not giving
you a pre-hearing conference because of this."

MR. VINATIERI: Right.

MS. MANDEL: He also doesn't want to have to
call his client and say he was denied a hearing
conference because it would be unproductive and a misuse
of administrative --

MR. HELLER: Misusing the resources.

MR. VINATIERI: Well, the negative statement
sure misuses my resources.

MR. HELLER: I think we have, at least some
ideas and we're going to try to work on something.

MS. MANDEL: yes.

MR. VINATIERI: Okay, thank you.
ms. RUWART: Right, we can do something nicer.

MR. LAMBERT: Non pejorative language is suggested?

MR. LANGSTON: Yeah.

MR. VINATIERI: Do me a favor, Brad, when you guys come up with something, just give me a call, if you would?

MR. HELLER: Okay.

MR. VINATIERI: Okay, let's go over to 4062.

MS. RUWART: Is this the same issue or comment of November 30th, 2005 -- I am sorryMR. VINATIERI: You know, I don't have that comment with me.

MS. RUWART: It says you recommended providing the taxpayer with copy of the proposed decision on a petition for rehearing prepared by the Appeals Division.

MR. VINATIERI: Yes.

MS. RUWART: So, is it the same comment? Anything new?

MR. VINATIERI: Well, yeah, there is something new.

MS. RUWART: Yeah.

MR. VINATIERI: That is that I have indicated -- if you look at the new proposed 5028.

MS. RUWART: Okay.

MR. VINATIERI: Look at that -- once again, I am trying to find symmetry among all of these programs and the way we do everything so that you don't have little nuances here and there, to the extent we don't
You'll note under 5028 that's the recommendation of petition for rehearing -- maybe I miss -- I said 4062, maybe it should be 4063, maybe I did that incorrectly.

What I am looking for is there has been, in my opinion, mistreatment relative to the petitions for rehearing by Board staff.

That is that when you file a petition for rehearing based upon the grounds that are articulated in the current Rules of Practice, that what happens is you file your petition for rehearing. It goes to, I guess, the Appeals Division. Appeals Division opines whether -- makes -- comes up with an opinion, which they give to the Board as to whether the Board should grant the rehearing or not.

I think that's absolutely wrong. Because if the Appeals Division is acting as a disinterested third party between the Department and the taxpayer, then they need to be disinterested.

And one way that they do that is that they listen to both sides and they say, "In our opinion here's what we think."

MR. LAMBERT: They have both sides, there's been a petition for rehearing made?

MR. VINATIERI: Right.

MR. LAMBERT: And then they're acting as the attorney for the Board and advising them of what
decision.

After that if there is a rehearing, then there
is a public process.

Mr. VINATIERI: Then -- then I think that's --
you can't wear two hats. And I know this is
longstanding Board procedure, but we're finally bringing
all this out in the open in this new Rules of
Practice -- or whatever we're calling it, Rules of Tax
Appeals -- and if the Appeals Division is going to act
as an independent body looking at both sides, it can not
then act in a way to take this independence away and
basically say, "Okay, here's what we're saying," and
you, in essence, have done that under 5028. You are
making a recommendation on a petition of rehearing in
that context public.

So then, let's have symmetry in the context of
this rule here.

MS. MANDEL: Is it public?

MR. LAMBERT: It is public.

MR. HELLER: It's not public, it's to the
parties.

MR. VINATIERI: To the parties.

MR. HELLER: There's a difference here --
excuse me, Bradley Heller, Legal Department.

I really appreciate you bringing up this
comment too, Joe. It is something -- I think that it
warrants some further explanation definitely.

But there is a dichotomy in the disclosure lows
rules that apply to our different programs. So in an
appeal from the Franchise Tax Board, everything is
disclosable to the public, except for something that is
otherwise protected by a privilege. Then you may
disagree with us, but the Board has traditionally held
that there is some sort of attorney-client privilege for
communications between attorneys in the Board's Legal
Department and Board Members.

And so in this particular case we've
traditionally prepared -- should say decisions on
petitions for rehearing as confidential attorney-client
documents going from the attorneys in the Appeals
Division, who in this case, you're right, are acting as
attorneys for the Board -- not as like a neutral
conference holder or something really in that particular
framework, I don't think -- then they submit it to --
well, that remains a confidential, non-disclosable
document, even though it would otherwise be in an income
tax appeal through that process.

And then if it's adopted by the Board, it
becomes the Board's decision and is publicly
disclosable.

If it doesn't, it just isn't something that
becomes public.

If we provide it to the taxpayer, then the
Board would waive its attorney-client privilege if --
you know, to the extent it exists. It would be waived
by giving it to the party because that would be a third
party that wasn't required for the communication to the
client.

So, that's the reason why those aren't provided
to the taxpayers, not really based on some idea of
trying to hide something from the taxpayers to keep it
confidential under those scenarios.

In the other scenario we don't disclose that --
the decision on petition for rehearing, period, it's not
a disclosable document.

So, we can share it with the taxpayer and have
it retain its confidentiality and still submit it to the
Board Members and achieve our goal of having the Appeals
Division devise it without making this a public
document.

MS. MANDEL: You mean the petition -- on the
other types of -- the non franchise tax case?

MR. HELLER: Right. Because the business tax
appeal and the --

MS. MANDEL: So, the change in these rules from
the current rules are that the decision -- that the
recommendation on a petition for rehearing in a business
tax or other non franchise tax matter would be provided
to the taxpayer.

The complaint used to be, previously, that
unlike a hearing summary for your case when you come to
argue, you never saw that recommendation on your
petition for rehearing before the Board acted.

The new rules, right, this is a new thing, on a
business tax matter you would, as the taxpayer, see that
staff recommendation on the petition for rehearing, but
for the reasons he explained, the income tax ones are
different.

MR. VINATIERI: I thought it was the other way
around.

MR. HELLER: That's at least what our current
proposal is.

MR. VINATIERI: Okay, I --

MS. MANDEL: So, the ones that you used to
complain about, they would have a sales tax case and
they wrote this recommendation for the Board on a
petition for rehearing and they totally didn't
understand anything I said in my petition for rehearing
and (unintelligible) --

MR. VINATIERI: I didn't do that.

MS. MANDEL: She probably can't type that.

MR. VINATIERI: That was off-line.

MS. MANDEL: Those are the ones that now, under
the staff proposal, you would see that recommendation,
right, Brad?

MR. HELLER: Correct, for business taxes.

MR. VINATIERI: That's not, I'm sorry --

MS. MANDEL: That's what's in 5028.

MR. VINATIERI: Okay, I'm sorry then, I
misspoke. That was my major concern.

MR. HELLER: Okay.

MR. VINATIERI: Because I wanted -- I did not
like the situation where we filed a petition for
rehearing, it was a confidential -- something given back
to a Board Member, come to find out that they still
didn't understand a fact or two and then we had no --
absolutely no right to even see that.

The only way I ever saw it was if a Board
Member -- sometimes they do and sometimes they don't --
would show it to you.

MS. MANDEL: On the income tax ones those
would, under the proposal, those would stay as the
attorney-client.

MR. VINATIERI: Okay, that's pursuant to the
specifics of the PIT and --

MR. HELLER: Appeals from FTB.
MS. MANDEL: Those are from FTB.
So, your 4062, which is the FTB.
MR. VINATIERI: Right.
MS. MANDEL: You're basically withdrawing that?
MR. VINATIERI: That's correct, yes, that's
correct.

MR. HELLER: It was very well worth
explanation, I think.

MS. MANDEL: Yeah.
MR. VINATIERI: Thank you.
MR. KAMP: So, you're withdrawing 4062?
MR. VINATIERI: I am. And the same with 4065.

---ooo---
MR. VINATIERI: Let's go to 5007(b)(4). This is a case we just had in front of the Board. And I think we better make sure that everyone knows what the -- the way these bankruptcy petitions are being handled.

This was a case a couple months ago -- excuse me, about a month ago. And it was in the context of a bankruptcy. In this case we were set for a Board hearing. The taxpayer indicated that they did not want to go forward in the Board matter. They went ahead and filed bankruptcy.

The Board went ahead notwithstanding based upon attorney-client privilege document from the staff --

MS. MANDEL: Oh.

MR. VINATIERI: -- saying that you do have the authority to -- to hear the case and that the automatic stay does not apply in that situation.

MS. MANDEL: Is there a difference -- this is -- this is -- oh, is this the general hearing or is this --

MR. HELLER: Yes.

MS. MANDEL: Oh, okay.

MR. VINATIERI: It says the Board -- the Chief of the Board --

MS. MANDEL: Not --

MR. VINATIERI: -- shall postpone a matter subject to provisions of Chapter 4.

MS. MANDEL: I understand. I was -- got confused again about whether we were in the FTB
provisions or the general provisions. My -- my guess is
that it's possible, but --

MR. VINATIERI: This is not your practice
today.

MS. MANDEL: It may be that this was written
prior.

MR. HELLER: Well, a quick question first, a
clarification, was your case involving an appeal from
the Franchise Tax Board or Business Taxes or Property
Taxes?

MR. VINATIERI: Business Tax case.

MR. HELLER: Okay. This procedure -- provision
right here, even though it is in the general Board
hearing procedure section, applies only to appeals from
the Franchise Tax Board, and it actually continues our
traditional practice of deferring cases or when there's
an appeal from the Franchise Tax Board and there is a
pending bankruptcy.

That, I believe, has been our traditional
policy for just appeals from the Franchise Tax Board.

MS. MANDEL: Oh, because it says provisions --
subject to provisions of Chapter 4 of this division.

MR. HELLER: Right, which --

MS. MANDEL: Do you see that?

MR. HELLER: Which -- which to make it more
clear maybe we should maybe add something to the
heading -- well, let me not jump ahead to clarify that.

But, basically, it was designed to just continue a
traditional policy that we've had and not expand it to other areas and -- and this wasn't based on -- this isn't necessarily based on anyone's conclusion that the automatic stay applied necessarily.

MR. VINATIERI: I think we better -- there's two issues here. Is there a reason for Franchise Tax Board appeals to be different than the policy of other appeals to the Board?

MR. HELLER: Uh-huh.

MR. VINATIERI: And, secondly, if we have this policy here, which I think is right --

MR. HELLER: Uh-huh.

MR. VINATIERI: -- why doesn't this policy then apply to all other cases in front of the Board?

MR. LAMBERT: Well, I mean that issue was raised with respect to State assessee hearings. It was decided, I believe, they go -- they go forward. Maybe you need to go forward.

MR. VINATIERI: Well, I --

MS. MANDEL: There was -- there is -- I mean Legal -- Legal looked at the issue of the automatic stay in the context of State assessment.

MR. LAMBERT: Well --

MS. MANDEL: -- and in the context of Business Tax and maybe they haven't thought about -- about this or --

MR. HELLER: Let me just --

MS. MANDEL: -- the income tax side.
MR. HELLER: Well, quickly to respond, maybe
I -- Ken Davis can -- can help me with this slightly
or -- or Bruce, as well, but I believe it actually
really evolved out of like principles of comity between
FTB and the Board, and the FTB, I believe, was -- and I
could be wrong, this is just my historical
understanding, was that there -- there was a --
basically, a -- I don't know, the practice of generally
agreeing to a deferral when a taxpayer filed bankruptcy
and the bankruptcy involved anything relevant to
their -- to their issues before the Franchise Tax Board.

So, the Franchise Tax Board didn't demand that
the Board move these cases forward where the taxpayer
didn't want to. And so, we just basically went along
with that and that became a rule. But it's --

MR. VINATIERI: Well, the Franchise Tax Board
is right.

MR. HELLER: And so here at the Board, the --
the Legal Department has concluded that it's not the
law --

MR. LAMBERT: There's a --

MR. HELLER: -- that's required.

MR. LAMBERT: Time out. The Legal Department
has hired a number of bankruptcy attorneys because of
some changes in the way the Attorney General delivers
our representation, and they have been quite adamant in
telling us, you know, that the automatic stay does not
apply to these tax appeal hearings.
MR. LANGSTON: And we -- we would agree with
that from the Franchise Tax Board, that as Brad pointed
out, this was a practice in the past to conserve our
resources --

MR. LAMBERT: Right.

MR. LANGSTON: -- so we weren't wasting lots of
time developing an assessment we're never going to
collect. But we also take the position that the
automatic stay applies to collection of tax --

MR. LAMBERT: Right.

MR. LANGSTON: -- not to the administrative
determination of the proper amount of tax.

MR. LAMBERT: Right.

MR. LANGSTON: So, I -- I think we -- we don't
really care one way or another. I mean, it's always a
trade-off. And I think in some cases the Board believes
all the work's already been done, might as well decide
it so you have a final amount that can go into the
bankruptcy and be dealt with.

On the other hand, if it would require a lot of
staff time and development and, you know, the -- the
taxpayer's clearly insolvent and never going to pay it,
anyway, why go through the -- you know, why make
everyone go through the motions.

So, that's -- that's my understanding, as well,
though. It's not a legal requirement that it be
deferred, that it -- it always has been a policy often
because the taxpayers normally are busy with other
things and, you know, have -- normally don't want to
have to pile their appeal on top of their bankruptcy.

    So, that's where it came from, if I am
correct -- I believe.

    MR. VINATIERI: Well, I think there's two
issues. First of all is -- is the substantive opinion
that's been rendered by your staff, which I disagree
with and -- and bankruptcy counsel disagrees with,
private counsel. From a taxpayer's standpoint, let me
tell you why.

    Because there is some discussion in the
bankruptcy code that whether a Court, a bankruptcy
Court, will take jurisdiction of a tax appeal is
predicated -- it's discretionary and it's predicated to
some extent on whether there has -- what type of
administrative hearing and -- and due process has taken
place at the administrative level.

    And then if a Court is of the opinion that
there has been a modicum -- and I'm just giving you what
I'm told by bankruptcy counsel -- but if there's been a
modicum of due process given, then a bankruptcy
Court -- the trial Court, might determine that they
don't want to take jurisdiction and hear the tax matter
in the bankruptcy case, because it's already been done
at the administrative level previously.

    From a taxpayer's standpoint, obviously, to the
extent that I don't feel that there has been fairness in
the process, and that is how I feel about this specific
case, that we definitely want the bankruptcy attorney --
the bankruptcy Judge, the Court, to hear the case -- to
hear the whole thing, because Bankruptcy Court comes
into it from a different perspective than the
administrative staff of the State Board of Equalization,
or I guess the FTB, although I'm not speaking to that.

So, I don't want a situation on behalf of my
client who decides that it's a waste of time at the
Board of Equalization and -- and as long as we're -- you
know, it's questionable that if we go the wrong way
on -- on the Sales Tax case, that we're going to have to
probably declare bankruptcy, anyway, might as well just
go ahead and deal with it in Bankruptcy Court right then
and there.

I don't want my client to be detrimented
because -- because the State Board of Equalization has
taken a -- done some kind of -- a modicum of due
process, whatever that is, and so that this Bankruptcy
Court decides not to take jurisdiction to hear the tax
case.

And I don't -- that's why I'm -- I'm very much
against this. That's why I agree with what you have in
here, because otherwise you're throwing out another
issue in terms of the ability of the -- of the taxpayer,
in this case the bankrupt taxpayer, to have that matter
adjudicated in the Bankruptcy Court.

And I think it's a very important thing. I
don't know whether your people or the staff has ever
even looked at that --

MR. LAMBERT: My people?

MR. VINATIERI: -- from that standpoint.

Well, whoever -- you talked about you hired some --

MR. LAMBERT: I don't have any people.

MR. VINATIERI: -- you've hired some bankruptcy -- you have a new title, you know. I don't know who you are now. I used to know you when you were just a Property Tax guy.

So, anyway, that's a very important policy issue. And it's a sleeper -- it's a sleeper because we don't get into bankruptcy very often. But it does come up.

MR. LAMBERT: Well, our current practice is -- at least with respect to State assessees, is we do not honor the automatic stay. That has been for a while.

MS. MANDEL: Well --

MR. VINATIERI: That's your practice.

MR. LAMBERT: Well, it -- it's been there -- I think it's been challenged. I think it's even gone to Court on different things and they've had people going back to other states and things and so far, so good. And that's the opinion of the attorneys on the staff.

So, that is the practice right now.

MS. RUWART: So, Joe, just to clarify what you said, there's nothing barring the Board from continuing its current practice. You just think it's a better
policy to do it your way, which is defer them all.

MR. VINATIERI: Well, I'm talking from my
limited bankruptcy experience, which is like --

MS. RUWART: Very limited.

MR. VINATIERI: -- that (indicating). All
right. I've had a couple of cases, tax matters, in
bankruptcy, but bankruptcy counsel has always been
involved, and they don't understand tax, so that's why I
get involved as an adviser. And I am told what I just
told you --

MS. RUWART: Right. Very articulately.

MR. VINATIERI: And they will take the
position -- the bankruptcy attorney will take the
position that it is a vio -- a clear violation of the
automatic stay.

Now, I can't opine on that, but that is what
they say.

MR. LAMBERT: I can't, either. So, -- I'm just
telling you, that's -- that's the --

MS. RUWART: Thank you for your comment, I
guess that's all we can say.

MR. LAMBERT: -- that is the -- that's the
position right now with State assessees, at least.

MR. VINATIERI: Okay, well --

MR. LAMBERT: I think with Sales Tax matters,
too.

MS. MANDEL: Yeah, it -- it is.

MR. VINATIERI: No, it is the Sales Tax, yes.
Yes, that's what happened to me --

MR. LAMBERT: Yeah.

MR. VINATIERI: -- on this other matter.

MR. LAMBERT: Right.

MR. VINATIERI: So -- so, but, in any event, if you want to go that direction, then you're going to need to clean this up. But the direction I'm indicating that you should go is the other direction, and then you ought to say Chapters 1-2 or 2-3.

MR. LAMBERT: So, your position is the rule -- the rule that's applicable to the FTB should be applicable in all cases?

MR. VINATIERI: That's correct.

MR. LAMBERT: For the reasons you've stated.

MR. VINATIERI: That's correct.

MR. HELLER: A really quick response is, you know, in addition to just what Bob said about our, you know, current practices, my understanding is this issue does come up somewhat regularly and that is a pretty clear statement of bankruptcy laws to when a Bankruptcy Court might take jurisdiction to decide a tax liability, the actual amount of it, make its own determination.

And so, it's really something if we were to change policy would be favoring -- allowing taxpayers to make a decision to remove jurisdiction from the Board to decide their tax -- like, you know, their Business Tax liability, their Sales Tax liability -- and move over to the -- the Bankruptcy Court and force counsel for the
Board now to represent the Board in another forum --

    MR. VINATIERI: Absolutely.

    MR. HELLER: -- right, that's not used to dealing with tax matters.

    MR. VINATIERI: Absolutely.

    MR. HELLER: So I think --

    MR. VINATIERI: Absolutely.

    MR. HELLER: -- that's the countervailing policy, and the reason why staff hasn't recommended it so far.

    MR. VINATIERI: Absolutely. That's what -- and that's -- we all know what bankruptcy is, it's to -- it's to enable the debtor hopefully to come out from underneath that debt and reorganize, and if not then to discharge. But even then, the State has priority.

    MR. HELLER: Yes, and so I mean --

    MR. VINATIERI: So, I mean, the State does get its due, you know. So, --

    MR. LAMBERT: Well, I think the import of what he says, you're asking the Board Members to give up authority and jurisdiction.

    MR. VINATIERI: No, we're asking to -- to just follow what the Bankruptcy Code says. Enough, we've talked about that.

    MR. HELLER: Yes. No, we will take it under consideration.

    MR. VINATIERI: Yeah. Well, I know what you're going to say but I -- but that's -- you know what, you
understand what the policy is.

    MS. RUWART: Yes. Very clearly stated. Thank you.

    MR. VINATIERI: Okay.

    MR. HELLER: 5011.

    MR. VINATIERI: 5011. If -- if you haven't figured it out, I was really tired one night and I had nothing to do because I couldn't sleep, so I did this.

    MR. LAMBERT: I want to thank you for that.

    MR. HELLER: That's why we --

    MR. VINATIERI: I thought so.

    MR. LAMBERT: I'm glad I've given my lunch hour for that.

    MR. VINATIERI: Your lunch hour doesn't start for five minutes. We're almost done.

    On 5011(b), I -- my concern was, first of all, you're talking about electronic mail all the way through here. So, where it says, "The Board Proceedings Division shall mail," I just said "shall provide by electronic mail or otherwise," all right. So, that's just consistent with -- all the way through.

    And then modifications to a hearing summary after official distribution is, "it shall be mailed or otherwise provided to the taxpayer and the Department."

    I put "within five days" -- "working days prior to the Board hearing." This just happened to me.

    MR. HELLER: Okay.

    MR. VINATIERI: It just happened to me four
weeks ago.

MR. LAMBERT: I can tell you, though, from having done hearing summaries that, you know, sometimes you actually find out things that are wrong in there within five days. So, you have no choice in that case but to tell the Board what the right information is, even if it's -- you're embarrassed and even if you might be scolded for it, nevertheless you're obligated to do so.

MR. VINATIERI: Well, all I can tell you is -- is in this situation -- and, you know, bad facts make bad law, right? But that's kind of what we're dealing with here and the staff -- the Appeals Division had this information within 45 days of the hearing date. I never saw a summary up until it was seven days or eight -- seven days, eight days, before the hearing and even then I only got it because it was faxed to me because some -- there was a problem.

So my point is that there needs to be -- and maybe that was just an anomaly, and if it's an anomaly, you know, I hate to -- like I say, bad facts make bad law. But -- but if there is a modification it needs to in some way, shape or form be given to the taxpayer on a timely basis.

Now, I put five days because I'm feeling a lot of pressure when you got a hearing date on Tuesday and the Board is anathema to give continuances for various reasons, and then I get this hearing -- hearing summary
three, four days, whatever -- whatever the -- five, six,
seven days, whatever it is -- I'd rather have it as much
as possible. And it's really difficult to get this
hearing summary just right before the hearing and -- and
expect to try to -- to, you know, do the case. That's
the problem.

MR. LAMBERT: I can appreciate that, but I
think nevertheless the problem is some of these things
you find out about at the last minute. Somehow all the
facts come in a big torrent just before the hearing.
So --

MR. VINATIERI: Yeah, I understand. I hear
you. Chris.

MR. SCHUTZ: And the alternative is that --
that David Levine, whoever represents the Appeals, would
just verbally say it at the -- and then you find out at
the day of the hearing.

MR. LAMBERT: You find out later.

MR. SCHUTZ: Yeah, you find out even later, the
day of the hearing.

MR. VINATIERI: Well, can we put something in
here that says it should -- that "modifications to a
hearing summary after initial distribution shall be
e-mailed," -- let's make it e-mail -- "or faxed and
provided to the taxpayer and Department" -- you say
promptly, let's -- "promptly" -- let's make it as soon
as possible after that modified hearing summary is
provided, all right?
MR. HELLER: As soon as possible.

MS. MANDEL: You mean prepared.

MR. VINATIERI: Or as it's prepared.

MR. HELLER: It's provided to the Chief of the Board Proceedings.

MR. VINATIERI: Yeah.

MR. HELLER: So right after it's provided to the Chief of Board Proceedings, they turn around and --

MR. VINATIERI: It just gets sent out.

MR. HELLER: -- as soon as possible.

MR. VINATIERI: And I think that's kind of maybe the way things are done --

MR. HELLER: Okay.

MR. VINATIERI: -- anyway, but let's just --

MS. MANDEL: I mean, you know --

MR. VINATIERI: Let's just put it down.

MS. MANDEL: It always depends what happens down in the mailroom.

MS. RUWART: I just wanted to make a comment, is --

MR. VINATIERI: On-line.

MS. RUWART: -- we -- we have similar issues in Chapter 3 with regard to State assessees, and the way we resolved it was to require Board Proceedings to promptly distribute documents without further detail.

I just wanted to say that because one of our goals here is to create symmetry and consistency.

MR. VINATIERI: Uh-huh.
MS. RUWART: And I'm not sure staff can promise
which one of those versions -- your commented version
here or something more similar to that would be the
final product. But we would consider this language, as
well.

MR. VINATIERI: And I -- look it, Board
Proceedings does a very good job. All right.
They --

MS. RUWART: Yeah.

MR. VINATIERI: And so I don't know if it's
Board Proceedings, I don't know if it's Appeals, I don't
know who it is because I don't fully always understand
the bureaucracy around here. All I just want to make
sure is that I've been heard --

MS. RUWART: Yeah.

MR. VINATIERI: -- and that everyone
understands that it does put a taxpayer at a
disadvantage and -- and it's already difficult enough
sometimes to have a level playing field.

MR. LAMBERT: Sometimes the information comes
from the taxpayer at the last minute. Particularly in
Property Tax cases where you've asked for it two months
ago and five days before the hearing you finally get the
information.

MR. VINATIERI: I have no empathy with the
taxpayer in that situation.

MR. LAMBERT: That's more common, in this part
of the --
MS. RUWART: Your situation, as I understand it, is when the fax and maybe even the -- the written -- the write-up, itself, is available that it is not promptly distributed when it is available.

MR. VINATIERI: Yeah.

MS. RUWART: Whenever that availability is. I just wanted to say we'll take a look at it.

MR. VINATIERI: You all heard what I had to say.

MR. LAMBERT: Yeah.

MR. VINATIERI: All right.

MS. RUWART: Sure. No, we appreciate it and we've been dealing with it in other chapters, too.

MR. VINATIERI: Yeah. Okay. And I -- you solved my 5029, so that's not a substantive thing.

MR. LAMBERT: Now we can -- any other comments to be made?

MR. BOYD: Yeah, I have comments.

MR. LAMBERT: Yes.

MR. BOYD: Doug Boyd. Just -- on behalf of cities and counties, we properly in these rules make a -- a substantial deal out of notice in a lot of ways. And when we get to 1807 allocations I hope we do that -- that we also do that same -- pay that same attention to due diligence to notice, and that includes notice to cities and counties. Things like pending reallocations, claims for refund and things like that.

MR. LAMBERT: Right.
MR. BOYD: Because most of us here, except for Joe, of course, to whom money is irrelevant because he has so much money --

MR. LAMBERT: No, no, no. No, he's a -- he's now a Councilman with the City of Whittier.

MR. VINATIERI: I'm losing money, you know that.

MR. BOYD: I know. I know. We -- every once -- once or twice a month we get a paycheck and we have bills and over time you build up a system whereby you -- you pay the bills out of the paycheck. And if you lost 25 or 30 percent of that paycheck all of a sudden without any notice, it would really cause you problems in paying your bills.

And that's the -- cities and counties have that problem when they get a quarterly and all of a sudden a bunch of money they counted on, they budgeted, they put in their budget, Joe and the City Council approved it --

MR. VINATIERI: The City of Whittier.

MR. BOYD: -- and it's just -- it's just not there. And so they need to know -- they need at least advance notification of these things.

MR. LAMBERT: We have a suggestion.

MR. BOYD: Good.

MS. RUWART: Yes.

MR. HELWER: Yes, and -- would you like to continue or time to stop?
Bradley Heller for the Legal Department again. And I -- I spoke with Doug earlier -- actually later last week. And he raised the same concerns and I was able to do a little investigation, as well, so that I can properly respond. And a couple of things, I did check in and -- and I think staff on our side thinks that there is something we can do to improve notice of potential reallocations that might affect your distributions.

MR. BOYD: That would be wonderful.

MR. HELLER: We don't necessarily have something right this minute that we can provide and we're trying to get our State -- local and district folks to somehow -- to figure out how best to coordinate with our refunds folks who are processing these claims for the taxpayer, to communicate when there's -- you know, figure out what threshold amounts might be appropriate and figure out what's a good process for those two groups to communicate so that local and district can then communicate with you that by the way, there's a big -- something that you'd be interested in, or whatever. Whatever kind of things we identify to be important.

And then on the other side I did check into the process for getting this implemented and also for making sure that the formal appeal procedures, themselves, have the notice requirements that are appropriate for that, and the detail that you're talking about.
And I checked with our Board Proceedings staff and -- and Business Taxes Committee and we're -- at least as of right now, and I -- it's not in stone, but -- but basically as of right now the -- one of the number one things on the list of items to be presented to the new Chair of the Business Taxes Committee when they take office in January will be rulemaking on Regulations 1807 and 1828. And at that time the whole process will be open for review and improvement, and also we can then look at all the notice provisions, as well. And if there's things that we recognize during that process that need to be -- affect what's going on in these rules -- with right now they just reference that and leave that process really intact for the moment. Then we can pick the revisions to these as they move forward or amend them if they become regulations by then so that they coordinate with whatever we change next year with the -- with the allocation appeals.

And I think if we can do that maybe we -- as a whole, overall, we can start with the front end of making sure that you're aware of the allocations that you might want to appeal and then providing clear process for you to go ahead and then appeal it and get to the Board --

MR. BOYD: That's great.

MR. HELLER: -- on the issues. So we do think there's going to be a way to address that.

MR. LAMBERT: We're going to follow through on
that and see if there -- the best way to do that.

MR. BOYD: Thank you.

MR. HELLER: Absolutely.

MR. BOYD: It would really help with budgeting.

MR. HELLER: Yes, we a hundred percent agree.

If we were budgeting we'd want the same information.

MS. RUWART: But -- so we wouldn't put it in this --

MR. BOYD: Yeah, I --

MR. LAMBERT: It's not necessarily the best vehicle right at this point.

MR. BOYD: Okay.

MR. HELLER: I think -- Mr. Kamp, did you have one or more comments?

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MR. KAMP: We have a few.

On page 1 through 3 of a letter distributed today, we have some suggested revisions for Chapter 2. They all relate -- we reviewed everything in Chapter 2 and we think there's an inconsistent use of the word "staff."

I mean we have -- you see references in the description, descriptions of -- in a very discrete way of what the staff is and then then the entire entire staff of the Board and it isn't something that you just take a fresh look at something you'll see that it's inconsistent.

On page 3 we make the suggestion you basically use the "Board staff" in all instances where there is not a five-member Board role, and replace references to Appeals Division with "Appeals staff." And examine the appropriateness of any delegation of staff that may have transferred into the Rules for Tax Appeals.

We also believe, that is the first bullet point,

"Explicitly inform the taxpayer of the phases of the earlier appeals process and how to contact the Board during these phases, without being overly prescriptive."

MS. MANDEL: What are you -- I know, I just don't know what he means.

MS. RUWART: Which segment of your comment are you referring to? What page?
MR. KAMP: Page 3 of the letter.

MS. MANDEL: No, I see the bullet point, I just didn't -- I haven't read Chapter 2 since right before that September Board meeting.

MS. RUWART: I guess my question is, are you proposing to expand the scope of Chapter 2 to take in actions that are -- occur even earlier in the appeals process than these are currently scoped for?

MR. KAMP: This is just noticing the taxpayer of the existence of these actions, yes.

MR. HELLER: Well --

MS. RUWART: So, in other words, just to make sure I understand, in Chapter 2, in fact, in all these rules generally, we've started at a certain point in time.

MR. KAMP: Yeah.

MS. RUWART: And you think that at least in some general sense steps that are earlier than that certain point in time should be referenced in these regulations?

MR. KAMP: Yes, in terms of notifying taxpayers of their existence, yes.

MR. LAMBERT: Like what specifically?

MR. KAMP: Well --

MS. RUWART: If we could get some more detail on exactly what this might be?

MR. LAMBERT: Give more detail off-line.

MR. KAMP: Off-line, all right.
MS. RUWART: Yes.

MR. HELLER: That's so good.

Real quickly now, the current rules -- this is the foundation, pick it up from the filing of the petition for the claim for refund, see, that's the initiation of the process.

MR. LAMBERT: Right.

MR. HELLER: We don't go into any detail of every act that is done by somebody in like a petition section itself, is that more --

MR. KAMP: Yes.

We don't want to be overly prescriptive, we just want the taxpayers to be aware of what's going on and how they can contact the Board.

MR. HELLER: I think --

MS. MANDEL: Without -- okay, without getting into all of the stuff that's not appropriate for regulations and that that --

MS. RUWART: Or these regulations?

MS. MANDEL: -- right, that restricts how the Board's going to set up its internal operations and other stuff.

MR. HELLER: We will -- we definitely want to see that specific language.

MR. KAMP: Okay.

MR. HELLER: We did -- just a thought too, we did actually include more details than is in the current draft originally and we actually stepped back from them
because we felt like it was way over detailed at some point in terms of the regulations.

This may not apply to what you're suggesting, just a thought, and we are considering for that information and we didn't just delete it, we took it out and we're planning to create publications that will accompany these regulations.

So, let's say you're the taxpayer and you file a petition, we will send you the, "So You Filed a Petition." It's going to get assigned to the petition section.

MR. KAMP: Okay.

MR. HELLER: Something like that.

At least we're hoping to prepare that as we complete these and see where we need to fill any gaps.

So, that would be also an idea.

MR. KAMP: Okay.

MR. HELLER: We're definitely looking at whatever comments you have.

MR. KAMP: That's it for us.

MR. LAMBERT: Okay, is that it?

Any more?

MS. MANDEL: Well, then the only question then becomes what winds up -- how you wind up determining what issues remain to be decided.

MR. LAMBERT: Right.

MS. MANDEL: By what people and what people are actually going to --
MR. VINATIERI: What day that is that?

MS. MANDEL: The Board meeting on this?

MR. VINATIERI: Yes?

MS. MANDEL: November 21st.

MR. HELLER: November 20th.

MS. MANDEL: 20th?

MR. SCHUTZ: 20th.

MR. HELLER: Okay, it will be the 20th.

I have three cases that day.

MS. CASAZZA: Will we have the interested parties here to see the next draft that comes out prior to the November 20th.

MR. HELLER: Sure. Real quickly, to wrap up, this is Bradley Heller with the Legal Department again.

As the process goes from here, right now the current direction the staff has from the Board is re-present the rules to them at the November 20th Board meeting, I believe is the date, there is two days scheduled for the meeting, but it will probably be on the 20th.

And so staff will be preparing updated drafts of all of the rules, incorporating some of the comments that we have received.

And then we'll be issuing those. They'll be provided to the public at least as early as when the Public Agenda Notice goes out for that meeting. So, they'll be available on the website at that point. If we can get them out earlier, we will, but that's
definitely the drop dead date for them come out. So, you'll see them then.

We will be also planning on updating our responsive comments to you. So, we'll have the additional comments that we received in writing for today's meeting and today, some of the comments that we received in the discussion today as well.

And then as far as, you know, what that exact form of that is, we'll have to determine that.

And then as far as what the Board will do, the Board could decide to have it rescheduled or give us whatever other guidance they want at that meeting as well.

MS. MANDEL: Well, but if somebody is going to present an alternative to the Board under the interested parties process that the Board is going to be voting on, I mean that was how -- when are those coming in and, you know, people would be coming to the Board to present their -- I mean it's not -- staff doesn't -- you know, I mean if someone doesn't show up and present their alternative language unless somebody decides to say that they want to make that motion that alternative language, but --

MR. HELLER: Real quickly, if somebody wants to make sure that either suggested language for a regulation or a particular comment is seen by all of the Board Members and considered by them, they can go ahead and send it to Diane Olson, the information's on the
notice for this meeting. And she'll have it distributed
to the Board Members.

They'd also -- if they wanted to be -- to
present it to the Board Members at the meeting on the
20th, they can submit it for that meeting and it will be
distributed for that meeting. Or they can appear and
submit written comments or testify in support or present
their comments at that time.

As far as whether a particular comment or
suggestion is going be incorporated into the language
that the staff recommends to the Board on that date, I
cannot tell you what the specifics [*|of] how that
will go. And at this point we're working on that right
now.

MS. CASAZZA: Sounds good.

MR. HELLER: Thank you all very much for coming
today.

And once again the information to contact
myself and Diane Olson is on the notice. It's also on
our website.

You can contact me at any time you'd like to
provide additional comments or thoughts that come to
mind and you can submit any written comments as well for
my consideration or the Board Members' consideration and
also alternatives, if you'd like.

And, once again, if we get information by
November 9th and it's something that we can consider and
possibly incorporate into the information -- the draft
that will be presented to the Board Members at the 20th, the meeting on the 20th, and any comments that come in after that, they can certainly be considered and presented to the Board, but there won't be time for us to incorporate into the language presented to the Board.

Thank you very much for coming today again and have a good afternoon.

MR. VINATIERI: Please note on-line that we're only twelve minutes into the lunch hour.

MS. MANDEL: The normal way that the interested parties process works is that there is a date by which people are to submit alternative language to what is is in whatever staff is going to propose. And then that is in a matrix for the Board. That's what would happen at a committee.

And then the proponent of that language would show up and tell the Board why they think that that language should be adopted in lieu of what the Board staff is presenting and Board staff's view on that language would be, "It's wrong, it doesn't make sense, it's, you know, blahdy, blahdy, blahdy," whatever the reason was for not adopting it in the first place.

And then the Board votes up or down. Now, that -- you know, there is always -- the Board is limited -- there is often limited, you know, issues for the Board to decide if they're going to decide anything and again if somebody doesn't, you know, show up to support their -- what they're proposing, that's, of
course, you know, another negative.

But normally -- sometimes things come out of
the interested parties process and everybody agrees on
everything or they decide, "You know what, it's not --
it's not going to break my heart if things go forward
the way they are in what the staff proposal is. And I
am not going to make an issue of it. It's not worth it
for a variety of reasons or whatever to put that forward
to the Board. And I understand everything's staff
saying, I'm just going to live with it."

And then the thing goes forward basically as a
consent item, in one sense, because it comes forward and
staff says everybody agrees. That's -- you know, that's
the usual kind of committee process.

But it may be that, you know, there is nothing
in particular off this that is going to come forward and
on -- one alternative that somebody might propose on the
gnarly things is, you know, drop it. That might be
somebody's alternative.

The Board might say, "I'm not going to drop
it."

But normally that's in the interested parties
process what we wind up seeing. Now, maybe other people
have anticipated something different at this interested
parties process, but it's just what the Board -- if the
Board -- I mean the idea at this meeting would be that
the Board would be voting to send regulations into the
formal rulemaking process for publication.
So, if somebody has different words rather than just a statement of concept, different words are easier to vote on usually than statements of concept.

MR. LAMBERT: I agree.

MR. SCHUTZ: And you just want to say for the gnarly issues, I mean, it's almost like for alternatives the rules for everything else and then -- or do you want to see the language for all of the little -- I mean, the smaller things?

MS. MANDEL: Well, you know, it's --

MR. VINATIERI: It's not small.

MR. SCHUTZ: Some are smaller.

MS. MANDEL: It may be that -- I may not -- may or may not want to see language, it's just that -- it's -- that's the process that we have, the normal process that we use in committees.

We have people who have never participated in that normal process. Joe, since he's sitting here, may have five things, one of which gets incorporated into the rules. Joe may decide that the other three or four, having heard the discussion, he's not going to make an issue of. He may not send a letter, he may not testify on them. That's --

MR. VINATIERI: If you just say the right thing, Joe's not going to say anything.

MR. LAMBERT: There is the rub.

ms. MANDEL: But if what we get for the Board meeting -- somehow it would be nice to know in advance
of the day we walk into the Board meeting whether there
is going to be an issue or not on something as big as
this.

MR. SCHUTZ: Are you suggesting like a drop
dead date to propose language if you haven't done so
already?

MS. MANDEL: It's usually kind of what we have.

MS. CASAZZA: Is that hard to do when the
revised staff draft doesn't come out until,
realistically, ten days before the hearing?

MR. HELLER: Pretty much -- Bradley Heller
again.

MR. LAMBERT: When in November?

MR. HELLER: November 9 is the last day that we
can incorporate something into a draft of the rules that
we'll be providing.

So, to the extent that we need a drop dead date
for inclusion, that's certainly it.

But as far as a date for being presented to the
Board Members, if -- people could submit things up to
the day of the hearing. They will be submitted to the
Board Members and they can sign up to testify on that
day.

MS. MANDEL: Right, but if they have actual
useful -- if it's important enough that they think it
should be in --

MR. LAMBERT: Submit the language --
alternative language.
MR. KAMP: Are you suggesting that people could submit language to your office on or before November 9? November 9 is the PAN deadline?

MR. HELLER: It is.

MR. LAMBERT: We'll take that into consideration at that point.

MS. RUWART: Our ability to --

MR. LAMBERT: Look at it and analyze it.

MS. RUWART: -- incorporate and review it.

MR. LAMBERT: That's about it.

Otherwise it goes raw to the Board Members.

MS. CASAZZA: Get it in as soon as you can.

MR. HELLER: But we don't have a date, because we'll look at it if comes in after -- even if it comes in the day of the Board meeting and it's the thing that we need to be doing, well, we're going to look at it.

So, it's --

MR. LAMBERT: But if it's -- at this late date in this process, if it's important to you, we would hope that would you take your best stab in coming up with the precise changes that need to be made throughout the document.

MR. VINATIERI: So, if I disagreed on the bankruptcy issue.

MR. LAMBERT: Right.

MR. VINATIERI: And said 2, 3 and 4, then I should send that to you?

MR. LAMBERT: Makes it easy to vote on, if
nothing else, right?

MS. MANDEL: Because, you know, otherwise when
it came last time it has the appearance of everybody
agrees with everything, which causes the Board to treat
it --

MR. VINATIERI: Differently, like a consent
deal.

MR. LAMBERT: So, yeah, you ought to have it in
the form that it can be voted on if it's important.

MR. VINATIERI: So, are you going to turn me
down on that one?

I'll send you a letter right now.

MR. HELLER: We would like to take it --

MR. LAMBERT: We don't necessarily have the
ability to say yay or nay right now.

But I think you ought to assume that it's not
going to change and then submit your alternative
language.

That would be the prudent thing to do.

MR. VINATIERI: I like when you talk like that.

MR. SCHUTZ: There are also -- well, they're
prior to this meeting that have alternative language for
different things that didn't get incorporated, we just
would say, well -- is that going to be part of the
matrix?

MS. MANDEL: You know, I sent them a lot of
language changes and we haven't sat down on all of them,
but most of them were editorial.
But -- I mean usually what happens at the end of this process is -- is somebody has been sort of keeping track and then it's do you want to take that to the Board and force them to vote on that or not?

Just because somebody made some language suggestion doesn't -- you know, we do have -- we do have whatever this thing -- where is it -- this matrix (indicating) which, you know, supposedly covered pretty much everything that people said.

MR. VINATIERI: And the reality is you've done a very, very, very, very, very good job taking all that stuff and synthesizing it down to where it's at.

MS. MANDEL: Presumably, at this point, you're back to the people who have some issue which --

MR. LAMBERT: If you don't comment now, I think we're going to assume you've been satisfied by the changes and the dialogue that occurred up till now.

I think that's a safe assumption. So, yeah, if they still -- if they made a complaint four meetings ago and it hasn't been addressed yet, they better renew it.

MR. KAMP: Well, are you going to -- there's I nobody from the California Tax Reform Association here -- you can argue why they're not here or should be or whatever, the deadlines you are putting out, will somebody communicate to them?

MR. LAMBERT: Yeah, we -- I think that's why he gave me the language that he did now because I told him right after the last meeting.
MR. KAMP: The November 9?

MR. LAMBERT: -- all editorial comments --

MR. KAMP: The November 9 deadline, just make sure they know that.

MS. RUWART: If you would like -- well, anybody else?

MR. LAMBERT: I'm not going to track him down in Malaysia or --

MS. RUWART: I just want to clarify, staff will contact Lenny Goldberg and Cal-Tax.

You kind of waved your hand and said, "And anybody else."

I don't know who that is.

MR. KAMP: I don't know either, to be honest with you.

MS. CASAZZA: Well, the interested parties that you list in your matrix, they have made comments. It might be fair to them to let them know what the -- what the deadlines are.

MR. LAMBERT: Yes.

MS. OLSON: To talk about Marcy -- and I do interested parties meetings with business taxes and stuff and we can do a notice to people and notify them -- the same people that we notified for this meeting -- let them know that we have a after deadline of November 1st to submit comments.

MR. LAMBERT: For staff to take it into consideration.
MS. OLSON: To take it into consideration.

MR. LAMBERT: Yeah, that's fair, that would be good.

MS. OLSON: To incorporate the language?

MR. LAMBERT: That's great.

MS. OLSON: I can provide Brad and Carole, but business taxes, when they do have alternatives that they're showing that the Board Members are able to vote on is what Marcy's talking about.

I can show them.

MS. RUWART: We're more than --

MS. MANDEL: But the e-mail alternatives are only if somebody -- I mean, people walk away from a lot of stuff whether they think what staff has done is absolutely right or not.

MR. LAMBERT: That's a great idea.

MS. MANDEL: People do walk away from things that they feel strongly about because they don't --

MS. RUWART: Sure.

MS. MANDEL: -- to take it to the Board.

MR. SCHUTZ: November 1st, that means staff's new version won't be ready yet?

You just want to refer them to any differences between the September 27th version or is staff going back and definitely coming out with their new version after the November 1st deadline, so, do we tell -- if we tell them, "Look at the September 27th version."

MS. RUWART: My preference would be the
September 27th version.

And I have already incorporated some comments, but it is a lot easier for me to all work from the September 27th version --

MR. LAMBERT: Okay.

MS. RUWART: -- than to have rolling versions.

And, of course, where there's discrepancies, that's part of staff's job to attempt to resolve them when you have competing comments.

But since those are already posted, that would be the best way to do it.

MR. LAMBERT: Okay.

MS. RUWART: Is there anything else?

MR. LAMBERT: Then this meeting is adjourned.

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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
October 18, 2006 I recorded verbatim, in shorthand, to
the best of my ability, the proceedings in the
above-entitled hearing; that I transcribed the shorthand
writing into typewriting; and that the preceding pages,
pages 1 through 18, pages 41 through 59, pages 89
through 99 and pages 109 through 129 constitute a
complete and accurate transcription of the shorthand
writing.


________________________________________
BEVERLY D. TOMS
Hearing Reporter
REPORTER'S CERTIFICATE

State of California     
                     ) ss
County of Sacramento  )

I, JULI PRICE JACKSON Hearing Reporter for the California State Board of Equalization certify that on October 18, 2006 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages, pages 19 through 40, pages 60 through 88, pages 100 through 108 and pages 130 through 146, constitute a complete and accurate transcription of the shorthand writing.

Dated: October 22, 2006

______________________
JULI PRICE JACKSON
Hearing Reporter