MR. LEVINE: -- it's not -- it's not restricted.

MS. MANDEL: But then -- but then it will -- then you might hear like what -- you know, "may also", you're starting a reg. with "may also" and you have a whole separate reg. so there may be a question of whether they have to be in one reg. together, just --

MR. LEVINE: Or just the person against whom the jeopardy is made --

MS. MANDEL: Or just say "may file" -- "may apply".

MR. LEVINE: -- may also apply.

MR. VINATIERI: Yeah, that would -- that would work.

So, just delete the "in lieu of filing a Petition for Redetermination," but the person against whom may also apply.

MS. MANDEL: Yeah. And OAL may tell you you can't have the "also" in there because it's a separate reg.

But you don't necessarily need it.

---00o---
SECTION 2047

MS. PELLEGRINI: Moving on to 2047, Limitation Period for Applications for Administrative Hearing.

---oOo---

SECTION 2048

MS. PELLEGRINI: 2048, Contents of Application for Administrative Hearing.

MS. MANDEL: Can I just give you some other words back on that same one?

If you have to do it as a separate reg. "person against whom a jeopardy determination is filed" -- "jeopardy "determination is made may file an application for an administrative hearing."

And then -- then it's -- then it's -- then I think it's -- it could be clear -- more clear that a Petition for Redetermination of the jeopardy is a separate thing from the application for an administrative hearing.

And this provides you can do both or you might do one or the other. But -- but this is a separate application, because that's what you contemplate, right, a separate application for it?

MR. HELLER: Correct.

MS. MANDEL: I mean, they could be combined in one document, but a separate application.

MR. HELLER: Yes.

MS. MANDEL: Sorry.

MR. HELLER: No problem.
---oOo---

SECTION 2049

MS. PELLEGRINI: 2049, Option to Post Security.

MR. VINATIERI: I disagree with this. I'm trying to remember what it was.

I -- I just -- I don't recall what it is at this point. I'll check that later

---oOo---

SECTION 2049.5

MS. PELLEGRINI: 2049.5, the Assignment of Application for Administrative Hearing to Appeals Division.

MR. VINATIERI: This is Joe. I had -- I wanted to make sure that there was some time limitations on this to make sure things were moving quickly. Because we are talking about, in some cases, sale of property and a person's livelihood.

So I had added this info -- text under (b) about the Appeals Division will hold the administrative hearing, and I put "within 30 days of assignment to the Appeal Division, and shall issue a determination within 30 -- 30 days as to each issue raised in the application."

And I also -- on (c) I took away the discretion language here where it says, "the Board has discretion to grant or deny an oral hearing for application."

I -- my view is that if somebody goes through the appeals process on one of these administrative
hearings on jeopardy, and they are denied at the Appeals level, that they should have the right by law to have that matter heard by the Board members.

This is -- this whole portion is -- is very -- can be very, very onerous. And we just want to make sure that in my view, out of an abundance of caution, that due process avails the taxpayer in this situation.

MS. MANDEL: It -- it may be they wrote it that way -- I don't know, you may have written it that way because there wasn't a clear statutory right to an oral hearing.

MR. VINATIERI: No, there is a statutory -- I believe there is a statutory right to an oral hearing. I don't have it with me here, but it -- it says that you have an oral hearing but doesn't say anything else.

There's no --

MR. LEVINE: I think the hearing it refers to -- and, again, this is the scenario I can't keep straight, but I think that it's referring to the hearing that is the only hearing held by the Appeals Division. Everything else are conferences.

So we do an administrative hearing. And I'm guessing that's why it's structured like this.

MS. MANDEL: But is that -- but if the statute -- I mean, the Appeals Division is a creature created by the Board as -- as process.

And so, I -- the -- don't know if the statute, if it just says "hearing" --
MR. HELLER: It says that, you know, the administrative hearing.

MR. VINATIERI: Hearing.

MR. HELLER: It doesn't say --

MS. MANDEL: And it may be -- I don't know, maybe the Board has delegated those administrative hearings to Appeals.

MR. LEVINE: I think that if we have other -- other, like revocations of sellers permits --

MS. MANDEL: Right.

MR. LEVINE: -- I think are hearings done by District, so these aren't the only administrative hearings.

MS. MANDEL: Right. And so -- so, if the Board has currently delegated which -- to Appeals those hearings and that that's then going to be in the Appeals Division -- I mean, I can tell you what the answer would be if it was Dean Andal sitting up there. He would tell you, "Anybody wants a hearing before the Board, I'm going to give him a hearing before the Board."

But that's -- so that, I guess, is just the explanation of why they've written the thing this way.

MR. VINATIERI: Well, I -- I understand and I -- I've only been involved in one or two of these, as I recall, over the years. And I didn't have a problem with what the -- the Appeals attorney came up with in terms of the administrative hearing.

But I'm just very sensitive. I mean, this
is -- Mr. Levine might disagree with me, but there was a revolutionary war fought over appropriation of property by one foreign government across the -- the Atlantic.

MR. LEVINE: Are you casting aspersions on my historical knowledge?

MR. VINATIERI: Well --

MS. MANDEL: I think it was --

MR. VINATIERI: -- yeah.

MS. MANDEL: -- our government was -- they just didn't --

MR. VINATIERI: So, what I'm -- what I'm looking at is I just want to make sure out of an abundance of caution that there is -- there is plenty of due process here, and I'd rather go overboard than underboard, if that makes sense.

MS. PELLEGRINI: On your comment on the time line, the only concern I would have on 30 days to do an Appeals Conference is depending on location they may want it in. It's usually -- kind of for Stephen, but usually never a problem if it's in headquarters or a major town, but sometimes people want them in places that are difficult to get to.

MR. SMITH: I was just helping -- yeah, I -- this is Steve Smith in Appeals. I've -- my recollection, this has came up in my experience, and Mr. Golomb would know about this. When -- when I researched the statutory construction it seemed to be saying that the administrative hearing was what the
Appeals -- the Appeals Division holds, and there was no statutory -- it didn't spell out the -- the jeopardy determination person could have after that an oral hearing, though we always sort of believed, like you said, that if someone wanted an oral hearing they would get an oral hearing. But it's not provided under the statute.

MR. VINATIERI: But my understanding has always been that in the law, itself, in the R & T Code, that it sets forth for this administrative hearing and whether there's been an actual delegation from the Board to the Appeals Division to handle it, or it's just kind of happened that way, I don't --

MR. SMITH: I was -- I was shocked that, you know, as the Appeals attorney would be holding the Administrative hearing, that under the statute seemed to be the final word. But --

MR. VINATIERI: Yeah, it's -- it's -- well, we're in a very Draconian situation here. And that's why -- I just -- I like the abundance of making sure that things move quickly and that -- that they have the opportunity to go in front of the elected Board.

MR. GOLOMB: The other key thing through all this is that the staff provide the taxpayer and/or their representative with the documentation supporting the staff's position, because what tends to happen is these are sprung without notice to taxpayers. And as a consequence, the taxpayer and/or their representative
upon receiving this doesn't have the background behind all this.

And in the case I was involved in, I contacted the staff and they were very uncooperative in explaining their position. And by the time I got the material, 30 days had elapsed.

So, literally, I was put in the position of having to write a request without knowing what the background of the case was.

And so, one of the concerns I have relative of this, is the staff does whatever they do. But they have a legal, if not moral, obligation to provide to the taxpayer or their representative information upon which they can then respond.

Because if you have no idea where the staff is coming from, you're kind of shooting in the dark.

MR. LEVINE: Abe, are you talking about after -- this is the one that requires a bond or payment to be made?

Are you talking about after the -- the appeal is filed or before?

MR. GOLOMB: No, they issue the notice.

MR. LEVINE: Right. But are you talking about --

MR. GOLOMB: And then all of a sudden you get a notice and you have 10 or 30 days, depending on which way you want to go, to respond.

And that's assuming you know what's going on.
MR. LEVINE: Okay. Just --

MR. GOLOMB: But not necessarily is a taxpayer or their representative provided with any information regarding the staff's position.

MR. LEVINE: I understand. And I'm far from an expert on this because I'm not a collector and maybe Joe can respond better.

But just my gut feeling is until you've -- we're talking about a situation where the State feels uneasy and has done a jeopardy because it's afraid the money is going to be missing, and until the taxpayer protects the State by paying or filing a bond, I don't think that the staff should be forced to disclose information that would make it easier for the taxpayer to preclude the collection.

But if they --

MR. GOLOMB: How can you file if you don't know the staff's position? Once you issue the notice --

MR. LEVINE: File -- file an objection.

MR. GOLOMB: Well, you can't file a bond. They want cash on the barrel head. They don't take bonds, anyway.

MR. LEVINE: Well, there's something in here that allows --

MR. GOLOMB: I don't know where you're coming from. You're put -- you're putting -- you're putting the cart before the horse. In other words, the staff -- the State does an action, they file -- they
issue a Notice of Jeopardy. The taxpayer is totally unaware. Their representative is totally unaware.

How can anybody respond when they have no idea what's going on?

How would you respond if you had no idea what was going on?

MR. LEVINE: You're wrong. Pull it off. We get lots of -- that's what we were talking about earlier, we get a lot of petitions like -- like that without just --

MR. GOLOMB: Okay, you write that and they say, "Well, your -- your grounds are not specific."

MS. PELLEGRINI: Okay.

MR. GOLOMB: So, that's exactly what comes up.

MR. VINATIERI: Let me ask a question. In light of -- we're looking at 2049. I'll give you my specific thoughts. I think Abe said some things, and this is a -- thank goodness this doesn't happen that often. But when it does happen -- and, by the way, I think the staff does a very good job, and this is the nuclear option, usually, because it comes in the context of small businesses and it will shut down a small business. So, I think there's a lot of good discretion that's being utilized by staff. But every once in a while -- and staff, I think, understands this is kind of a nuclear option -- but when it does happen, there's a disagreement, we just need to be very, very careful that over -- an over-abundance of due process is
given.

And I -- my concern relative to this one today is making sure that when this thing comes back, whatever reiteration it comes back in, that there are some parameters such as I've thrown in or maybe some things that Abe has thrown in.

And, David, you're right, this is a -- this isn't kind of a -- a black hole. So -- but it's an important area for -- for a lot of small business taxpayers.

But a lot of times we don't know what's happened, what the -- what the Board staff has gotten in terms of information leading them to believe that their security is jeopardized.

So, --

--- oOo ---
ARTICLE 3
CLAIMS FOR REFUND
SECTION 2050


MR. VINATIERI: Right. I -- I add "feepayer" in there.

MS. PELLEGRINI: Any other comments?

MR. VINATIERI: I did have another comment under Section (b), and maybe I'm just -- I don't understand this, or I'm -- I have an incorrect knowledge, but I've got a situation where it's the Motor Vehicle Fuel Tax Law, where the -- the entity has filed a claim -- or has filed a claim for refund; the refund was paid by the State Controller's office; and then an audit was done by the State Controller's office, and we disagree with the audit.

And the audit is just wrong. And they're now -- they're now threatening the client that, "Well, you didn't" -- "We shouldn't have given you the refund in the first place. And now that we have this audit that shows you owe 'x' number of dollars," our response to them is, well, then you should sue us, because that's what the R & T Code provides for.

And they say, no, no, no, we're just going to offset -- the State Controller is going to offset some money that you're owed against the amount that has been
audited.

And so, we're -- we're without a -- in fact, I was going to talk to Marcy about this at -- at some point. But there's no provision in here to take care of that kind of situation. To go -- to come over to the Board of Equalization.

MS. MANDEL: So if you -- if you have a motor vehicle fuel audit, you're saying there's no petition process?

MR. VINATIERI: That's correct. Well, it --

MS. MANDEL: The law provides no petition process.

MR. VINATIERI: There is no petition process, as I understand it, unless I'm -- I'm missing something. And that could be, but -- yeah, we are just stuck with the State Controller's office now, and they're saying we did a good audit, and you owe us some money, turn it over. And then the statute says that if the State Controller has done an erroneous refund, then they're supposed to either give it to the Board of Equalization to do a deficiency determination or file a lawsuit against the claimant, or against the party.

MS. MANDEL: Except that there's also a lot of different types of authorities that I'm not familiar with about what -- what -- what things can be offset, you know, against other refunds that might be owed you from other places. And maybe they have that general offset authority. I just don't know.
MR. VINATIERI: Well, the problem is --

MS. MANDEL: It sounds like what -- that's what they're saying.

MR. VINATIERI: -- it's put us in never never land. I mean, we have no -- and it's pretty clear to me that the audit is incorrect.

So, I -- you know, I'm waiting for them to come to the Board of Equalization and give us a deficiency, and then I'm happy. Let's -- let's fight over it. But they're not doing that, they're just going to do an offset.

MS. MANDEL: Have you talked to Mr. Shivaro?

MR. VINATIERI: I have not. But I thought as long as we're doing this here, I thought maybe we ought to have something in here that specifically says that if you had a denial by the -- of the claim by the Controller, then there should be an appeal right over here to the Board of Equalization.

Okay, I put that under -- on page -- whatever, it's page 14, I think.

MS. MANDEL: Assuming there's authority --

MR. LEVINE: You didn't get the Controller's vote on our regs. telling the Controller what to do?

MR. VINATIERI: Well, I realize that there's -- there's departmental jealousies and that type of thing.

MS. MANDEL: And what's our -- you know, what's our -- they're just trying to reflect the statutory authorities, too. If there's not a statutory
authority -- I mean, it's -- we understand the -- but if
there's not -- I mean, that's --

MR. VINATIERI: Well, perhaps this is -- maybe
if there's not statutory authority then perhaps there
needs to be legislation for this kind of situation.
I don't know, obviously, how often this
happens.

MS. MANDEL: I mean, you can make the comments
and then I guess if they say, "Oh, well, it would be
nice, but we can't put anything in our column that says
there's statutory authority for appeal to us or a
petition on an -- on an audit, then -- then -- then the
next question is does somebody want to have legislation.

MR. VINATIERI: Yeah, that -- that would be
fine. I think my point is I wanted to bring it up
because it's out there

MS. MANDEL: Because you're like, aah, how
could this be --

MR. LEVINE: It just sounds like you're --
well, I haven't reviewed it, but what you're saying
makes sense to me. But it still sounds like you're
wanting us to put an interpretation of something that is
what the Controller is doing, and that it's a problem
with the Controller's interpretation or yours, but it's
between the taxpayer and the Controller.

It doesn't involve the Board.

MR. VINATIERI: No, I understand that. And the
reason -- the reason I bring it up is because if the
Controller were doing what I think the statute says to do, they would either go to file a lawsuit against the client, or they would come to the Board and have the deficiency set out.

So -- but they're not going to do that, they're going to do this collection thing, which is -- you know, it's not fair.

MR. LEVINE: It sounds like it's not that much different than the insurance tax. We -- we make decisions on it, but we can't make the Commissioner issue a billing, even if -- if it's taxable and we know it.

The Commissioner decides to issue the billing. Then it comes into our hands. It sounds like the same thing.

MS. MANDEL: Yeah, you're -- you're -- well, you talk to me later about --

MR. VINATIERI: I'll talk to you later. Okay. If -- if you want to say that you don't have the authority, then -- then it becomes an issue, maybe there should be some legislation.

MR. HELLER: My guess is just like in your one situation, we just don't have -- you don't necessarily have an overpayment made to the Board in that situation, when you're challenging an offset that they've made.

MR. VINATIERI: Well, they haven't -- they're going -- they're threatening to do the offset.

MR. HELLER: Well, I'm just trying -- yeah, I'm
just trying to think it -- it just might not even fit
into any of our areas even if we wanted to say that it's
something we want to review. It's still going to be
tough to fit in, so it may be --

MR. VINATIERI: Yeah.

MR. HELLER: -- something that would be really
good for a statutory change.

MR. VINATIERI: Yeah, that could be what it is.

MS. PELLEGRINI: We are now on 2051.

MR. VINATIERI: I am sorry, there's --

there's --

MR. HELLER: A few more comments on that?

MR. VINATIERI: -- on this (c)(3), it's
Childhood Lead Poisoning Prevention.

MS. MANDEL: You just want to make that
parallel with your comment earlier on the petition?

MR. VINATIERI: That's correct. That's
correct.

MS. PELLEGRINI: That's why I was off pages.

MS. MANDEL: I know.

---oo0---
SECTION 2051

MS. PELLEGRINI: 2051, Limitation Period.

MS. MANDEL: Yeah, all -- all of your comments that would have parallel claim for refund provisions --

MR. VINATIERI: Incorporated herein.

MS. MANDEL: -- incorporated herein.

MS. PELLEGRINI: Any comments on the Limitation Period? 2051.

MR. VINATIERI: I had one comment on page 17, item (j), Waivers. And -- and this is -- this might be surplusage -- surplusage, but this subdivision regarding waivers does not apply to claims for refund filed -- you know what, it doesn't matter. It's under that section.

---000---
SECTION 2052

MS. PELLEGRINI: 2052, Failure to File Timely Claim.

MS. MANDEL: I had one if you're trying to make this into basic English.

MS. RUWART: Okay.

MS. MANDEL: Instead of saying on the second line that -- again, you'd have to do the thing about whether the section reference tells you how to do that, but as provided, if you don't file a claim it constitutes a waiver. Can we just say "is a waiver"? Instead of "constitutes," which, you know, some people are going to have to go to their dictionary and then does that mean there is one or isn't one? What does it mean to constitute? Why don't we just say it is.

---oOo---
MS. PELLEGRINI: 2053, Content of Claim.

MS. ARMENTA-ROBERTS: I have a -- this is Joan Armenta-Roberts. I -- I don't know where exactly this should go under claims for refunds -- the claims for refund section, but it's the issue I brought to the Taxpayer Bill of Rights hearings.

It seems like somewhere there should be noted that the taxpayers are not allowed to do self-help, you know, refund claims on -- they can't just reduce their return by --

MS. MANDEL: The next period or --

MS. ARMENTA-ROBERTS: And there's nothing -- but I'd be kind of tooting my horn about this because there's nothing in any of the Board's publications that explains that a taxpayer cannot just credit their tax return for something they find out, oh, I -- I gave my customer credits in January, it's now June, I think I'll just put it on my next return.

They're not allowed to do that, and I agree with that, but it's not publicized anywhere. And taxpayers do this all the time, and auditors tell taxpayers they can do this all the time.

I've had Audits tell me, "Just tell your client take it on the next return."

And, you know, I know better, so I've been, you know, actually educating auditors, no, they can't do that because, you know, that could get denied if the
Statute of Limitations comes in and they -- you all know what I'm talking about.

So, something should go in this to -- I'm trying to -- trying to just ask the Board to put that in more publications.

It's not -- it's not in pamphlets, not in the regulations, not in annotations. It's nowhere. I think it's in the audit manual. And the tax --

MR. LEVINE: I'm sure everyone agrees that should be in the -- a regulatory thing. It should be explicit.

MS. ARMENTA-ROBERTS: Something, because -- and -- and auditors allow it, and then --

MS. MANDEL: Unless they get caught by the Statute of Limitations and then they don't.

MS. ARMENTA-ROBERTS: Right. They'll go, "Oh, it's within this audit period. You know, you took it in 1999 and this audit period goes to 2000. You actually should have taken it here, but we're going to let it go because it's within the same audit period."

Well, the taxpayer thinks -- thinks it's okay, and then they get caught with the Statute of Limitations. It's huge, too.

MR. HELLER: So maybe that should be like right at the beginning of the refund section, so the first thing anybody looking at refunds sees is, "You should not do this on your return. You should file a claim for refund."
MS. ARMENTA-ROBERTS: You're not allowed to do a -- I know staff calls it a self-help refund, right, Bob?

So, you know, it's something that should be -- Taxpayer Bill -- I mean maybe a bulletin article. Something, everything to get the word out because it's -- I've -- I've seen taxpayer or auditors allow little ones and then all of a sudden they see a big one and go, "Oh, you know, we really shouldn't do this and guess what, the statute's run out and you owe money."

MR. HELLER: Gee, there's all sorts of stuff.

MS. ARMENTA-ROBERTS: I didn't know where in this section it should go, but somewhere.

MS. PELLEGRINI: Okay.

MR. MICKEY: On -- Kai Mickey again. On subsection (b), I was wondering -- I know it says "should also include a breakdown of the refund." Is that something -- that's not even on the typical claim for refund that the Board has, is that something that needs to be there?

MR. HELLER: Well, it's something -- it's currently requested in our publication, but I think it's more dealing with claims for refunds. It's not commonly provided and we could use the word "should" basically to try to, you know, make it clear that we'd like to get it but not to penalize people who don't.

So we could either clarify that or it could be something that we could -- it can be rewritten or
removed if necessary.

MS. MANDEL: Yeah, I think the one -- the one thing you have to watch out for when -- I know you use the word "should" for we really would like to have it, but I think others would view "should" is like saying must. And that it's a mandatory phrase.

And if you've ever had to do research, as I have had to do a long time ago over the particular choice of words, and does "may" mean the same thing as, you know --

MR. VINATIERI: Right.

MS. MANDEL: -- there's a lot -- there's case or there's stuff in the codes on what the different words mean.

MR. HELLER: So, it may --

MS. MANDEL: So, it's -- so, you just have to watch for that kind of stuff.

MR. MICKEY: Maybe a clarification of not including that doesn't invalidate the claim.

MR. VINATIERI: I -- I think -- I think the word "may" -- you know, I -- I had a problem -- this is Joe. I had a problem with that, also. Because it's not -- definitely not in the statute.

So, I think if you make it discretionary -- discretionary on the part of the -- the claimant, that's the way to handle it.

MS. MANDEL: I mean, if -- if there were a statute that gave the Board the authority to establish
the requirements of what has to be in something, but -- you just -- if you're using the "should" -- oh, I'm going to repeat myself, I am sorry.

If you're using "should" with that concept of we really would like to have it, just watch that you're not inadvertently creating mandatory requirements where you don't mean to.

MR. MICKEY: A similar comment, please. Again, Kai Mickey -- with subsection (c) now. Again, it says "should," but it seems -- in my reading of that subsection, it seems to be saying that if I have a claim for refund that the state covers two quarters; that this is asking me to spell out my basis for refund for the one quarter, say the same thing for the next quarter. If I'm covering four quarters, I'm going to say the same thing four times in my claim for refund.

I don't know if that's what the Board is looking for. The -- the Board's claim for refund right now, is it set up that way? I don't think it's a requirement that you do that. I'm not sure why that's being put in here. So, maybe some clarification on what this is in here for.

And so, it's really trying to specify --

MS. MANDEL: Well, what if you said something like by -- by each each reporting period, to the extent they differ, or something? I mean, I don't know.

MR. MICKEY: Part of -- of my question with this is on a claim for refund you don't have the benefit
that you do under a petition of amending your claim
later when you realize that, wow, I should have said
these were interstate commerce instead of sales for
resale.

So, particularly when you file a claim for
refund and you don't know all the reasons that might
come up, you're going to file a claim for refund with
all the areas that might come up so you can address
that.

If you have to do that for each reporting
period, you know, it just seems like kind of a
redundancy in reporting.

MR. GOLOMB: This is Abe Golomb. Also this
relates to supporting documentation, you should mention
copies. You know.

MS. MANDEL: Yeah.

MR. GOLOMB: Because you'll end up with
originals that get lost, you know, and have a problem.

MS. MANDEL: Well, just generally -- generally,
we would say that anything -- any -- any provision under
the Claims for Refunds that has a parallel provision
under petitions, the same comments are going to apply.

MS. PELLEGRINI: Okay. Any more comments?

---oOo---
SECTION 2054

MS. PELLEGRINI: We're now on 2054.

MR. VINATIERI: I think on (d) once again we should put the discretionary "may" and delete "should."

MS. MANDEL: Okay, Joe, once again, any comments --

MR. VINATIERI: I heard you.

MS. PELLEGRINI: 2054.

MR. VINATIERI: I was short that time.

MS. PELLEGRINI: Contents of Claim for Refund under --

MS. MANDEL: I don't mean to be --


MR. VINATIERI: Right.

MS. PELLEGRINI: Any comments?

MR. VINATIERI: I had a question about -- is -- is motor vehicle fuel not been -- specifically statutory, not subject to this refund?

Yeah, what -- what's happened to -- maybe I -- maybe it's covered and I missed it.

MR. HELLER: That's supposed to be covered by the general provisions. Only diesel fuel --

MR. VINATIERI: Is -- is --

MR. HELLER: -- is separated out --

MR. VINATIERI: Okay.

MR. HELLER: -- as one of the fuels.

MR. VINATIERI: Okay. So, as long -- okay, I just want to make sure it was covered.
MR. HELLER: And the intention was originally that section -- I think it's 2001, is -- basically says that this part generally applies to all of those listed taxes and fees.

So, unless there's an exception then the rules should apply to -- to all those parts -- those taxes and fees listed in front.

MR. VINATIERI: Understood.

---oOo---

SECTION 2055

MS. PELLEGRINI: Okay. 2055, Claim for Refund Regarding Lost, Unmarketable or Condemned Alcoholic Beverages.

---oOo---

SECTION 2056

MS. PELLEGRINI: 2056, the Contents of Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law.

---oOo---
SECTION 2057

MS. PELLEGRINI: 2057, Address for --

MR. GOLOMB: Yes.

MS. PELLEGRINI: -- Filing a Claim for Refund.

MR. GOLOMB: There's a mistake in the address for (a). The zip Code is wrong.

MR. HELLER: Oh, yes.

MS. RUWART: Yes, it is.

MR. GOLOMB: But also as it relates to just -- as it relates to claims, I think they can also be hand-delivered, you know, et cetera, mailed, all that kind of stuff.

MR. VINATIERI: Is this subject to your general continuing objection?

MS. MANDEL: Yes. I was just trying to speed things up by not having to be repetitive. But I guess I have to be repetitive in trying to speed this up.

---oOo---

SECTION 2058

MS. PELLEGRINI: 2058, Acknowledgment of Claim.

MR. VINATIERI: I feel like my ability to speak is diminished.

MR. GOLOMB: Yeah. As it relates to claim acknowledgments, in the past it's been sometimes a lengthy period of time for claims to be acknowledged. I assume that's kind of cleared up.

MR. BUNTJER: Staffing issue.

MR. GOLOMB: Yeah.
MR. BUNTJER: And currently we are current.
So, that shouldn't be a problem.

MR. GOLOMB: Okay.

---oOo---

SECTION 2059

MS. PELLEGRINI: 2059, Review Process and
Request for Additional Information.

MR. VINATIERI: I -- I changed the language on
the last sentence a little bit, to say, "The failure to
provide such information may result in a denial of the
claim for refund instead of being denied.

MR. HELLER: That's correct.

MR. VINATIERI: And I also put, "upon request,
the failure to provide such" -- blah, blah, blah.

---oOo---
SECTIONS 2060 AND 2061

MS. PELLEGRINI: 2060, Action on the Claim.

MR. GOLOMB: Yes, I have a -- I don't know if it's the right section. But let's say the claim involves not just a documentation issue, but an interpretation of law issue. And the staff takes the position, obviously, the taxpayer is not correct. Taxpayer in their claim requests an Appeals Conference and/or a Board hearing.

So, obviously, if the staff does not agree with the taxpayer's position, obviously it goes forward. It's not automatically denied.

MS. MANDEL: I think that's in 2061, sort of.

MR. GOLOMB: Sort of. But I thought I'd try to get that real clear, because --

MS. MANDEL: Is there something in -- maybe in 60 which potentially gives the conflict of 61 on what you're saying, maybe?

MR. LEVINE: What's the conflict? I'm --

MS. MANDEL: Well, I don't know. I'm trying to figure out what --

MR. LEVINE: It talks about recommend, so they're going to recommend grant, deny or partial.

MR. GOLOMB: Well, let's say -- let's say you're arguing an interpretation of law.

MS. MANDEL: Well, that's in (d), I think, Abe. If -- if you get a letter described in (c) -- in (c), which is if they recommend deny, they're going to send
you a letter with a recommendation and explanation. You can agree or disagree. If you disagree, which is the third one; the first two are agreed, then you can request that Appeals Conference or hearing, and then 61 says there's discretion on that.

MR. GOLOMB: And that's what I want to get at.

MS. MANDEL: Okay.

MR. GOLOMB: That my understanding was you request one; you're granted it.

MR. MICKEY: Well, that would be a question I agree on 2061 the same as with the other one where you take out the liberally granted and just say that the Board will grant an Appeals Conference on Claims for Refunds, like they do on petitions.

MR. LEVINE: That's never been the rule. And this is different than late protests, which are substitute for petitions. There are several reasons to deny. The classic is you had a petition, you had a hearing, the Board denied it, you file a claim, there is nothing new, it doesn't go to an Appeals Conference, it just gets denied, you can go to Court.

MR. GOLOMB: Don't have a problem with that.

MR. LEVINE: Another may be it's a follow-on audit, again you had the Board hearing, this is discretionary.

MS. MANDEL: Right.

MR. LEVINE: Nothing new has happened.

MS. MANDEL: And there's no statutory right to
a --

MR. LEVINE: Right.

MS. MANDEL: -- oral hearing --

MR. GOLOMB: Then say that.

MS. MANDEL: -- is what -- where he is.

MR. GOLOMB: Yeah, just say that. That's -- I don't have a problem with -- that's not the kind I'm talking about, by the way, you know, where you're going to Court.

What I'm talking about is the brand new claim not involved in any petitions or anything. And --

MR. LEVINE: Well, maybe Bob could comment on when new claims, no prior stuff, are not allowed a conference.

MR. BUN'TJER: I think -- the only thing I can think about -- this is Bob Buntjer from the Refund Section -- is if the claim isn't timely, if somebody files a claim today for something made in 1995, we're not going to entertain that claim. We are not going to go into the Appeals Conference and argue whether or not it's timely or not.

Off the top of my head, that's about the only exception when we will not grant an Appeals Conference, other than those Dave has previously mentioned, where someone has been through the process.

If someone has been through an Appeals Conference and then pays it and wants a Board hearing, we'll go ahead and give him a Board hearing on that
claim for refund.

    So --

MR. DAVIS: This is Ken Davis.

Why not then just say that under these specific circumstances the claim will be denied, otherwise it will be allowed?

    MR. LEVINE: I personally am against that because I would not want to preclude something else.

       It is -- it's such -- there's not a real -- I'm guessing that you're talking in theory and you don't have a real problem. Have either of you had an actual problem -- Abe or Ken -- an actual problem in getting an Appeals Conference or a Board hearing where you thought you should have one?

    MR. GOLOMB: No, but what I'm concerned about is on a go forward basis this becomes statute and can be interpreted differently in the future than it's being interpreted today when the current decision-makers are no longer around.

       And that's part of the problem that I've seen in other areas along the same lines.

       In other words, we have some policy that's unwritten or partially written. The person that has implemented that parti -- policy, moves on, new people come in and they only were relying on the words, and the words say what they say. They say, "Well, see, we have discretion. I'm sorry, our discretion is you don't get it."
MR. LEVINE: I'd say two things about that.
Number one, the -- there -- under current, where it is
now, the law is clear. No right to a hearing, and
there's nothing in the law that would support a
requirement for a hearing.
This is just putting in the reg. exactly what
the law says, and what we've been doing. And I
understand your point, interpretations can change.
But if it's a problem, especially when this
directly reflects what the law is and what we've been
doing and the proper way to do it, is you challenge the
later interpretation.
But because someone could misapply a rule at,
I'd say, an egregious level, I don't think it's a reason
to change it. And you dealt with -- the Board has a
long institutional memory, and I think you probably know
what I'm talking about.
I remember things that happened before I was
here. And other people who started after me remember
things that happened that I've told them about. It just
becomes part of the -- the way things are. And that's
why like on -- I was talking about late protests.
Historically, we did it narrowly. It's only
grown. And a lot of that, quite frankly, is because of
Board Member involvement.
But it's never shrunk. And we maintain the
institutional knowledge that that's how we handle late
protests. And I -- I don't think that -- that it
warrants an attempt to list every possible reason we'd refuse because I don't think there's any problem.

MR. SCHUTZ: This is Chris Schutz. I have one quick comment on -- if -- if the Board doesn't take any action on a claim for refund within six months, it's deemed denied and they can --

MS. MANDEL: By law they can go to Court.

MR. SCHUTZ: -- they can go to Court.

MS. MANDEL: It's -- it's -- it's permissive denial.

MR. SCHUTZ: It's -- yeah.

Are these --

MR. LEVINE: Geneva Towers.

MR. SCHUTZ: Are these the three actions then that -- that the Board would either have to take, what's in that six-month period, or if they're doing an audit -- an ongoing audit we've accepted your claim for refund or we're looking at it. It's a conflict, see.

MS. MANDEL: You -- a person -- a person can't -- it's a permissive deemed denial.

MR. SCHUTZ: Right.

MS. MANDEL: So it's a -- you, as a taxpayer --

MR. SCHUTZ: Right.

MS. MANDEL: -- may deem your claim denied. You can do that at any point. If you -- if you decide you're going to file your lawsuit and the refund --

MR. SCHUTZ: After the six-month period --
MS. MANDEL: -- after the six-month period, and the Refund Section is actively working, has asked you for a lot of information and you're like, uhh, uhh, uhh --

MR. SCHUTZ: Right.

MS. MANDEL: -- I'm just going to go to Court, then, you know, you hopefully were advised by your lawyer because there will be questions potentially raised about failure to exhaust another issue.

So, people, when they make the decision to file a lawsuit when they're in the midst of an administrative process, you know, there's risks and benefits. They don't have to deem it denied. They can -- they can wait for an actual written denial. They're not -- they're not required.

And that's in contrast to some -- actually, some local business tax things where -- or the regular Government Code where claims might actually be denied.

But it's a permissive denial and you're -- and sometimes if people know that it's an issue that they think is going to have to be decided by the Courts, they probably would, you know, assuming all the information has been in -- they would have had some conversation with Refunds and -- or whatever.

But it's a -- it's a permissive denial and they can do that. And if they do it early, they --

MR. SCHUTZ: And then can some reference be made in this to that particular statute?
MS. MANDEL: That -- that they have --

MR. SCHUTZ: That within six months they have a permissive.

MS. MANDEL: Oh, just to -- so that people know?

MR. SCHUTZ: Right.

MR. HELLER: We weren't really trying to explain how to sue the Board at this stage. Basically, or that --

MR. LEVINE: You know, it does relate because not only does it just make sense to complete the process, but as soon as someone files suit we close the file, we're done. It's denied.

So, it really does kind of complete the picture because we're effectively by regulation telling Refunds or Appeals, whoever has it, stop -- or Board hearing's scheduled, someone files suit, pull it off.

MR. VINATIERI: You have -- you have the Superior Court reference in the Board -- general Board hearing procedures, and maybe -- maybe that ought to be put here, also.

MS. PELLEGRINI: Okay, we have two more sections to go through before we get to Article 4. I would like to get through them and then break for lunch.

MR. DAVIS: I just wanted to -- Ken Davis again. I just wanted to briefly address what David said about the Board institutional memory regarding when the requests will be granted for claim for refund.
This institutional memory should be more clearly specified to taxpayers, otherwise they're at a disadvantage. They don't have an institutional memory as the Board does. And I would think there would be some form of clarification on this. You could give yourself an out for unusual situations that haven't been contemplated, but where you do at least lay out the common situations where a refund will not be granted.

MR. LEVINE: I agree with that. I mean, it makes sense to add in "a hearing and conference will generally be denied when." And we wouldn't want to make that complete, either, because sometimes we do grant a hearing even in those cases where we normally don't.

But that makes sense, to make it clear when -- so, I -- I think that's worthwhile.

MR. HELLER: So we're thinking like listing some of the cri-- the situations that we normally wouldn't --

MR. LEVINE: Grant.

MR. HELLER: -- wouldn't grant a hearing but --

MS. MANDEL: Without limiting yourselves.

MR. LEVINE: Just say --

MR. HELLER: -- but also to state those so taxpayers will be aware that those are those -- that we look at those circumstances differently, and then just to still have something that's kind of a catchall.

MR. LEVINE: Yeah, I would suggest just adding --
MR. HELLER: There's still --

MR. LEVINE: -- a -- a thing saying, for example, they're generally denied when, and list the -- like the two major ones.

MS. PELLEGRINI: Okay, 2062, refunds over 50,000.

MR. VINATIERI: I'm -- I'm sorry. To follow up on -- on what was just said, my -- my thought, of course, is if you have new information, the -- the legal arguments or it's going to change your case law, whatever, those are some of the -- the positives and -- yeah.

---o0o---
SECTION 2062

MS. PELLEGRINI: The Refunds over 50,000.

MS. ARMENTA-ROBERTS: Should there be -- this is Joan Armenta-Roberts. Should there be a section on -- on denials of refunds for over 50,000, a procedure for those? I know those go before the Board, too.

I had a question -- I guess for Bob. Do they -- Buntjer -- are those usually -- taxpayer usually notified that those are going to the Board?

MR. BUNTJER: Yes, we usually send a pending denial that we are going to present it to the Board and then we allow probably 30 to 60 days for the taxpayer to respond.

MS. ARMENTA-ROBERTS: If they respond then -- with -- arguments why they think -- is that -- is that sent along with -- I don't remember ever seeing that come with the package of denials -- recommendations for a denial.

MS. MANDEL: Yeah, we --

MS. ARMENTA-ROBERTS: And you get the staff's recommendation --

MS. MANDEL: We --

MS. ARMENTA-ROBERTS: -- but do you get a --

MR. BUNTJER: Well, usually, if they come back with arguments, you know, like say new arguments or whatever, then we pull it off that -- you know, denial recommendation. We evaluate those arguments and respond to those, so that by the time we finish at least we
would have made the taxpayer aware -- aware of our position.

    MS. ARMENTA-ROBERTS: So they are sent a letter saying, "This is going to the Board." And we get to the -- the late protest I found that wasn't happening with the late protests, denials of the request for relief of -- not late protests, request for relief of penalties.

    So, it's kind of a different area, but I was just making sure that they get letters on this, too.

    MR. SHAH: I don't think they know when it's going to be on the Board, no.

    MS. ARMENTA-ROBERTS: No.

    MR. SHAH: Because --

    MS. PELLEGRINI: They're given a time line of approximately when it will be heard, but not the specific Board meeting.

    MR. BUNTJER: Thank you.

    MS. PELLEGRINI: And it's a pretty short time line there.

    MS. MANDEL: You're thinking do we get -- does the Board get told that the taxpayer thinks it had more resales than are being allowed or something?

    MS. ARMENTA-ROBERTS: Uh-huh. Are the -- because I know the Board gets a summary of staff's reason for denying the claim for refund, but does -- do they see what the taxpayer argued, also? Something on the taxpayer's behalf.
Or if the taxpayer agrees now that it's being
denied, and they agree it should be denied.

MR. BUNTJER: Usually when we prepare the
summary on the denial it will state what the taxpayer's
position is. And then why the staff disagrees with that
position, and then we indicate whether the taxpayer
concurs or doesn't or is noncommittal, and usually if
they're noncommittal then we advise them of their
statutory rights, or appeal rights.

MS. PELLEGRINI: Okay. Anything else?

---ooo---

SECTION 2063

MS. PELLEGRINI: We have 2063, Credits and
Offsets.

Okay, we are now on Article 4A and it is,
according to that clock, about seven minutes after. I
suggest we reconvene at 1:15. Right here. Thank you.

---ooo---
P.M. SESSION

ARTICLE 4A

REQUESTS FOR INNOCENT SPOUSE RELIEF UNDER THE
SALES AND USE TAX LAW

SECTION 2070

MS. PELLEGRINI: Okay, we are reconvening the
Interested Parties Meeting, and we are on Article 4A,
the Requests for Innocent Spouse Relief under the Sales
and Use Tax Law.

2070, Requests for Innocent Spouse Relief.

Any comments?

We're missing a few people. Was Marcy
returning?

MS. OLSON: I don't know, I didn't ask her.

MR. VINATIERI: Yes, she was going to.

MS. PELLEGRINI: I thought she was. And Abe?

I know Kai was not.

MR. HELLER: -- he was gone.

MS. PELLEGRINI: Yeah.

MR. VINATIERI: Is Neil Shah with us?

MS. PELLEGRINI: Who is present on the
telephone?

MS. REESE: You have Tanya, Sabina and Jim Herd
from Board Member Yee's office.

MS. PELLEGRINI: Thank you.

MR. SHAH: Neil Shah from Mr. Parrish's office.

MS. PELLEGRINI: Thank you. Okay.

Comments on 2070, the Request for Innocent
Spouse Relief.

---ooOoo---

SECTION 2071

MS. PELLEGRINI: 2071, Reviewing Request for Innocent Spouse Relief.

---ooOoo---

SECTION 2072

MS. PELLEGRINI: 2072, Request for Reconsideration by the Board.

---ooOoo---

ARTICLE 4B

SUCCESSOR'S REQUEST FOR RELIEF OF PENALTY UNDER THE SALES AND USE TAX LAW

SECTION 2075

MS. PELLEGRINI: 4B, Successor Request for Relief of Penalty under the Sales and Use Tax Law.

7075, Successor Relief For Penalty.

I'm sorry, Request for Relief.

---ooOoo---
ARTICLE 4C
OTHER REQUESTS FOR RELIEF OF PENALTIES AND INTEREST
SECTION 2080

MS. PELLEGRINI: Article 4C, Other Requests for Relief of Penalties and Interest.

2080, No Independent Right to Oral Board Hearing.

MS. ARMENTA-ROBERTS: Yeah, I have a -- a question on this, is that I guess this is for Board's Legal. Is that if a taxpayer has a request for relief of penalty, is this saying they don't have the -- they don't have a right to go to hearing -- for a hearing?

MR. HELLER: There is no statutory right to a hearing before the Board. But --

MS. ARMENTA-ROBERTS: Because administrative remedies, though, I think they -- they do allow them to.

MR. HELLER: They have the -- they have the right to have -- to request for relief and then the relief process basically is just to -- to review the request.

It doesn't really -- the statute doesn't specifically say there's a right to a hearing before the Board.

MS. ARMENTA-ROBERTS: Well, I thought this was fixed. I had a -- a case but now it's actually ended up being a claim for refund or -- the penalty was paid. A claim for refund was put in. And then it went through the process that way. But --
MR. HELLER: We do generally grant hearings when there's still a disagreement after staff has reviewed a request. So, it's really not intended to change current policy, which is that is they generally are granted. But it's still not -- I mean, that's like a statutory right.

MS. ARMENTA-ROBERTS: Well, I'm looking for where the -- the remedy was put in. I actually took this to Ray Hirsig. I had a situation where a taxpayer filed for request for relief of penalty.

MR. HELLER: Okay.

MS. ARMENTA-ROBERTS: They didn't get a response right away, so it was eventually denied, but when it was -- they were sent a letter of denial, it was already heard by the Board. It had already gone up into the Board as a Consent item.

And so, somehow it's supposed to -- there's supposed to be a remedy put in so that the taxpayer would have been told, "We are recommending" -- kind of what Bob Buntjer said with the claim for refund, "We're recommending that your -- your request for relief of penalty be denied, and it's going to be going to the Board Members for decision."

I'm wondering where that is now.

MR. YOUNG: I could answer that. This is Joe Young.

With that particular situation, the Return Analysis will send out a letter to the taxpayer that --
informing them that the penalty relief request is being recommended to the Board for denial, and it will list, you know, the web site, you know -- the -- that is -- intended to be scheduled for this particular Board hearing date, but it may change, you know, at the discretion of the Board Member.

But this will be -- the letter is being sent to the taxpayer informing them that, you know, through staff recommendation we denied the relief request.

MS. ARMENTA-ROBERTS: And I know that the -- part of the remedy was supposed to be the -- they got that letter, they took it back and said it should have the reasons, not just we're denying it, so that the taxpayer can say, "Oh, okay, you have read everything I presented and you still don't agree." So, they know that maybe something was missing or -- or, you follow me?

MR. YOUNG: No, I think -- I believe -- you know, I can't speak for the Return Analysis Section, but I do review those penalty relief request denials. And I believe they -- I could be wrong, that when -- when they send a letter out to the taxpayer informing them that the recommendation will be presented to the Board, they will tell them the reasons why, the reason that they are being denied.

And also right now, we've added another provision that they may request a reconsideration of that denial if they have new information.
MS. ARMENTA-ROBERTS: And that's what we are looking for, because this one --

MR. YOUNG: Right.

MS. ARMENTA-ROBERTS: -- because this one -- it was before they could -- they were -- they kept following up saying this is what's going on with it and have you made a decision. And nothing was sent until it was denied and the Board already had --

MR. YOUNG: Right now we have recommended that. You know, they actually receive a letter notifying that -- you know, the recommendation denied, but they also have -- have the right to request a reconsideration if they have new information to -- you know, maybe the staff can change their mind.

MS. ARMENTA-ROBERTS: So, then if you get the information, you still use -- staff says, "We still think it should be denied," then the only -- is the only recourse at that point to -- to pay it and file a claim for refund.

MR. YOUNG: That's correct.

MS. ARMENTA-ROBERTS: Because --

MR. YOUNG: Yes, because like I said, the statute does not provide a -- any further remedy other than, you know, paying and filing claim for refund.

MS. ARMENTA-ROBERTS: Or a request for relief penalty.

MR. HELLER: Yeah, but I think -- we do have for -- as far as notifying the -- the requesting person
of the determination of the Department, that's in Section 2087(d), and specifically says, "Once the determination of Subdivision (c)" which talks about deciding whether relief is warranted, "the assigned staff member shall prepare and mail the person requesting relief a letter containing his or her decision and an explanation thereof.

So, it doesn't -- I don't know if it has the detail that we're looking for, but --

MS. ARMENTA-ROBERTS: Where -- where are you reading?

MR. HELLER: I'm reading -- I'm on page 35.

MS. ARMENTA-ROBERTS: Okay.

MR. HELLER: This is -- it should be Section 2087, subdivision (d), and then -- yeah.

MS. ARMENTA-ROBERTS: It says "referring to the same request for relief of penalty."

MR. HELLER: Yeah, this is actually for all the requests. The way it's set up is that it discusses how to do a request under the four different -- the four different general types of requests. And then it goes, this -- I'm talking about the article I was discussing, and that article then concludes with -- with assigning of the request for review and then the actual review of the request in 2087.

And so, it's -- really what it does, it sets up how to go ahead and make a request first for each different type. So, say you have a disaster request; it
excludes how to do that one as opposed to a reasonable cause request.

And then once you've done it -- once it lists all the different types of requests and explains those procedures, then it goes into review and it applies to all the different types of requests.

So, it's -- the provisions are in there and they are generally applied to all the different types of requests listed in the article.

But it doesn't -- does not provide for the additional right to an oral hearing before the Board.

MR. VINATIERI: And I have a similar situation. We had an EFT penalty. Yeah. And, I mean, there was a lot of money. And the problem is you get into a situation where you -- let's say staff disagrees with you. They recommend the penalty to the Board; the Board upholds the penalty; then you end up paying the penalty and filing a claim for refund and going throughout -- going down that route.

In my mind, it -- it would be much better if we had a system by which those -- those penalties could be reviewed, because if it turns out later that relief is granted, you end up getting your claim for refund back, that's -- you know, how many money -- many months later and how many dollars out of pocket?

And what you're doing is you're -- you're essentially taking -- it's almost like a pre-- pre-deprivation -- there's no pre-deprivation...