INTERESTED PARTIES MEETING

REPORTER’S TRANSCRIPT

DECEMBER 14, 2005

IN RE:

RULES FOR CALIFORNIA TAX ADMINISTRATION AND

APPELLATE REVIEW

PART 4

APPEALS FROM ACTIONS

OF THE

FRANCHISE TAX BOARD

Reported by:  Carole W. Browne, CSR 7351
Laurie Gower, CSR 8000
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MS. PELLEGRINI: Good morning. I'm Deborah Pellegrini. I'm the Chief of Board Proceedings, and we're going to start the meeting now.

We're here this morning to take the comments on Part 4 of the California Tax Administration and Appellate Review.

We are going to begin by going around the room and giving introductions. As you can see, we have two court reporters here today who will be making a transcript, and we're assuming it will be due right after the first of the year.

We're also going to send around a sign-in sheet. We're requesting that if you have your business cards with you, that you provide the court reporters a copy of your business card.

And as we go around and do introductions, if you will speak slowly and say your name and who you represent. Therefore, after we start the proceedings, all you'll need to do is, the first time you speak, say your first name and last name, and after that you can just speak by saying Debbie, Joe, and pretty soon the hearing reporters will figure out who you are and we don't have to go through your whole name and who you
represent every time. So we'll take those few minutes
right at the beginning.

After we finish introductions, I will overview
the meeting and how we're going to proceed. So I'm
going to start and say I'm Deborah Pellegrini, the Chief
of Board Proceedings.

MS. RUWART: I'm Carole Ruwart with the Board's
Legal Department.

MR. DAVIS: Kenneth Davis with the Franchise
Tax Board.

MS. BORGMAN: Susan Borgman, Franchise Tax
Board.

MR. LANGSTON: I'm Bruce Langston from
Franchise Tax Board, Tax Procedure and Administration
Bureau.

MR. VINATIERI: I'm Joe Vinatieri from Bewley,
Lassleben & Miller Law Firm.

MR. HELLER: I'm Bradley Heller with the
Board's Legal Department.

MR. FOSTER: Ian Foster with the Board's Legal
Department.

MR. HERD: I'm Jim Herd with Betty Yee's
office.

MR. EVANS: I'm Gary Evans with Board
Proceedings.
MR. SMITH: Chris Smith with Betty Yee's office.

MR. APREA: I'm Marc Aprea, Aprea & Company, here on behalf of Price Waterhouse Coopers.

MR. DANOWITZ: Steve Danowitz from Ernst & Young.

MR. PLANT: Philip Plant from Plant, Bauer & Smith.

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

MS. ZIMMERMAN: Sarah Zimmerman, SEIU Local 1000.

MS. CROCETTE: Sabina Crocette, Betty Yee's office.

MS. KINKLE: Sherrie Kinkle, Board of Equalization, Property Taxes.

MS. LANDEROS: Rebecca Landeros, Board Proceedings.

MR. SHALTES: Craig Shaltes, Board of Equalization Legal.

MR. KOCH: Al Koch, MBIA.

MR. KAMP: Steve Kamp, Board member Betty Yee's office.

MR. LoFASO: Allen LoFaso, Board member Betty Yee's office.
MS. WAGGENER: Michele Waggener, Price Waterhouse Cooper.

MR. RIVERA: Gus Rivera, Intel Corporation.

MR. SHAH: Neil Shah, Board member Claude Parrish's office.

MR. PENILLA: Jess Penilla, Deloitte & Touche.

MS. PELLEGRINI: And now those of you on the telephone.

MS. MATULICH: Hi. This is Diane Matulich. I'm with Advanced Microdevices.

MR. HARRIS: Bill Harris with Intel Corporation.


MR. EVERETT: Kirk Everett, Silicon Valley Leadership Group.

MS. PELLEGRINI: Can the last person speak up a little bit more?

MR. EVERETT: Kirk Everett, Silicon Valley Leadership Group.

MS. PELLEGRINI: Thank you. Is there anyone else on the telephone? Okay.

And those who have not introduced themselves who've just come in?

MR. GOLDBERG: Lenny Goldberg, California Tax
Reform Association.

MS. MAHONEY: Laura Mahoney, Daily Tax Report.

MS. PELLEGRINI: Okay. And again, when you speak the first time, if you will say your first name and your last name, and after that, you can just say your first name. That way we'll make sure the transcript is accurate.

We are going to start the meeting with Brad Heller, who will be providing an overview of the amendments to Part 4 that were sent out last Friday, December the 9th, which replaced Article 3 through 6 with new Articles 3 through 5 and the amendment to 4020(c). After that, Ian Foster will be walking through the amendments, explaining the purpose of the amendments and how they work.

During these two presentations we're going to ask that you hold your questions and let the presentations go. At the end of each presentation, you can ask questions.

After that, Carole Ruwart will be walking you through the sections, section by section, while receiving comments so that we can have the discussion.

It is our goal to try to be completed by 12:30, as we have the next Interested Parties Meeting beginning at 1:30. So with that, I'll turn it over to Brad.
MR. HELLER: Thank you, Debbie.

My name is Bradley Heller. I'm an attorney with the Board's Legal Department, and I've been working on this project since July.

And just as some background, basically back in September we issued proposals to create the Board of Equalization Rules for California Tax Administration Appellate Review, and they're broad, comprehensive regulations that would govern all of the administrative processes, from the initiation of a petition or a request for review, a request for relief, a claim for refund, a request for reassessment, all the way through -- or appeal from the Franchise Tax Board -- all the way through to the end of the Board's decision.

At this point we've already held interested parties meetings in October and November that dealt with Part 2, Business Taxes, and Part 3, Property Taxes. Today we're going to -- or this morning we're dealing with Part 4 that deals with appeals from the Franchise Tax Board.

Last Friday afternoon we posted amendments to both Part 2 and Part 4. Part 2 is, as I said, the Business Taxes portion. And those amendments essentially inserted a briefing schedule which we omitted originally and also made kind of some small
changes to the way that -- basically small changes to --
I think it's Section 2106 which deals with request for
reconsideration of decisions and recommendations and
requesting oral hearings before the Board and basically
were just amendments to clarify some terms and to
account for other agencies that may participate in
appeals conferences.

Today, more importantly, are the amendments to
Part 4, which, basically what they did was, they amended
Section 4020(c) and then they also replaced Articles 3
through 6 with new Articles 3 through 5. And we had
copies of the amendments available this morning, and we
still have copies available if anyone needs one.

We're accepting comments on all of the original
proposals plus all these amendments through next Friday,
December 23rd. And I'll be available by phone as well
if anybody would like to speak with me to submit
comments. We'd like to make, you know, the process of
dealing with these amendments as easy as possible for
everyone.

Basically, in order to facilitate everyone's
review of the new appeals procedures that are being
amended into Part 4 we're going to have Ian Foster
briefly explain how they're supposed to work and what
those provisions do and what our intent was for them,
and then we're going to go through starting with Articles 1 and 2 of the original and then Articles 3 through 5 of the amendments.

And basically this morning it's an informal process. We're here basically to make sure that we hear everyone's comments and that we have an opportunity to take in information so that we can consider it in preparing the final product for the Board members.

Our hope is to have a package for the Board members to vote on at the February 1st meeting. In order for us to do that, we'll probably have to have it done a couple weeks before that so the Board members can review it and issue all of our necessary notices. So we're on a kind of a tight time frame as we are this morning as well.

So basically we would like everybody to go ahead and take an opportunity to comment whatever they feel is necessary or relevant today. We definitely appreciate all the comments that we've received so far. They've been very useful.

But basically, once you've commented, if you can let the next person take a chance to comment, we'll go ahead and note where we'll make adjustments if there's a consensus from all the comments that something needs to be done or if it's administrative or clerical
type of fixes. Otherwise, we're just going to go ahead
and record those comments so we can consider and respond
to them later. And that way we think we can get through
the process a little faster.

But like I said, it's really informal. We're
here to have a discussion, to make sure that all the
relevant issues are discussed today.

With that, I'll go ahead and turn it over to
Ian for an explanation or an overview of his amendments.

MR. FOSTER: Thanks, Brad.

For those of you that don't know me, again, my
name is Ian Foster. I work in the Board's Legal
Department. Specifically for the last five years I've
been in franchise and income tax appeals, and along with
Brad and Carole for a number of months I've been doing a
lot of grunt work on these regulations.

Let me start with the first and the least
controversial of the amendments that was posted last
Friday, and that has to do with electronic filing. In
our original versions we had omitted any reference to
electronic filing as we were still trying to figure out
how that was going to work.

The document is entitled "To Interested
Parties." It's not dated. It's about halfway through
that document. Rebecca has copies.
MR. HELLER: Let's just take a moment.

MS. RUWART: This is posted on the Internet.

MR. FOSTER: This has all been posted on the Internet since last Friday.

MS. RUWART: For people on the telephone, this new document was posted on the Board's website last Friday, and so if you want to get a copy of that handout, then you can go to the Board's website front page, the Rules of Practice link, and you should be able to find it if you wanted to follow along.

MR. HELLER: Yeah. If you click on the link on our home page that has the notice for today's date and this meeting, that will take you to our overview page for the entire project, and just click on the December 9th date and that will have all the amendments listed right next to it, so you can pull down all that information.

MS. MATULICH: Thank you very much.

MR. FOSTER: Is everybody up to speed then?

Okay.

We amended Section 4020, subdivision (c), to take into account electronic filing. It's pretty basic. It just provides that people can file their appeals and any related documents by fax, e-mail, or any other approved electronic means.
It's very generic. It just says that the Board Proceedings Division will notify people of the acceptable methods, e-mail addresses, fax numbers, and so forth.

And then we made technical amendments throughout other sections. Anytime filing of a document was involved, we simply referenced back to 4020(c) so that we don't have to repeat all the language on the various ways you can file.

Now on to the most substantial change. The amendments that were posted last week add a provision for appeals conferences and all appeals from actions of the Franchise Tax Board, and it includes income, franchise, HRA appeals, any appeal from the Franchise Tax Board.

We had a number of reasons and purposes for doing this. One of them right up front was uniformity. There were a lot of comments on the Board's procedures being not uniform. This creates uniformity among the procedures. It makes our FIT procedures look more like business tax procedures. Taxpayers and tax practitioners will no longer have to learn different procedures for different types of taxes.

The next reason is efficiency. Although an appeals conference does add an extra step in most cases,
we believe it will provide a more developed record, particularly in complex cases. Appeals division attorneys will be better prepared to make recommendations to the Board and answer the Board's questions.

Likewise, Franchise Tax Board attorneys will be better prepared going into Board hearings, FTD attorneys will be on equal footing with the BOE's business tax attorneys, now having the benefit of a decision and recommendation on issues before the Board.

We believe all of this will allow the Board to make a more informed decision, conduct a more efficient oral hearing, and hopefully reduce the need for post-hearing evidence and briefing, possibly reduce the need for petitions for rehearing.

The appeals conference will be much less adversarial. Appeals conferences will provide an atmosphere for the parties to hopefully cooperate, possibly compromise, possibly resolve the appeals in some cases, and at the least, we hope it will narrow issues and reach stipulations of fact.

UNIDENTIFIED SPEAKER: What page on your documents are you referring to?

MR. FOSTER: We're not going through section by section right now. We're just getting an overview of
all the amendments and then we'll go through it section
by section.

UNIDENTIFIED SPEAKER: All right. I
understand.

MR. FOSTER: A big problem in our current
procedures is our inability to handle in-depth
discussions of complex cases. Franchise Tax Board cases
can get very complex legally and factually. And
generally, currently, those cases go straight to the
Board for oral hearing.

Because of time constraints, the Appeals
Division is unable to dig into the case, resolve factual
disputes, resolve outstanding legal questions, and what
we end up with are short, ten-minute presentations at
the Board that are too short for in-depth discussion and
a lot of post-hearing work afterwards.

If there's an appeals conference beforehand,
the parties in the Appeals Division can sit down and
hopefully resolve a lot of outstanding questions, take
an in-depth look at the complex issues, and then go to
the Board with a much more complete record.

We're also concerned about accessibility to
unrepresented taxpayers. The current system is very
formal, impersonal, and even intimidating to
unrepresented taxpayers, particularly HRA claims. We're
hoping that appeals conferences will provide a more informal forum for people to express their opinions and have a give-and-take discussion.

I'd also like to note that a lot of the revised sections -- we revised Articles 3 through 6 and consolidated down to Articles 3 through 5. A lot of the revised sections are substantially similar to the ones posted on the Web in December.

A lot of the changes are technical in nature. We had to change numbering and references and some minor procedures to incorporate the idea of appeals conferences; but other than those technical changes, they're pretty much the same as they appeared before.

The other new procedure is that for small tax cases and HRA appeals we put in a simplified, shortened briefing schedule that hopefully will be less intimidating, less formal, and more useful to people who have small amounts of tax or small amounts of penalties at issue.

The small tax procedure will be mandatory for all homeowners and renters assistance appeals, because those appeals typically don't require long briefing procedures anyway. They will be elective for income tax cases involving no more than $10,000, at the taxpayer's election.
Typically, in those cases, our current longer briefing schedule doesn't serve much purpose other than to drag out the process unnecessarily; and the simplified briefing schedule will not only shorten things, but if it leaves issues unresolved, then we still have the appeals conferences to resolve those issues.

I'd also like to take you through a brief overview of sort of how the process will now look in approving appeals conferences.

You start at the beginning, a taxpayer or an HRA claimant files an appeal. If it's timely, if we have jurisdiction, and if the appeal contains substantially all of the information that we need to process the appeal, which does include a signature of the taxpayer, we take it in, we accept the appeal and the briefing process begins.

If the appeal is incomplete, missing some information, the taxpayer will have 90 days to perfect the appeal before briefing begins.

And if there's some dispute about timeliness or jurisdiction, we can still take it in, and that dispute will be part of the briefing process.

If there's no dispute about timeliness or jurisdiction, we clearly don't have jurisdiction, it's
clearly not timely, the appeal will be rejected outright in the beginning.

Once briefing begins, there will be three different types of briefing schedules. The default briefing schedule, which will apply in most cases, is substantially similar to our existing practice.

There will be a new briefing schedule for innocent spouse cases. Amendments in the last few years to the innocent spouse statutes require that both spouses be allowed to participate in the appeal, so we've had to amend the briefing schedule for innocent spouse cases to give substantial participation of both spouses. It's a somewhat complicated briefing schedule, but it actually is streamlined and clarified from our existing practice. And then, finally, we have the simplified briefing schedule for small tax cases and HRA cases.

When the briefing is complete, there will be an appeals conference scheduled. Board Proceedings will handle the scheduling and noticing of the appeals conference.

There is a mechanism, just like there is for business taxes, for postponements, waiving appearances, and collecting additional briefing and evidence.

If evidence or briefing is accepted after the
appeals conference, the other party also will have to be
given a chance to respond.

   An appeals attorney, just like in business
taxes, will be the conference holder, and the Appeals
Division will develop procedures to ensure that all
conferences are conducted in a fair, uniform and
efficient manner.

   After the conference, the Appeals Division will
prepare a decision and recommendation. This will
contain findings of fact, conclusions of law, and an
explanation of any questions left unanswered or any
evidence that was left unpresented. A D & R will
contain the appeals attorney's recommendation for how to
resolve the appeal.

   For small tax and HRA appeals, the D & R is the
end of the line. They cannot request a Board hearing.
If they want to challenge, they have to file a petition
for rehearing. And that will be made clear up front for
taxpayers when they're asked whether they want to elect
a small tax procedure, they'll be notified that an
election means a waiver of the right to Board hearing.
Of course, the Board, in its discretion, can always
order a hearing in any case.

   For all other cases, the parties will have
30 days from the decision and recommendation to
challenge it and request a Board hearing. If there is no request, the D & R goes before the Board as a nonappearance item.

If there is an oral hearing, then the Appeals Division prepares a hearing summary just like our existing practice. And, of course, in all cases, everybody retains the right to file petitions for rehearing regardless of whether there wasn't any oral hearing.

That basically concludes my overview.

MS. RUWART: At this point in time I'd like to explain the process by which we're going to go through the taking of the comments.

It's going to be essentially linear. We'll start from the beginning, take comments on each section in seriatim, and we don't want to go backtracking if at all possible.

What I will do is, we'll go through Article 1, and then once -- and then we have one change in Article 2, so you probably should have both the old version and the new version -- that's available outside -- with you.

What I plan to do is do Article 1 and Article 2 from the old version and then jump to the revised version for the remainder of the time, because, as Ian
explained, we deleted 3, 4, 5 and 6 and replaced them wholesale.

Another part -- something else that I would like to mention is that, because of our time constraints, trying to finish this by 12:30 -- we're having to finish this by 12:30 -- I'd like to mention that we know that there's grammatical and stylistic changes and edits. We will accept them all. We'd like to get them in writing. We would like to confine the comments to changes that have a substantive effect.

UNIDENTIFIED SPEAKER: Are we going to be discussing Article 5 at all today?

MS. RUWART: If you're here for disclosure, ex parte and Part 5, that commences at 1:30, so that's why we need to get out of here by 12:30 for just the franchise part. But, of course, you're all welcome to come back.

That said, if everybody is ready -- and again, I remind you, when you make a comments, which I did not do, please state your name for the court reporter.

My name is Carole Ruwart. I'm from the Legal Department.

Are there any comments on Section 4010 of a substantive nature?

MR. DAVIS: Ken Davis on behalf of the
Franchise Tax Board. First of all, thank you for the opportunity to allow the Franchise Tax Board to comment today.

Just preliminarily I'd note that our comments are reflected in our memorandum that we submitted yesterday to the sections. And what we've done is tried to add language that would either improve the good work of the Board of Equalization or to make suggestions where appropriate and/or request clarification where appropriate or add additional sections to conform either to statutory provisions or to maybe some of the current regulations that are -- that might have been inadvertently omitted.

As to 4010, our first comment is to (a), and we've added in just a clarification and -- or we've included the Taxpayers' Bill of Rights reimbursement claim section as one of the provisions for applications to the Board of Equalization proceedings.

We've also added in on (c) a conflicts resolution clause just to clarify that where conflict exists between Part 4 and 5, that for Franchise Tax Board appeals matters, that Part 4 would control.

MS. RUWART: Thank you.

Are there any other comments of 4010?

Terrific. Moving on to 4011, the Definitions section.
MR. DAVIS: Ken Davis again. On section 4011 we were suggesting that this -- that the definitions -- that these two definitions in Part 4 be incorporated into Part 5.

We've also suggested that in the term "taxpayer" that the term "business entity" or some variation thereof be included in the terms, because, as it stands now, the term "taxpayer," at least in this section, only applies to an individual. And then we've made corresponding comments as well in that same paragraph.

MS. RUWART: Thank you. Any other comments?

On to 4012, Jurisdiction.

MR. DAVIS: Ken Davis on 4012.

We've changed the term for the Board to read "quasi-adjudicatory," rather than "administrative agency," and this is consistent with the statute in the Kopp Act referring to the Board as an adjudicatory body.

As to the deletion on Subsection (a), we're deleting that and suggesting that the term, "The Board shall not consider grievances," that that be moved over to the section dealing with matters that the Board will not consider, and that's at Subsection (c) of the same section on 4012, and that's in our comments that's included in page 4.
We've also included on (b) just a phrase that clarifies the jurisdiction of the Board according to statute.

MS. RUWART: Okay. Any -- yes, sir, go ahead.

MR. LANGSTON: Bruce Langston from Franchise Tax Board.

Also there is a -- we made some changes in the written documents dealing with the six-month deemed denial provisions. We've had a number of statutory case -- statutory changes and court cases intervening describing how claims for refund is perfected and how the six-month period works, so we have made those comments in writing.

But those are to conform to the statutory and case law.

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

Just in response to the FTB comment about using "quasi-adjudicatory" body, based on the Kopp Act I would think that "quasi-judicial" would be better than "quasi-adjudicatory." "Adjudicatory" is a term of art, really, for the Kopp Act; and the Board, when it sits and hears appeals from Franchise Tax Board matters is in fact adjudicating a dispute between two parties. But with respect to all of the other types of hearings that
the Board holds, the Board is acting as an administrator of the tax or as an assessor of the tax. And "adjudicatory" for Kopp Act purposes includes any oral hearing before the Board as well as any matter that had been on a consent calendar and was removed from a consent calendar for any reason, including Board member contact with Board staff. So it's a term of art, I think, for the Kopp Act that probably shouldn't be mixed up here.

MS. RUWART: Okay. Any further comments? Mr. Vinatieri?

MR. VINATIERI: Yes. Joe Vinatieri.

I had -- I think Ken was talking about the issue on the grievance. And I had put in my comments where it states, "The Board shall not hear any grievance against the Franchise Tax Board," to me that was a bit of an ambiguous term.

And I can understand it possibly going down under (c), but I think if we're going to -- if we're talking about tax protesters, if that's what we're going after here, I'm not sure that the language is as tight as it can be. I didn't give you an alternative. I guess I would need to think about that, but I think the word "grievance" could have a panoply of meanings for people who aren't even in the tax protest category.
MS. RUWART: Okay. Sir, there was a question?

MR. DANOWITZ: Steve Danowitz for Ernst and Young.

On (b)(1) I would suggest adding "or any other notice" after "notice of action" to make it consistent with (b)(2).

Also, and I don't remember the term in the statute, but a couple of years ago there was a new procedure put into the law where the FTB could deny credits, even though they're not issuing a notice of proposed assessment, and the taxpayer has a right to Board appeal. And so that concept, I think, ought to be included, unless I missed it.

MR. LANGSTON: No. Bruce Langston from Franchise Tax Board.

You are correct. That is called the notice of proposed carryover adjustment or NPACA, and we do issue those, and I agree that that should be included.

MS. RUWART: Mr. Kamp.

MR. KAMP: Getting back to the point about the word "grievance" in Subsection (a), I think that's a very well taken point. The word "grievance" actually is a term of art in the labor relations area. I think that the staff had something in mind when they chose that phrase. I don't know which it was, Ian or Brad, Brad,
one of you folks wrote it. What were you thinking about when you wrote that in there?

MR. FOSTER: We have a 25-odd-year-old formal opinion that uses a similar phrase, talking about how we will not hear grievances against the Franchise Tax Board.

MS. MANDEL: What kind of subject matter things were happening?

MR. FOSTER: It typically refers to --

MR. LANGSTON: I would point out it also -- we get a lot of appeals where people are basically just making irrelevant complaints about years that aren't at issue, perhaps the way they were treated on the phone. And the goal is to focus the appeal on the issue at hand and not let people go off on a rant about something that happened years ago, you know, in a different matter.

And so maybe "grievance" isn't the right word, but I think we want to point out that they are supposed to stick to the issue that's before the Board and not bring in basically things that are not relevant to that particular case. I think that was the goal.

MR. KAMP: How about something like, "Except for the circumstances under Subdivision (b), the Board will not review any actions of the Franchise Tax Board other than those directly at issue" and place the issue
in the appeal before them or something like that.

    MS. RUWART: If there's no other -- are there
3 any other comments on this? I think we understand the
4 issue here. "Grievance" is not the best word. Rather
5 than wordsmithing as a group, everybody go home, use
6 their thesaurus, give us your best shot.
7
8 If you have any other comments?
9
10 MR. DANOWITZ: One other question, comment. It
11 could be written in the positive of what the Board will
12 hear as opposed to what the Board won't hear.
13
14 MS. RUWART: Okay. That's a good suggestion.
15
16 MR. FOSTER: And we'll accept written comments,
17 but I'd just like to point out that Bruce from the FTB
18 has essentially nailed what we were trying to describe
19 with grievance, and we are open to any suggestion for
20 how to phrase that better.
21
22 MS. PELLEGRINI: I'd like to remind everyone to
23 please state your first name and then speak.
24
25 MS. RUWART: Yes, sir.
26
27 MR. DAVIS: A few other additions, our goal in
28 paragraph (b), as Bruce noted, is really just conformity
29 to the statute.
30
31 And where we think the language may -- you
32 might want to revise, just to be consistent, but also we
33 think that one of the triggering mechanisms is the
mailing, and that's why some of our comments are reflected there.

MS. RUWART: Okay.

MR. DAVIS: Moving to Subsection (c), we've added in some language just to hopefully clarify, to include types of deficiencies, assistance, and overpayments, that the Board determines.

MS. RUWART: All right.

MR. DAVIS: And then continuing on with kind of our discussion of the grievance area, the matters that the Board would not consider, we've added some language to clarify what the -- what the term "appellate court" meant, means to include federal and state appellate courts. And we've included language as to matters which the Board would not consider, to include tax liabilities, which should be discharged in bankruptcy, as well as challenges to procedures against the Franchise Tax Board.

MS. RUWART: Okay.

MS. PELLEGRINI: Your name, please, for the record.

MR. DAVIS: Ken Davis. Thank you.

MS. RUWART: Any other comments on 4012? Very productive.

We move now to Article 2, and when we get to
Subdivision (c), we'll move to Ian's change.

But is there any comment on subdivision (a)?

4020 is Basic Appeal Requirements and we're looking for specific comments on Subdivision (a).

MR. VINATIERI: This is Joe.

And I had just indicated on item 6 that I would used the words "notice of action," which was the formal term, rather than using a more generic statement there.

MS. RUWART: Okay.

MS. MANDEL: But is it -- oh, I'm sorry, Marcy.

Is it notice of action for everything that's being appealed, if they each have different --

MR. LANGSTON: A deemed denial wouldn't have.

MR. FOSTER: This is Ian Foster.

We did -- we -- when I first drafted it, I put "notice of action" in and I quickly struck it out because "notice of action" is sort of a term of art that refers to one type of notice that you can appeal from.

MR. VINATIERI: Okay.

MS. MANDEL: Joe.

MR. VINATIERI: Yeah, back behind, yeah, and I'm fine with that.

MR. DAVIES: Ken Davis, with the FTB.

On that same Subsection of 6, one of our concerns was that the -- was the reference date in
having the claimant or the taxpayer determine the
appropriate date. And so we're suggesting that a copy
of the notice be included in the submittal. That way
everyone is on the same page as to the -- as to what is
the -- what date Franchise Tax Board is using for its
action, etcetera.

We're also requesting in 9 that the signatures
of the taxpayer be only those people -- persons that are
listed on the notice, because sometimes we have had
instances where appeals have come in from people not
listed on the notice.

So that's our -- we wanted to clarify that as
well.

We've also included language that was in the
prior section to say that the Franchise Tax Board's
notice was, if it's directed to more than one taxpayer,
each taxpayer desiring to contest it, should -- has the
opportunity to appeal, jointly or separately.

MS. RUWART: Are there any other comments on
Subdivision (a)?

MR. KOCH: Al Koch.

MS. RUWART: Yes.

MR. KOCH: I have a question about dates and
item 6 and what that -- what that standard refers to for
appeal purposes.
Is it the date on the notice, or is it the date of mailing? Because if you have, say, 30 or 90 days from the date, it seems to me it might be better to have it be the mailing date rather than the date on the notice.

MS. MANDEL: Al, it's Marcy.

It's the date of -- the date of mail, that the notice is mailed is the actual date, I think, in the statute that starts the running.

There have been, I don't know if it still happens, but rare circumstances in the past where the date on the face of the notice was not the actual postmark date. And in those instances, when the client walks in the door the day before, you sure say to them, "And where is that envelope, please?"

But, you know, I don't know how much that happens anymore, but you're right, if the mailing, actual mailing date that the thing gets out of FTB and to the post office is different than the date on the notice, is that right, Bruce, date of mailing actually?

MR. LANGSTON: Bruce Langston of Franchise Tax Board.

In 1999 Section 19045 was amended to require the Franchise Tax Board to put the date that the taxpayer may appeal on deficiency notices. And so
that's basically binding on the Franchise Tax Board.

So even if we mailed it earlier, if the notice
told them they may file an appeal by a particular date,
under 19045(b)(1), they're timely if they file within
the date shown on the notice, which is usually 30 or 60
days after the actual notice, the date the notice is
dated.

MS. MANDEL: Right, and -- Marcy.

That was in conformity to the federal law for
notices of deficiency. And I guess Al's question would
go to the situation where you have it that date and you
actually, instead of mailing earlier, the mail went out
late and so that that date would be inside of the time
period to file.

MR. LANGSTON: Can I point out that it's the
next section, 4021, that talks about the time for filing
an appeal. This is talking about what is included with
the appeal, so maybe we should have that discussion when
we get to that section.

MS. RUWART: Okay. Any more comments on
Subdivision (a)? We'll move to Subdivision (b),
Property Tax Assistance Appeals. Any substantive
comments here?

MR. DAVIS: Ken Davis on behalf of the FTB.

We've changed the heading just to make sure
that it's -- it reflects this is for HRA appeals, and
our entire section (b) revisions here or suggestions
really are to be uniform and consistent with our
comments on 4020(a), so the same comments apply.

MR. FOSTER: This is Ian Foster. And to
respond to one of your -- the FTB's comments, the FTB's
proposing to add into subdivision (b) with the HRA claim
of adding any appeal amounts and facts and legal
authorities. We had left that out because we're
typically much more liberal and generous about taking in
HRA appeals, talking about unrepresented people, usually
very low-income, a different sort of audience. That's
why we didn't include that stuff.

MS. RUWART: Anything else on subdivision (b)?
Okay. Move to subdivision (c), what to mail, where to
mail. This is incorporating -- the revised version is
in your new packet, somewhere in the middle, and it
looks like this. And this is where the -- it was
modified to include electronic filing capabilities.

Is there any comments on -- you can probably
comment on either the old or the new section here, but
probably the new section.

MR. DAVIS: Ken Davis on behalf of the FTB.
The change was made from the old (c) which included the
requirement of mailing -- that the appellant mail two
copies to the Franchise Tax Board and that then -- or
ercuse me -- two copies to the Board, and then the Board
would thereafter send one copy to the Franchise Tax
Board.

And as I looked at the statute, 19046, that was
consistent with the statute. We now have the new
revision of (c), which really has one copy only going to
the Board, and so we're just asking for clarification as
to how that squares with the statute. And we'll leave
that your good graces as well.

MR. FOSTER: This is Ian Foster. And we're
aware of that. We originally wrote in two copies
because that is exactly what the statute says, two
copies. In our view, two copies is a waste of paper.

If we get one copy, there's no problem.

Everything's -- I mean, we're going to scan it anyway.

It will be e-mailed to FTB under our current procedures.

I mean, we're certainly open to question about
whether we have -- I mean, I don't know if your question
is whether we're unable to take the appeal because the
statute requires that someone file two copies of it.

MS. PELLEGRINI: This is Debbie Pellegrini.
The practice is, many of the HRAs do not send in two
copies. It is easier to go over to the copy machine and
make a copy than it is to send it back to them and say,
"Please send us a second copy." And that's a fact. But it does not preclude them, of course, from sending the copy.

MS. MANDEL: This is Marcy. (c) applies to all appeals; right? Regular FTB appeals as well. So . . .

MR. DAVIS: All appeals.

MS. MANDEL: Right. And the statute -- and I haven't read it in a while -- requires two copies to the Board, it requires one copy to -- it requires filing with FTB -- it used to require sending a copy to the FTB. Is that how it's phrased?

MR. LANGSTON: No. That changed a long time ago.

MR. DAVIS: 19046 --

MS. MANDEL: It just requires two copies be filed with BOE.

MR. DAVIS: BOE, and then a copy to the -- and then BOE would send a copy to Franchise Tax Board.

We understand that, you know, the practice is that -- and, you know, I'm sure it's common for only one appeal to be sent. We're just leaving it in your good hands as to how you want to square that up.

We also -- you know, I think we agree with the idea of the electronic mailing provision.

The other concept that I note that you want to
include throughout this is that electronic -- is that
this section be used throughout.

One of the things we were trying to accomplish,
which we haven't spoken in our comments right now, is
what is going to be the best way to facilitate in
expediting Franchise Tax Board receiving either appeals
or supplemental briefing at the same time the Board --
that Board staff receives it. So we are also suggesting
that when reply briefs be sent, that language may be
included that would have one copy be filed with the
Board and one copy be sent to the opposing party.

MS. RUWART: Are there any other questions or
comments on subdivision (c)? Very good. We'll move
back to your old original version for Section 4021.

MR. DAVIS: Ken Davis. And this is on
Subsection (a). We've included some language, just to
try and clarify some language as to the statutory
reference and jurisdictional issues. And we pulled some
from the former section 5071, which outlined the Board's
authority. We thought that was some generally good
language.

As to the statutory deadlines, as this is what
Bruce was referring to, we've included, consistent with
the, I think it's 4012, some of the jurisdictional
language of -- that actions be -- that the triggering is
the mailing by the Franchise Tax Board on the date shown
of the notice. And we used that language consistently
throughout.

MS. MANDEL: And this is Marcy.

On item 3, I'm shocked and appalled to see
that's the way it was originally drafted by staff.

MR. FOSTER: This is Ian.

I'm sorry we shocked and appalled you.

MS. MANDEL: You did.

MR. FOSTER: This was an inadvertent error. I
was cutting and pasting from one paragraph to the next.

MR. DAVIS: I think that's -- and then we've
also highlighted, our comment, we've highlighted it in
bold, it's our footnote 30 and 31 to our comments, just
to clarify the distinction in the -- in the different
days and how the -- and the application relating to
unpaid interest versus a denial of abatement for paid
interest.

So it's maybe -- and maybe there's another way
to handle it, but we wanted to make sure that was
focused for the taxpayer.

We've added three additional subsections, or I
guess two sections. One is on (a)(6). We've added some
additional interest abatement language.

And we've also added -- we've also, I'm sorry,
we've also added jeopardy assessment.

    MS. RUWART: Yes, sir.

    MR. DANOWITZ: Steve Danowitz.

    I think we need to add into (a) that same concept of the notice of the credit adjustment.

    And then on (a)(3), the language "not later than 90 days from the date the Franchise Tax Board is deemed to have denied."

    MS. MANDEL: That's what I was shocked and appalled at.

    MR. DANOWITZ: Oh, I'm sorry.

    MS. MANDEL: Yes, yes, because the Board supported the taxpayer and the California Supreme Court to make sure that everybody understood a deemed denial is not mandatory.

    MR. DANOWITZ: Okay.

    MS. RUWART: Any other comments on subdivision (a)?

    Moving to Subdivision (b), which deals with extensions.

    MR. LANGSTON: Bruce Langston from Franchise Tax Board.

    We recommend that this section be deleted entirely. We have prepared extensive written comments explaining the statutory basis. And a number of recent
court of appeal decisions very clearly state that
statutory requirements must be strictly adhered to, and
there is no jurisdiction, there's no ability of a state
agency to extend those statutes. So rather than going
through them now, we've submitted our legal arguments
that you can go over. But we do, we take the position,
and in fact we do now when we file replies, that this is
not authorized under the law.

MS. RUWART: Okay.

Any other comments on (b)?

MR. DAVIS: I'd just add one other comment to
Bruce's, and our legal arguments are outlined in our
memo, but we've also pointed out, just as a public
policy argument, that the extensions, as they're
written, are inconsistent with a government mandate,
because it gives more favorable treatment to
paper-filers being able to mail than those E-filers that
would have to adhere to the deadlines, to the strict
deadlines.

MS. RUWART: Subsection (c), comments? This
deals with date of mailing, for those who are still
mailing.

MR. DAVIS: Ken Davis.

We've just added a note as to the definition of
delivery service that's included in Part 5.
MS. RUWART: Subdivision (d) deals with examples. Any comments on those?

MR. LANGSTON: Yes, Bruce Langston.

Franchise Tax Board recommends the examples be deleted for the same reason that we think Subsection (b) should be deleted.

MS. MANDEL: I have -- I just have a question -- it's Marcy -- on Subsection (b).

I guess I never focused on this. I mean, I do have a panic file in my garage, which has a lot of research in it about mailing deadlines and what the deadline is and what it's going to be extended, so maybe I'll have to find my panic file. But I thought that the regular extension of time for responding keyed off of where the thing was mailed to that you're responding to.

Because the idea was that you couldn't respond to it if it was mailed to you, you know, overseas, that the mail would take so much longer, that you would have more time to respond.

But maybe I need to go over that. Maybe I've been too far away from the Civil Procedure Code.

MR. VINATIERI: Uh-huh.

MR. FOSTER: This is Ian Foster again.

In drafting this I basically just incorporated the existing regulations.
MS. MANDEL: Okay. I'll believe it. Thank you.

MS. RUWART: Any other comments in Subdivision (d), the examples?

Moving on to Section 4022, Accepting or Rejecting an Appeal. We have several subdivisions. Let's start with Subdivision (a), determinations of jurisdiction and timeliness. No comments?

Subdivision (b), accepting the appeal.

MR. DAVIS: Ken Davis. The Franchise Tax Board recommends that, along with the copy of the appeal, that Chief of Board Proceedings provides a copy of the acknowledgement letter, which is consistent with current practice.

MS. RUWART: Subdivision (b), anything else?

Subdivision (c), issues relating to jurisdiction and timeliness.

MR. LANGSTON: Bruce Langston from Franchise Tax Board. We have actually proposed another subsection allowing for bifurcation.

From our perspective, it's tremendously burdensome to include issues of jurisdiction in the appeal. It will be much easier, I think, for Franchise Tax Board and the taxpayer to deal with jurisdictional issues first; and only if it's determined there is
jurisdiction, then we would write the brief addressing
the issues.

    I mean, a lot of our cases have, you know,
major unitary issues, a lot of factual development. And
if, for example, the case is clearly outside the statute
of limitations, it's a refund claim where the amount
wasn't paid, you know, certain basic jurisdictional
needs are not met, the proposal basically -- and the
current practice basically requires us to spend lots of
time, the taxpayer has to spend lots of time dealing
with the substantive issues, doing factual development;
and then, as it turns out, if we're correct that there's
no jurisdiction, then none of that work was necessary.

    So our view is, it would be better government
to deal with jurisdiction first, as in a normal court
situation, and only if there's jurisdiction would we --
we would suggest that then we would proceed to hearing.
And we have written comments suggesting that.

    MS. RUWART: Okay. Yes.

    MR. VINATIERI: This is Joe. This is the first
time I've had a chance to look at this bifurcation
issue. But it seemed to me that if the Board determines
to go forward with having the Appeals Division hold
appeals conferences relative to income tax matters, then
Bruce's comments would dovetail well into that context,
so that you would only get into a hearing with an
appeals conferee relative to a jurisdictional issue,
which would then keep it out of the, I guess, I suppose,
the domain of the Board and having to get into that, if
that's what we're looking at doing with having a --
holding appeals conferences in income tax cases.

MS. MANDEL: Well, that would be true as long
as they don't have to fully brief before. He'd still be
looking at -- this is Marcy -- bifurcation of --
assuming this whole sort of business of appeals.

UNIDENTIFIED SPEAKER: And then I guess you'd
have to dovetail the whole brief -- the opening brief
sort of concept with this as well, because otherwise the
taxpayer will go through all this briefing.

MR. LANGSTON: Bruce Langston again. Perhaps
we could -- if we do end up with the appeals conference
procedure, maybe the way to resolve this is having a
separate appeals conference right at the beginning about
jurisdiction and bring those, and then once that's
resolved, then go forward. That would be another
possibility.

MR. FOSTER: This is Ian Foster. Those are
excellent suggestions. And we appreciate getting them
in writing as well.

MR. VINATIERI: It's hard to get them in
writing when we just got this on Friday.

MR. FOSTER: I understand. I understand. You have another week or so.

MR. VINATIERI: Yeah. I'm going to speak to that in a couple of minutes.

MS. RUWART: Very good. Any more on subdivision (c)? How about moving to subdivision (d), rejecting the appeal? No comments on that?

Moving to Section 4023, Perfecting an Appeal.

MR. VINATIERI: I'm sorry, Carole. This is Joe. I didn't turn my page quick enough.

I had indicated in my submission that I had a concern about the language of alternative rights and remedies, whatever those are. I'm not sure what it is that's being referred to there. And if there are some specific items that would constitute rights or remedies, I think we just ought to go ahead and specify what those items are, because I don't know what they are.

MR. LANGSTON: Bruce Langston from Franchise Tax Board. I think in many cases, if it's a deficiency case, and the taxpayer has missed the deadline, we advise them they can pay the amount and file a refund claim, go through that route.

If they are beyond the statute of limitations on a refund claim, we advise them that they can go to
the old Board of Control and go through that route.

The other thing is, if it's a claim that has not been fully paid, we advise them how much needs to be paid in order for them to perfect their claim and go to appeal.

And I think this was written generally because in every case there's something different. There might be a third avenue, you know, that we haven't thought about in a specific case, you know.

MR. VINATIERI: This is Joe. Those are all good points, specific points. My concern was that this is going to be under the jurisdiction of Debbie, and so it's got to come from the Board of Equalization, as I see it. So if the Board of Equalization, Board Proceedings Division, were to take that language that Bruce has just stated and put that in the letter, then that would take care of my concern.

MR. FOSTER: This is Ian Foster. We pulled that language out of the old reg. We're certainly open to rephrasing it or deleting it.

MS. RUWART: Any more comments on subdivision (d) or 4022?

MR. DAVIS: This is Ken Davis. Just going back to the bifurcation issue, one other addition to that might be, we're still in the perfecting-the-appeal area,
and as I read your, briefly, your new submission of last Friday, that follows, once there's a determination, that the appeal is perfected. So maybe there's a concept here of dealing with the bifurcation and jurisdiction at that time, even before it goes to the appeal -- or to your appeals conference, if that type concept goes forward.

MR. FOSTER: We're certainly going to think about a number of options on how to handle this.

MS. RUWART: 4022, last call. Okay. Thank you. We're doing well on time. We'll keep going on this pace and we'll be just fine.

Section 4023, Perfecting an Appeal.

Subdivision (a), the general provisions, any comments?

MR. DAVIS: Ken Davis with Franchise Tax Board. We're suggesting that the word "substantially" be stricken just for conformity to the statute.

MS. RUWART: Any other comments on Subdivision (a)?

Okay. Moving on to Subdivision (b), the time to perfect the appeal.

MR. DAVIS: Ken Davis again.

We're just suggesting some additional language to provide a copy of notice to the Franchise Tax Board of the perfected appeal.
MS. RUWART: Any other comments on Subdivision (b)? Very good.

This completes our taking of comments on Articles 1 and 2. At this point I am going to close my book on the original version and bring out the revised version. I think the most efficient thing to do that is if you have made comments on the old version, you can of course feel free to submit them in writing. I know there was carryover between the old and the new.

We'll try to stick to the new version unless -- I don't want to foreclose anybody from commenting, so I guess I shouldn't have said I will close my book. I will keep it open. But we should try and work off the new version.

But if anybody has any questions at any point in time of where the old went into the new and they have a comment on the old that's important to them, please feel free to bring it up. I want to make sure that everybody is heard on every single point they want to discuss.

MR. KOCH: Carole?

MS. RUWART: Yes.

MR. KOCH: Al Koch.

Is the new Ian's paper?

MS. RUWART: Yes.
MR. KOCH: Okay.

MS. RUWART: It has a very bland cover. It says "to interested parties." It has no date. It has no anything. It's about 15 --

MS. MANDEL: Has no page numbers.

MS. RUWART: Has no page numbers.

About 15 pages into it it has bold and all capitalized type that starts with the work "replace."

Okay. So the first part of -- up at the top of this paper where it says, "Replace Subdivision (c) of Section 4020," we've already handled that.

Now, I'm moving down to the bottom half of that first page where it says, "Replace Articles 3 through 6 of Part 4 as published on the website September 14th, 2005, with the following Articles 3 through 5."

MR. KOCH: Should we number the pages so we know where we are?

MS. RUWART: That's a great idea.

Let's call this page page 1. And we will just keep going -- starting where it says, "Replace Subdivision (c) of Section 4020," that's page 1.

And we'll just take -- everybody take a moment to number their pages.

People on the phone, are you following along?
We're all -- we're numbering our pages. I have 19