Supreme Court. Okay.

MR. VINATIERI: Well, no, there's -- the Supreme Court left a -- the door open a little bit. You could -- if you have evidence to prove that in fact it's not a -- a direct benefit, then it is a tax.

So, I just want to make sure that this is not exclusive. So, that's why I -- I offered the language that I did.

Secondly, under -- under item 2, those of us who have been -- those of us who have been involved with childhood lead to some extent have been a bit frustrated with the fact that the Board does the bills but the Department of Health Services is responsible for this exclusion or exemption claims.

And I want to make sure that if the Board is going to take the position that you have to file these exemption claims with the D.H.S. that there needs to be some type of time line upon which D.H.S. has to work on that particular claim of exemption, so that it -- they can't just sit -- let it sit there and go on and on and on, which has happened a couple years back.

So, I added the language for the last sentence of item 2 that would be, "If the State Director," meaning Director of D.H.S. "has not acted upon the petitioner's application within six months of the filing of the application or applications, the claimant may deem the application denied and proceed to the Board."

MS. MANDEL: Well, what -- what -- where do we
MR. VINATIERI: I just made it up.

MS. MANDEL: Okay.

MR. MICHAELS: Did you consult the Director of Health Services?

MR. VINATIERI: I did not. I did not. There has -- there has to be some time limitation because claims have been sitting there.

MS. MANDEL: How -- how do we -- so, the statute -- the statute provides they do the exemption, right, and we do whatever the petition is.

MR. VINATIERI: Right.

MS. MANDEL: And -- and this sort of ordering -- is this ordering of -- of we're going to -- don't file with us until you -- you've been through the exemption process?

MR. VINATIERI: That's precisely --

MS. MANDEL: Wait, wait, wait.

MR. VINATIERI: -- the answer that you get today.

MS. MANDEL: Uh-huh.

MR. VINATIERI: That's exactly the answer you get.

MS. MANDEL: But -- but is that -- that's a matter of structure for us, or that comes from the statute? That's a matter of, you know, appropriate -- you know, makes the most sense to handle them in that order or --
MR. HUDSON: The statute is not clear. I just read it the other day. It's not clear at all about that.

MS. MANDEL: Okay, I'm just wondering --
MR. MICHAELS: What do you mean, not clear?
MR. HUDSON: It's not clear about whether or not they have to get a formal denial of the -- their request for exemption for us to hear it.

MR. MICHAELS: From D.H.S.
MR. HUDSON: From D.H.S. first. So, the order is not clear.

MR. VINATIERI: I -- I think the way it's been administered, nothing was happening for the first couple of years and then I think a decision was made to say, okay --

MS. MANDEL: So what you --
MR. VINATIERI: -- decision -- decision was made here.

MS. MANDEL: What you -- what you want is so that the filing of -- of petition with the Board will goose Health Services to act on the exemption?

MR. VINATIERI: I don't know that I'd use that terminology, but, yes.

MS. MANDEL: Well, you know me, I made a record even though there's a transcriber in the room.

MR. VINATIERI: What's happened is the Board has administratively determined -- the staff's determined not to move forward on any petition that's
filed under this program until it's -- something's been
filed at the D.H.S. And -- and on occasion my
understanding is that things get filed at D.H.S. and
there's no action on anything.

MS. MANDEL: Well --

MR. VINATIERI: So, we need to put some teeth
into it.

MS. MANDEL: Well, I -- I would suggest that
one be careful about the deemed denial six-month
language only because in other forums that has been
something of a contested problem, concern, whatever.
But -- but --

MR. LEVINE: I have no opinion on this one way
or the other --

MS. MANDEL: Right.

MR. LEVINE: -- but I think your point is well
taken that if we were going to do this, it shouldn't be
dehemed denied, it should just be focused on our moving
forward. If they haven't acted, we move forward on
the -- the petition.

MR. MICHAELS: I don't think you can.

MR. VINATIERI: Well, no -- you, you can.

What's happened is the staff here -- and it makes
sense -- the staff here said, "Look, we don't want to
deal with this petition" --

MS. MANDEL: Yeah, yeah, because --

MR. VINATIERI: -- "until D.H.S. has done their
thing."
MS. MANDEL: Oh, okay, so this --

MR. VINATIERI: And D.H.S. sits on it and does nothing, then --

MS. MANDEL: Yes, so this -- what this is saying -- yeah, you know, because I'm reading it as we're sitting here, this is -- this is saying the Board -- you know, you file your petition --

MR. VINATIERI: Right.

MS. MANDEL: -- but the Board is not going to act until D.H.S. has acted. And maybe what you need to have would be to sort of address the concern that if things are languishing over there -- and I don't know what the contact is between D.H.S. and the Board, is that somehow there's some, you know, notification because it could be that something is languishing over there. In which case it's possible that the Board staff could go, you know, "Hello, you know we're -- we're going to get hammered on our backlog if you guys don't start doing -- handling your backlog," or it could be that something -- the thing with the deemed denial kind of concept is it's possible something could be -- they could be actually working on it. And then --

MR. LEVINE: And then if they granted it --

MS. MANDEL: Or they could --

MR. LEVINE: -- which the taxpayer wants, the feepayer wants, we would say that would mean they can't grant it any more. And the feepayer doesn't want that.

MS. MANDEL: Yeah, so --
MR. LEVINE: They'll want a chance to win over there.

MS. MANDEL: It's a --

MR. VINATIERI: Well, okay, if -- you understand what the concern is. Maybe the deemed denial is not the way to go, but I think -- I think it should be a situation where internally here, if you have filed your exemption, nothing has happened within six months at D.H.S., then you should not be detrimented from moving forward in the Board of Equalization appeal process.

MS. MANDEL: Well, you should -- it's sort of like you should, you know, be able maybe to send a letter saying, "Hey, you know, I filed this thing. I haven't heard anything at all from them," you know, blah, blah, blah. "I'd like to move forward with my petition."

I mean that's what you're -- but maybe, you know, maybe that's not enough time for D.H.S. I don't know what their normal process is and what their staffing levels are --

MR. VINATIERI: It's very slow.

MS. MANDEL: -- and blah, blah, blah, blah, blah.

MR. VINATIERI: Very, very slow.

MR. LEVINE: We've had some cases that the Board just decided that it took a long time through the process.
MS. MANDEL: Right. But there may be issues about --

MR. VINATIERI: Two or three years.

MS. MANDEL: -- why they took a long time through the process which might not just be that they were sitting in the drawer at D.H.S.

MR. HELLER: Just -- before we wrap up, the thing is, you know, we do want the expertise of the Department of Health Services before we go ahead and try to decide whether what they're doing is correct or not.

So, moving forward is obviously -- could be necessary in some cases where it's just gone on a ridiculous amount of time.

MS. MANDEL: Yeah, but maybe --

MR. HELLER: Otherwise it's disadvantaging the Board, I think, with the amount of information and expertise they can bring to bear on an issue.

So we may just want to think about it a little more and maybe we can still submit comments through at least the end of December meeting.

So if you even want to think about it a little further --

MS. MANDEL: Yeah, I mean, even if you -- even if you -- if you were -- if someone was able to figure out, you know, something, then your first sentence would be, you know, "will not" -- you know, "normally will not act," or whatever written in.

But you'd have to be getting -- I mean, I'm not
saying how I really -- these are just sort of trying
to mesh everybody's comments. But then you -- you would
have to have something because it would be in the
tax petitioner's lap to tell the Board what's going on.
   Much like when you have a Court case that's on
hold because of something else, you periodically have to
say where things are I don't know. But --
   MR. HELLER: Well, we can consider it and maybe
even consider putting in some discretion in the Board to
go forward on some circumstance or --
   MR. VINATIERI: I think the important thing is
however you want to denote it, there needs to be
something that says if it sits over there and it's been
an unreasonable period of time, unreasonable in my view
is six months, then the Board should move forward -- or
the Board moves forward in the appeal process.
   Otherwise, you're -- you're making a mockery of
the appeal process and that's the problem with these
bi -- where you have two agencies --
   MS. MANDEL: Bifurcating.
   MR. VINATIERI: -- involved, or three
agencies. There's another's one where there's three
agencies.
   MS. MANDEL: That's why I used the term
"goose."
   MR. VINATIERI: I wouldn't say that, Marcy.
But you can.
   MS. MANDEL: Yeah, but I'm a girl and I can.
---oOo---

SECTION 2018

MS. PELLEGRINI: Okay. We'll move on now to 2018, that's Petition for Redetermination Pursuant to Covered Electronic Waste Recycling Fee.

MR. MICHAELS: These are all brand new, this program, right?

MS. PELLEGRINI: Yes.

MR. MICHAELS: So, we don't really have a track record on dealing with the Department of Toxic Substances Control?

MS. MANDEL: We do in other --

MR. MICHAELS: On this --

MS. MANDEL: Oh, okay.

MR. VINATIERI: My -- this is Joe. My concern on this one was what -- the way this is written, I'm assuming that if the -- if D.T. -- D.T.S.C. says no, then it's into the appeal process here at the Board of Equalization, is that correct?

MR. HELLER: I think that -- that one was basically -- the statutory language seems to be very clear that only that agency can make a decision on whether something is covered electronic or is a covered electronic device.

That hasn't been determined by the Board as of yet. But that was just an attempt to kind of bring the language of the statute --

MS. MANDEL: So you think it's like --
MR. HELLER: -- into our current regulations.

MS. MANDEL: -- the same thing as what's a hazardous waste, that only they have the authority?

MR. GAU: Yeah, I think -- David Gau. I think Brad is correct, I think they wrote it specifically that way, the D.T.S.C. reg.

MS. MANDEL: So that -- so the answer would be --

MR. GAU: That the responsibility is with them. Yeah.

MR. HELLER: But if that's the only ground that you're raising a petition on, then that would be the D.T.S.C.'s forum.

MR. GAU: Yeah.

MS. MANDEL: And then does -- does the law then provide that if you don't agree with D.T.S.C. that you sue D.T.S.C.?

That's -- you know, he's -- that's where he's sort of wondering what's the -- or do we not look at what the next step is when you don't agree with --

MR. VINATIERI: That's my concern.

MR. HELLER: I mean, I don't know.

MS. MANDEL: What happens on hazardous waste? We don't know yet. We just know we don't have the authority to decide what's a hazardous waste.

MR. VINATIERI: But you have the authority to . answer all those other questions around that, which I would think would be the same situation here.
MS. MANDEL: Yeah, but --
MR. VINATIERI: I'm anticipating that this is going to eventually be a -- a big deal.
MR. VINATIERI: That's correct.
MR. MICHAELS: That's correct.
MR. VINATIERI: It's going to -- it's going to become a really big issue. Or -- it's so new that we don't see it yet, but it's going to happen.
MR. MICHAELS: Yeah, eventually.
MR. VINATIERI: Yeah.
MR. HELLER: And this was not I intended to take a -- necessarily a position on, anyway, legislation. It was really just an effort to try to make sure that that issue was addressed in these rules. So --
MS. MANDEL: So the people know they're supposed to go to the --
MR. HELLER: -- calling us.
MR. LEVINE: What happens if they say, "yes"?
Do we process the grants or they --
MS. MANDEL: The refund.
MR. HELLER: They forward it to us. We have all the funds.
MR. VINATIERI: Well, there's got -- my view is, I'm not -- I'm not a real fan of D.T.S.C.
MR. HELLER: Marcy --
MR. VINATIERI: And -- to say the least,
and I'm concerned that if somebody says "no" over there, that there's no appeal right at all.

MS. MANDEL: Well, somebody could look at the statute and figure out.

MR. VINATIERI: Well --

MS. MANDEL: Maybe. You're -- you're suggesting that -- that -- I mean, I guess if you look at the statute and say, "I think that is, if there is an appeal right to the Board, or that it is an issue that the Board can decide and that staff's wrong in saying that only -- only D.T.S.C. --

MR. HELLER: And this regulation --

MS. MANDEL: -- or -- or if you look at the statute and you see that you don't think it's something the Board can consider or that there's an appeal right to the Board on it from D.T.S.C. or even an ability to, you know, sue D.T.S.C. or file a claim on the issue or something then, you know, you need to talk to your local Legislator.

MR. VINATIERI: Well, then let me -- let me ask -- let me ask the question. If that's the case, if -- if the staff's view is there is no right to appeal to the Board of Equalization after D.T.S.C. says no, would the Board consider legislation to move forward and allow the Board to have that appeal authority?

MR. MICHAELS: Well, there's been a lot of conversation about all this for months and months and months.
I would think there --

MS. MANDEL: I mean, the impression I have from this little rule is that you guys think this is just like hazardous -- the decision of what's a hazardous waste. Just from reading this.

MR. HELLER: Really, there wasn't a desire to analyze it, but what we did do is basically say that the petition -- based on the statute it does look like the petition should at least be sent to the Department of Toxic Substances Control.

So, that's really all that this says, is that we'll go ahead, that it should be filed with them and that we'll forward it to them if it's filed with us.

And so, the regulation that we're writing here isn't designed to necessarily curtail the Board's authority to decide this issue. It's really just designed to make sure that a petitioner who has this issue is getting their petition sent to the right agency.

MS. MANDEL: Can you -- can you -- what's the -- what's the statute on that? You don't know?

MR. HELLER: No, I don't have all --

MS. MANDEL: Okay.

MR. MICHAELS: What's your question?

MS. MANDEL: I was just wondering what the statute was so I --

MR. HELLER: But essentially what it's really just trying to do is -- is provide some procedure so if
you're somebody who has this issue, what do you do to at
least start the review process. And it's telling you
that basically we do want you to file within -- if you
file with us, we'll forward your petition to them so
that they can rule on the issue.

It doesn't -- it doesn't equivocally or
unequivocally say that, that the Board can't hear this
in the future; the Board can't decide on this; the Board
doesn't have authority to interpret those statutes.

So --

MS. MANDEL: So, there's -- is there -- there's
a statute that provides for petitions to Toxics on this
issue?

MR. HELLER: That's correct.

MS. MANDEL: As opposed to the kind of statute
that says the Board of Equalization cannot decide what's
a hazardous waste?

MR. HELLER: That's for --

MS. MANDEL: In comparison to --

MR. HELLER: It really says that the Department
of Toxic Substances Control will decide, I think,
something like that. But it doesn't specifically say
that we -- we won't or can't exactly, but I think that
might be the contention.

MS. MANDEL: Okay. But -- okay.

MR. HELLER: But it really wasn't designed to
advance the Board on deciding that issue. It was really
designed to just help somebody who needs to file a
petition and to know how to do it and where it needs to
go, is really all that that regulation is trying to do.

So that we can still discuss the issue in the
future, even after this regulation was promulgated. It
wouldn't foreclose it.

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SECTION 2019

MS. PELLEGRINI: Okay, moving on to 2019, and that's the Scope of Petition for Redetermination Pursuant to Water Rights Fee Law.

Any comments?

MR. VINATIERI: I had the same issue on this one as I did on the prior one, and that is what's the State Board jurisdiction if -- if, once again, Water Resources Control Board says no?

I just want to make sure that there's some administrative due process. I don't have a great deal of -- of confidence that those other agencies will look at things from an objective standpoint, to be very candid with you.

MR. HELLER: It's also very similar to the prior issue. It's basically there's statutory authority granting the State Water Resources Control Board the authority to look at those issues. So, it's really just advising people that that's where your petition should go.

But it really -- you know --

MS. MANDEL: You're going to have to look, Joe, and see whether -- because, I mean, I don't know, I haven't read all these -- what provisions they pick up and -- administrative provisions and whether -- whether they -- you know, these are new laws, and they -- whether they have retained review -- through whatever provisions they've adopted, retained Board of
Equalization hearing review or not.

MR. VINATIERI: I --

MS. MANDEL: And maybe they haven't. I don't know. But --

MR. VINATIERI: I believe -- this one is a little bit different than the one before, because this one comes under the Fee Collection Procedures Law, which is an umbrella --

MS. MANDEL: Right.

MR. VINATIERI: -- of a bunch of cookie jar taxes --

MS. MANDEL: Right.

MR. VINATIERI: -- that the Board has to administer and --

MS. MANDEL: Right.

MR. VINATIERI: -- I believe under the Fee Collection Procedures Law there's appeal rights. I'm not sure about on this electronic waste recycling.

MR. HELLER: Well, on the electronic -- I'm sorry.

MR. VINATIERI: That's a little bit different, but I believe -- I believe there is the right under the Fee Collection Procedures Law. It's a really screwy --

MS. MANDEL: Well, then if it --

MR. VINATIERI: -- setup.

MS. MANDEL: And then --

MR. HELLER: The language is in the water code.

It is language reserving that authority to the State
Water Resources Board, it comes from. It's not in the Fee Collection Procedures Law, because that's really a general set of procedures that these are just subject to.

MS. MANDEL: Right, then you might -- then you might have some --

MR. HELLER: So, there's room where different people could look at those two sets of codes and really come up with different interpretations on how they interact.

MS. MANDEL: Oh, joy.

MR. HELLER: And it really wasn't -- it was designed, like I said, to try to give everybody -- to cover all of our issues and provide guidance to the public on how to get things filed.

MS. MANDEL: Right.

MR. HELLER: We really didn't -- the scope of this project really wasn't to try to resolve the entire scope of the Board's jurisdiction --

MS. MANDEL: Yeah.

MR. HELLER: -- on every possible issue.

MS. MANDEL: So, what's going to happen is in the future, when these -- somebody files a water rights fee on this issue, they'll petition Resources Control Board -- Water Resources Control Board. And if they get a nyet from Water Resources Control Board, then they can come to you and "Joe, Joe, what do we do?"

And then I guess that frames the --
MR. VINATIERI: That's -- that's the situation.
MR. HELLER: Well, what I can do is I can go ahead and send off -- send Joe the -- the statutory references I refer to and -- and any comments, if he wants. I don't know, what -- detail about what he thinks the scope is of our -- our review function and then we can take those in consideration or forward them to the Board Members for their consideration.
MR. VINATIERI: Yeah, I -- I'm just -- I'm concerned. I know these little cookie jar taxes that there be some type of administrative due process, for appeal right. And the Board is well set up to do it because it's been doing it for a long time, and does a pretty good job. But --
MS. MANDEL: Yeah, you probably -- you know, if -- you probably ought to put that kind of -- think about putting that kind of thing together if only -- if only for the reason that if this stays exactly the way it is, he's going to come and start talking before the Board saying exactly this stuff, and then you're going to have Members asking you those questions.
And so, you ought to be at the very least --
MR. VINATIERI: Better to ask them here than --
MS. MANDEL: Right.
MR. VINATIERI: -- at a later point in time.
MR. HUDSON: This is Tom Hudson, from Bill Leonard's office. I'm not sure if this is the right time to bring this up, but I know we had requested in
the past, and I know other folks have, that each one of these sections have a statutory reference beside them.

Is that -- is that -- I know that's a monumental task, but I'm just a messenger here, so is that -- is that being done as we speak?

MS. PELLEGRINI: The intent is to put together a matrix on these for the meeting and --

MS. MANDEL: Because -- because, you know, if you don't that, somebody is going to be asking Tom to do that.

As you guys really know --

MR. HELLER: We're certainly not trying to burden Tom, but -- we're actually trying to put together and the matrix really is going to state -- it will state the section number, the title of the section and then provide references to both the authority for rulemaking on the issue, and the actual statutory issue being addressed or developed.

And then it will provide some short comments about whether or not that's -- what we're doing is -- is coming from an existing regulation; it's coming out of statute or -- or an existing publication, or even just modifying something that's already out there.

So that you can kind of track where we've come from from the past and also see what our authority is going forward. And all this is absolutely necessary for the rulemaking process which we're hoping to get into in January.
And we're hoping to have all of this done hopefully sometime next week, is our goal. We were -- we certainly are trying to get done as quickly as we can. So, we definitely recognize the value and intend to do that.

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MS. PELLEGRINI: Okay. We are now on 2020, and I would like to get through the next couple of pages and we'll need to take a break for our Court Reporter.

So, 2020, the Addresses for Filing a Petition for Redetermination.

MR. GOLOMB: I have a comment on 2020. Can I -- just a clarification. I don't have a problem with the addresses. The addresses are what they are.

MS. MANDEL: Yeah, just --

MR. GOLOMB: But if you're an uninformed taxpayer, many times you'll mail it to the local district office, mail it to the auditor, hand-deliver it. And it really doesn't mention anywhere that you can do that. And I think that should be addressed, that if I prepare and file a petition, and I provide it to any authorized Board staff member, the Board has received it.

So, I can hand-deliver it. I can mail it.

The other question I just wanted to throw out on the table, what about faxing a -- a petition and/or e-mailing a petition? Because, obviously, as we move forward in time, technology will be advancing and there may be other alternatives to snail mail. And you really don't address any of those.

And so, if I fax a petition to Phil Spielman in the Petition Unit, and the original gets lost in the mail, do I have a valid petition on file?
MR. HELLER: Okay.

MR. GOLOMB: And -- and to be honest, I do that on purpose for that reason.

MR. SHAH: You lose it on purpose?

MR. GOLOMB: No. Just in case it gets lost, I fax it and mail a copy.

And I say on the fax the original to follow by mail. But so much paper comes into the agency --

MS. MANDEL: Just make sure you put it on your fax machine correctly so they don't get six more pages.

I've seen that happen.

MR. GOLOMB: Oh. No, I don't -- but that's -- that doesn't address anywhere. All it says is, you know, you mail it, but what about all the other alternatives of providing the petition to the Board of Equalization? I think those should be addressed in some fashion.

MS. PELLEGRINI: We'll address those.

Anything else on the addresses section?

MR. VINATIERI: That -- that -- Abe's -- Abe's statement is responsive to mine. As I indicated, what if the petition is not sent to the right group.

So, yeah, I think it would be a good idea if -- I like the fact that, you know, your -- you've -- you've laid it out to send it to the specific mix. But if someone just doesn't get it right, they just send it to the Board of Equalization, and that should not disqualify them.
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SECTION 2021

MS. PELLEGRINI: 2021, Assignment and Acknowledgement of the Petition for Redetermination.

MR. VINATIERI: I threw in -- this is Joe -- I threw in a modifier there, the word "promptly."

MR. HELLER: Is that in (b)?

MR. VINATIERI: That would be in (b) where it says, "Board staff: -- it says "Once the petition is assigned to the appropriate section or group, Board staff" -- I'm sorry, I'm reading too fast -- "from that staff" -- "section or group will send -- will promptly send the petitioner a letter acknowledging receipt of this Petition for Redetermination."

I'm not -- I'm not locked in concrete. The idea is just to make sure things are done timely.

MR. LEVINE: Have you seen delays?

MR. VINATIERI: Not -- not recently. There have been some issues in the past, but, no, it's usually pretty good right now. I like the way it is right now; it is prompt. So --

MR. HELLER: Keep that.

MS. PELLEGRINI: Okay. Any other comments on 2021?

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SECTION 2022

MS. PELLEGRINI: We're on page 7 now. 2022, Review of the petition and Referral to District Office or Audit Group.

MR. VINATIERI: This is Joe. I've got a question on the process. I -- I know that the process used to be that when the petition came in it was reviewed and either sent back to the district or what -- got sent directly over to Appeals.

There are times -- what -- excuse me, the way this is written up, it's mandatory that the petition is assigned -- "will refer the petition back to the district office or audit group."

There are definitely times where that is a waste of time. And that it's much better to just move it up to Appeals Division. Obviously, that involves discretionary judgment on the part of whoever is reviewing these petitions.

But the system is such that where you have -- it's been very -- it's very clear at the District office level that it's not going to get resolved, it adds at least 30 to 60 to 90 days to that timeframe.

If we're -- if what we're trying to do here is make sure that as many petitions are done timely and quickly as possible, then I would suggest that you continue to utilize discretion and take out the word "will," which is mandatory and use the word "may" instead.
MS. PELLEGRINI: Comment noted. Any other comments?

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SECTION 2023

MS. PELLEGRINI: We are now on 2023, the Assignment of the petition to the Appeals Division.

MR. GOLOMB: Oh, I have one comment -- actually on the top of page 8, regarding to -- say, 2022.

A case is referred back to the District, they do their investigation, they write their report, they indicate to headquarters that the taxpayer agrees.

MS. MANDEL: And they're wrong.

MR. GOLOMB: And the taxpayer really didn't agree. So one of the things I suggest is that before headquarters automatically assumed that the taxpayer agrees, that they confirm with the taxpayer or their representative that that is correct. Because that has happened to me.

MR. SHAH: Abe, is this on a reaudit?

MR. GOLOMB: Yes. Reaudit or any type of investigation.

MR. SHAH: In reaudit they do send out a letter to the taxpayer saying what -- whether they agree or not.

MR. GOLOMB: Yeah, but a lot of times people don't understand the -- the implications of what that means. You know, that letter means. And it's too easy for a case to get redetermined when a taxpayer really doesn't agree, and the process just automatically moves forward.

So, I suggest that language be put in there
that the petition -- whatever headquarters unit is
working on that, that they verify the correctness of
that statement. Otherwise you have to come back and get
the Notice of Redetermination undone and go -- you know,
get reinstated and all that.

And I'm afraid with -- once this is in
statutory language that may be impossible.

MS. PELLEGRINI: Comment noted.

Any other comments on page 7?

MR. VINATIERI: Yes, I -- 7 or 8? Okay.

MS. PELLEGRINI: Either, yes.

MR. VINATIERI: I have a -- a comment with
regard to 8. This is (d)(2). This is where it gets
sent back to the District; it's not agreed upon. And I
just want to make sure I -- I'm reading this correctly.

It's -- it's -- the language here is predicated
on the fact that the petitioner requested an Appeals
Conference or an oral hearing.

What happens if the taxpayer did not in their
petition request an oral hearing? Then what happens?

Is it just left up in never never land or where
does it go?

MR. HELLER: You need a procedure to just go
ahead and issue the Notice of Determination at that
point, is what you're thinking?

MR. VINATIERI: I think if that's what -- what
it is, then I think it ought to say that, so that they
know that if they haven't requested a hearing and the
District disagrees upon referral, then they need to know that you're going to get a Notice of Redetermination.

MS. PELLEGRINI: Any other comments then on our Article 2A?

23.

MR. VINATIERI: Yeah, I -- Joe again. I had a concern -- I put an interlineated sentence here where it says, "Once the assigned section or group completes its summary analysis of the Petition for Redetermination," I want to make sure that a copy of the summary analysis is prepared to the taxpayer and the entire file is forwarded to Case Management.

I think that's pretty much the practice now. I believe it is. But as long as we're formalizing some of the procedures, let's -- let's put it down in writing.

MS. PELLEGRINI: Okay. With that we will be taking a five-minute break. Actually, we'll return here at 5 minutes till. About seven minutes.

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ARTICLE 2B
FILING A LATE PROTEST

SECTION 2030

MS. PELLEGRINI: All right. We are now
starting Article 2B, Filing a Late Protest. And it is
2030, Untimely Petition as Late Protest.

Comments, please.

MS. ARMENTA-ROBERTS: I have --

MR. GOLOMB: Yes. Go ahead, I'm sorry.

MS. ARMENTA-ROBERTS: It's Joan
Armenta-Roberts. On Part (c), where it's the -- "the
Board has discretion to grant or deny an Appeals
Conference or oral hearing," my question is who makes
the decision to grant or deny? And what is the basis
for the decision?

And if the staff is making the decision --
decision, does the taxpayer have any recourse?

MR. MICKEY: May I add a comment to that.

We're on the same issue, of course.

Kai Mickey. I would like to see Section (c)
have discretion eliminated where there -- if a late
protest is accepted, that they will grant an Appeals and
a Board hearing just like they would under a petition.
A timely petition. Completely remove the discretion.

MR. SHAH: I'm sorry, what was the answer?

MS. MANDEL: We don't have an answer. Brad is
just writing furiously.

MR. GOLOMB: This is Abe Golomb. I agree a
hundred percent with Kai Mickey. Otherwise there is no
point in a late protest being accepted. It's accepted
and you're not granted any hearings, what's the point?
I mean, you know --

MR. LEVINE: I will agree with that. I had a
problem with this. I think that if staff is not going
to move it on, they should just refuse it up front.

MR. HELLER: Okay. And would you have a
comment on who should decide when we should -- who
should accept the petition then?

MR. LEVINE: How they've been doing -- things
have gotten a lot more lenient than in the old days. In
the old days a late protest was only allowed if they
thought there was a reasonable likelihood that there was
a mistake.

MS. ARMENTA-ROBERTS: But what -- how old?
What's the old days?

MR. LEVINE: But I don't know what the process
is --

MS. PELLEGRINI: We'll let Joe speak to this.

MR. YOUNG: This is Joe Young. We've been
pretty lenient, like David says, with late protests.
Unless, you know, it's really late late, you know,
several years late, then obviously, you know, those will
not be granted, but --

MR. SHAH: What's late late, Joe?

MR. YOUNG: Yeah. But, you know, if -- if, you
know, it's reasonable and then the grounds are
sufficient that we think there will be adjustment, generally there's no problem accepting late protests. And once the late protest is accepted, we provide them with the same ground, appeals conference, they request a Board hearing, we go right through that same process.

So, I agree that the (c) may not be necessary in that particular case.

MS. PELLEGRINI: Any other comments on 2030?

MS. ARMENTA-ROBERTS: Who is making the decision in staff? Someone in -- in the Petition Section, staff level?

MR. YOUNG: Generally, yes. If we --

UNIDENTIFIED SPEAKER: Referring to Section (c)? I'm not aware that's ever occurred, that -- that there's been denied an Appeals Conference. Once it's set up as a late protest.

MS. ARMENTA-ROBERTS: Now, who accepts a late protest? If it's -- but if it's denied, how would -- is there a recourse or is the taxpayer told there's any kind of recourse --

UNIDENTIFIED SPEAKER: If your staff filed it on time.

MS. ARMENTA-ROBERTS: -- if your staff denies it.

MR. YOUNG: Yeah, this is --

MS. ARMENTA-ROBERTS: Well --

MR. LEVINE: You know, the history is, this is
something that evolved that wasn't actually permitted by
the statute, but --

MS. MANDEL: Well, but the -- the question is
that if they're late protests it's denied. Are they
told that if they pay the tax and file a refund claim
that then they can get administrative review?

MR. LEVINE: Right.

MR. SHAH: They have a form letter that
Petition sends out about this.

MR. YOUNG: Right. We -- we denying the late
protest and, you know, we state on the denial letter
that they have -- they -- they should pay the
determination and file a claim for refund. That will
get them into the -- the administrative review process.

MR. SHAH: And don't they also add language,
"However, we don't want to collect more tax than is due,
and so please provide information"?

MR. YOUNG: So, you know.

But, you know, that's the circumstance, we
think, you know, they have some legitimacy with the late
protest. We generally accept it, anyway.

So, it's only in situation where we find
there's absolutely no grounds for accepting the late
protest that it would be denied.

MS. ARMENTA-ROBERTS: Is there guidelines on
when to accept and when not to with your staff, or is
that just their own discretion?

MR. YOUNG: Pretty much, you know, we leave it
up to the discretion of the staff. Because they -- they
have the file, they know -- analyze all the situation,
all the issues involved and most of the time, you know,
you just pretty -- are pretty accurate.

You know, so I think the outside representative
would know that we don't deny them really late protest.

MS. ARMENTA-ROBERTS: Well, I am not concerned
with myself. I -- I think there's just a lot of
taxpayers that don't understand their -- that they can
continue protesting it, or that they're -- it is only at
the staff level, they can actually maybe call the
Taxpayer Bill of Right or Taxpayers Rights office, or
their Board Member if they felt like they are not
being -- you know, they don't know which way to go.

So, I'm just asking who makes the decision. Is
it -- what level?

MR. SCHUTZ: Joe, I have a quick question for
you. This is Chris Shut.

Is there any review of when somebody submits a
late protest to see if they -- they recently made a
payment, and whether that payment, that late protest
could clearly be considered for that -- that portion of
the payment that they made a claim for refund?

Even though it's -- even though the -- the
taxpayer has labeled it, "This is a late protest," but I
mean it has maybe generally all the language needed
to -- to meet a claim for refund.

MR. SPIELMAN: This is Phil Spielman from
Business Section. Did -- in that case if a late protest comes in and a payment is detected then a copy of that document is forwarded over to the Refund Section to set up a partial claim for refund.

MR. SCHUTZ: Thank you.

MR. YOUNG: We usually will not take any action until the payment is in full for the tax portion.

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SECTION 2031

MS. PELLEGRINI: 2031, Accrual of Interest.

MR. SCHUTZ: And here I'd have a comment as far as in -- in this case, a late protest is filed and they've made payments, they're making payments, there may need to be an admonition here that you do need to file a claim for refund, because the -- it's not necessarily in petition status.

MR. SPIELMAN: This is Phil Spielman again. The late protest letter does advise them that they have to file a protective claim for any remains. We did have a problem with that years back; they didn't realize it. So it is --

MS. MANDEL: Well, if it's in the letter then maybe it goes in -- something goes in 2032 --

MR. LEVINE: Or 32.

MS. MANDEL: 32 is on collections.

MR. SCHUTZ: Yes.

MS. MANDEL: And then -- then that would flip them to the refund rules that are --

MR. SCHUTZ: Right, maybe some sort of cross-reference to please see the refund rules.

MS. MANDEL: 2031 and 32.

MS. ARMENTA-ROBERTS: Okay.

MR. MICKEY: Question on 2031, perhaps. Kai Mickey again. It may be helpful to taxpayers who are maybe looking at this and representatives who don't understand this, that there be clarification that the
Board doesn't have any authority to stop or remove interest down the road that has accrued.

Some -- I've run into cases where I've talked to my clients who thought perhaps they could argue interest only, and there's just no statutory provision.

So, maybe just a clarification that there is no hope for that interest being removed. It might be beneficial.

MS. MANDEL: Well, there is some statutory authority.

MR. LEVINE: (voices in unison) -- that require for relief, but it would require us -- and I don't -- I have no opinion on whether it should be there, I'm just saying if we put in anything we'd have to finish the thought by saying "unless there's grounds for relief under 6593.5." --

MS. MANDEL: All at once.

MR. LEVINE: -- "and disaster, unreasonable delay under 6596."

It's either all or none --

MR. MICKEY: That's true.

MR. LEVINE: -- that type of thing.

MS. PELLEGRINI: Any other comments?

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SECTION 2032

MS. PELLEGRINI: 2032, No Stay of Collection Activities.

MS. ARMENTA-ROBERTS: This is Joan Armenta-Roberts.

This has been granted at times in the past, so I think this is actually saying that it's never allowed here, putting in the regulation.

It goes against what's been allowed in the past. And why that's being put in there.

MR. SHAH: Because it's final, right?

MR. HELLER: Yes, it's final.

MS. MANDEL: Joan is just saying somehow --

MR. HELLER: We want to make it clear there's discretion in staff to agree to stay collections. But that -- this was only intended to point out that like if you send this letter in, don't expect that somebody who's about to levy on your bank account's going to just freeze and not levy on your bank account. Because they are legally entitled to.

And assuming that no one in staff has been notified and made a decision to -- to stay collections, then there is a final liability that can be collected on at the time.

So that was really all we were trying to convey. It certainly wasn't designed to -- to reduce the discretion we have.

MS. ARMENTA-ROBERTS: But you could -- they can
request a -- a stay.

MR. HELLER: Okay, so want to introduce some additional language that would allow a request and --

MR. GOLOMB: This is Abe Golomb.

Let -- as Joe said, when they accept a late protest the possibility of adjustment is very high. Otherwise what's the point of accepting it?

MR. HELLER: Right.

MR. GOLOMB: So, obviously, if they're going to adjust the liability downward --

MR. HELLER: Okay.

MR. GOLOMB: -- there's no point in having a taxpayer pay that liability that's going to be adjusted out.

So, it's very obvious there has to be some discretion allowed to the staff, because otherwise the poor taxpayer is paying liability that will obviously be adjusted out. And/or the process has to be speeded up so rapidly to make that adjustment quicker so they don't have to pay the liability.

The way to solve the problem is to allow discretion. Obviously, if it's recognized that, let's say, half the bill or three-quarters of the bill or whatever is really not due for various reasons, there's no point in having them pay that portion of the bill. And so the discretion has to be there, otherwise you're -- you're running into this bureaucratic nightmare of collecting money and then immediately
turning around and trying to go through the Refund Section to refund it. And why avoid that nightmare.

    MS. ARMENTA-ROBERTS: I had that exact situation just happen. And the audit -- it was -- they were only late by a week or so. They misunderstood the letter. And by the time it got to me, we asked for a late protest.

    Late protest was accepted, stay was not, and they paid, you know, like $100,000 or something, I forget what it was. But it's brought down to like 10. Now they have to go through the refund process, you know, and wait six months or longer to get their money back.

    And the decision to stay -- I was basically told, "We don't do that," and that, "We never do it, rarely."

    So, I -- I think it should be raised at a higher level or it should be put in that you can request it, but I don't think it should be at a lower level staff to determine this.

    And if they can't make the decision, they should pass it up. Take it up higher.

    MS. MANDEL: I guess on -- on every single one of these, to the extent you're trying to alert taxpayers to the consequences, which is what you were probably thinking of, is don't think, as you said, that filing late gets you out of any collection action to the extent that -- that there are other things that could happen.
You kind of have to do the David's -- you know,
I like that complete the thought type of comment.
Because this would look like it doesn't and -- and never
will. And if that's -- if in fact it sometimes does get
stayed for reasons, I mean any -- in any one of these
rules, what you're trying to do is alert people to the
consequences of their action.

You have to think of both sides of the --

MS. ARMENTA-ROBERTS: Well, when -- when would
it -- when would it? I mean, I ask this to -- to the
two of you, Joe and Phil. When would you allow it, a
stay?

MR. SPIELMAN: This is Phil Spielman. I can
answer that. Generally speaking, the first thing that
would warrant a stay is if there's been some error or
lack of follow-through on the Board's staff and clearly
explaining the appeals process. And the most egregious
situation would be where the representative is not sent
a copy of the audit report and notice.

So, the taxpayer was legally served with the
notice and should have filed within 30 days, but their
known representative didn't receive the audit or notice
of determination, and therefore the representative
didn't file it timely; that confusion usually is because
Board staff didn't follow through. In that case we
would sundry --

HEARING REPORTER: In that case we would --

MR. SPIELMAN: We would --
MR. LEVINE: Sundry.
MR. VINATIERI: Sundry withhold.
MR. YOUNG: Sundry withhold.
MR. GOLOMB: There's another situation. I represented a taxpayer that was located in Australia.
MS. MANDEL: Oh. How long is the mail to Australia?
MR. GOLOMB: Yeah. And the Board sent a Notice of Determination but obviously did not put sufficient postage, because, you know, how many taxpayers are located outside the State -- you know, the United States.

    Well, the Post Office returned that letter to the Board, but it took longer than 30 days. And so, in that case the taxpayer was granted late protest.

    So, I think there -- there has to be discretion because otherwise under the law a taxpayer didn't file, it was mailed, but they couldn't receive it because of errors on the Board staff's behalf.

    But, legally, if you read the law, it just says you have to put it in the mail. It doesn't say you have to put sufficient postage on it.

    MS. MANDEL: Well, come on. You come the other way, though --

    MR. GOLOMB: You know.

    MR. LEVINE: If you would have brought it to Appeals, to be quite frank, we would have said that's -- as long as they got it filed within 30 days after they
Mr. Golomb: Got it, yeah.
Mr. Levine: -- that it necessarily requires
that you put enough postage on it.
Mr. Golomb: But, yeah -- so --
Mr. Levine: Are you sure it cost more to send
something to Australia?
Mr. Golomb: It cost -- I don't know what
the -- but it's more than 37 cents.
Mr. Levine: It's more than the same thing?
Mr. Golomb: Yeah, it's more than 37 cents.
Or whatever their --
Ms. Pellegrini: Any other comments on 2032?
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ARTICLE 2C
CONTESTING A JEOPARDY DETERMINATION
SECTION 2040
MS. PELLEGRINI: If not, we'll move on to
Article 2C, Contesting Jeopardy Determination. 2040.
It's Notice of Jeopardy Determination is Immediately Due
and Payable.
Comments?

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SECTION 2041
MS. PELLEGRINI: 2044, Security Requirements --
I'm sorry, 2041, Persons Who May Petition a Notice of
Jeopardy Determination.

MS. PELLEGRINI: 2042.

Mr. GOLOMB: What about 2041, I apologize?

MS. PELLEGRINI: Sure.

MR. GOLOMB: Allowing that person's
representative to file a petition. It just says the
person. So, obviously, if they have a representative
that person -- that representative should be also
authorized to file.

MR. LEVINE: David Levine. I think that's by
operation of law. Your actually authorized
representative, we always allow --

MS. MANDEL: Except at the beginning, the first
rule on who can file a petition specifically refers to a
representative under certain circumstances.

MR. LEVINE: I personally would.
MS. MANDEL: Yeah. That's why I had a
question.

MR. LEVINE: I always take out all
representatives because I think the representative, as
long as you're duly authorized, can act for the --

MS. MANDEL: Right.

MR. LEVINE: -- taxpayer/feepayer, et cetera
until that representation is revoked.

MS. MANDEL: Well, that -- that's why I sort
of -- when I saw it in the first one, I was like, where
is this from. But that's why Abe's raising it, because
it's in the first one and it's not here, right?

MR. GOLOMB: You know, I'm just --

MS. MANDEL: Just like to be consistent.

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SECTION 2042

MS. PELLEGRINI: Okay. 2042, The Content of the Petition for Redetermination of Notice of Jeopardy Determination.

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SECTION 2043

MS. PELLEGRINI: 2043, Limitation Period for the Petition for Redetermination of Notice of Jeopardy Determination.

2044, Security Requirements for Petitions.

MS. MANDEL: It's -- it's been a long time. Is that Section 2043, that's the standard --

MR. HELLER: Statutory.

MS. MANDEL: -- way that you -- that's the statute or that's --

MR. VINATIERI: It's the statute.

MR. HELLER: Well, that one's referring up to the Statute of Limitations.

MS. MANDEL: Yeah, and that -- that -- my question was whether for regulation purposes if -- over at OAL is that -- is that the way one would make the reference?

Do they say "section" if you were referring from one regulation to another regulation. Or is it regulation such and such of this article?

I mean, just make sure that the reference is --

MR. HELLER: Correct.

MS. MANDEL: -- because notice what he said
immediately, that's the tax Code section.

MR. HELLER: California code -- regulations are
actually sections of the California Code of Regulations.

MS. MANDEL: Yeah, but just as long as our
cross-reference is clear enough.

MR. HELLER: Yeah, we will definitely clear
that with OAL before we send any packages up for their
approval or review.

We're hoping to meet with them prior to sending
any of this stuff over to them.

MS. MANDEL: Yeah, because it's going to be
such a big package.

MR. HELLER: And it's going to be very large.

MS. MANDEL: And they're going to be going,
what?

MR. HELLER: That's right. We wanted them to
have the staff on hand and a good concept of what we're
trying to accomplish.

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SECTION 2044

MS. PELLEGRINI: 2044, that's the Security Requirements for Petitions.

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SECTION 2045

MS. PELLEGRINI: 2045, the Administrative Review of Petitions for Redeterminations of Jeopardy Determinations.

MR. GOLOMB: I have a comment on 204 -- I think it's 2045. Actually, it combines with 2046. You can ask for an administrative hearing, get your 30 days, and, you know, you have to list why you want it.

And one of the things, obviously in a jeopardy, collection is not stayed, everything moves forward against the taxpayer faster. And one of the things I think that's important in that process here is that the request for administrative hearing, et cetera, should also move forward quicker, because otherwise the taxpayer, especially if they believe that the jeopardy was issued in error, you know, because once it's issued it cannot be unissued. It cannot be undone, so to speak.

And I've had situations where the hearing process unfortunately sometimes took longer than it should have. So --

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MS. PELLEGRINI: 2046, Application for Administrative Hearing. I think that's kind of what was already being addressed. Anybody have comments?

MR. VINATIERI: Yeah. This is Joe. I had changed the language, where it said "in lieu of filing petition for redetermination," I put "in addition to", because I think the statute -- I think the statute allows both.

Obviously, to the extent you file a Petition for Redetermination and you don't post the security -- the petition is not going to be accepted. As well as it should not be.

But I thought it would be a good idea that just to -- to provide flexibility to taxpayers that if somebody wants to file both petition and an application or deemed -- it would deem both of them.

I just thought it would be better to -- to allow -- to do both of them rather than just the -- the singular. I don't know that it adds that much to be candid with you, but it's pretty important that when it comes to this administrative hearing, a lot of people -- at least ones where I've been involved with, the administrative hearing is extremely important because you're talking about the due process of law and the sale of -- of a person's assets, et cetera.

And so, there has to be real meat to the administrative hearing, and the ability of the reviewing
staff to -- to look at something objectively and -- and
stop something from happening, if that's the appropriate
thing to do under the circumstances.

So I'm -- I'm just giving you my general
speech about the administrative hearing, because this
is -- sometimes is the only meaningful thing that
they're going to have an opportunity to deal with before
being dispossessed of life, limb and property.

MR. LEVINE: David Levine. I can never keep
these two straight, so I don't know how -- I can't
remember how they interact.

Just looking at the wording you suggest "in
addition to" at least arguably could be interpreted to
mean you got a pot of -- do the other --

MR. VINATIERI: That's true.

MR. LEVINE: -- and do this one, too.

So, if "in lieu" isn't good, I'd suggest
something else.

MR. VINATIERI: I -- I would agree with what
you just said.

MS. MANDEL: Well, then you would take out
the -- the first phrase and start it with "the person
against whom."

Well, OAL may not like this.

MR. LEVINE: Just "may also".

MS. MANDEL: "May also".

MR. LEVINE: "May also" --

MS. MANDEL: Yeah.