administrative due process in a situation like that.

MR. LEVINE: What type of -- how many are we talking about? Potentially.

MR. VINATIERI: How many cases?

MR. LEVINE: Yeah. And I don't know if you know, but my -- I understand what you're saying, it makes sense to me. But I'm thinking workload because this is something that would come presumably to Appeals, and I think we're probably -- and Steve can talk to it, though -- I think we're probably getting pretty shorthanded if we're spending time on a lot of new cases -- we already got enforcement under AB 71. And if we're spending a lot of time just -- just an observation, if we're spending a lot of time with a bunch of penalty relief requests, especially ones that -- if they're not going to get granted, we may not be making our 90-day deadline on the important cases that you've got. Of course you may consider the penalty more important.

But just an observation. It's also a workload issue.

MR. VINATIERI: I appreciate that, but I mean, for example in this case the penalty was millions. And that's a lot of money.

And there -- there -- you know, thankfully things were resolved because the staff decided. But we didn't know which way the staff was going to go, because it's all kind of cloaked in secrecy and all that. And
there's no effective way of -- I mean, there's no legal
right as -- as I understand it here, to even be able to
go and talk to somebody about it from a -- an
administrative standpoint.

And so, you're forced to pay a couple million
bucks, file a claim for refund, present your case and
you probably get it granted. But I mean why should you
have to go through all of that and all the refund and
all that stuff when -- I just think due process would be
a good idea to have some type of ability to have an oral
hearing. You know.

Maybe -- maybe it should -- I -- well, I -- I
hear what you're saying, David. I -- I understand.

MR. HELLER: Can I just -- Brad Heller.

Basically, so we're thinking though you don't need to
necessarily create a right for every single person to
have an -- an Appeals Conference and an oral hearing,
but a right to request one and have it remain so that
certainly if any of our cases or complex issues came
down, we could make sure that the additional due process
would be available where appropriate.

MR. VINATIERI: I would -- I would go along
with that. I mean, it's discretionary -- there is some
discretion involved, but that way it's not a mandatory
right. And hopefully that would assuage the concerns
from Appeals.

MR. HELLER: Does that sound feasible, Joan,
or --
MS. ARMENTA-ROBERTS: Mine wasn't -- it's relative, the amount of money depending on the size of the taxpayer's business.

MR. HELLER: Well, I wouldn't specifically tie anything to the amount of money at issue.

MR. VINATIERI: Right.

MR. HELLER: I just need to create that discretion so that there certainly would be an ability for people up the chain to review it and --

MS. ARMENTA-ROBERTS: Well, and with EFT payments it could be they were an hour late. And that's --

MR. LEVINE: Okay, but just -- I mean, that makes sense to me to have no right to ask, but my view would be the -- the person -- and you may not like this -- but I think the person who has to have the discretion whether to move it up the line is actually the person who denied it. Or Joe's group. Appeals certainly. Basically we get what comes to us. Although -- except rare cases when it comes to us, we handle it. We -- we would not reach in and get a refund case that Bob decides -- oh, Bob decides to leave. That -- Buntjer -- Buntjer who knew I was going to mention him decides shouldn't have a hearing.

You all up and complain to me and I say, "Yeah, that's a" -- I don't know. I still would not call Bob and say, "Give me that case." Because we take what's given to us.
So, I certainly would not want the request to come to us to -- to -- to grant it, because that would require us to do a review to decide whether to do a review.

So, I'm just -- a point, it would still have to be somewhere in the Department to pass on -- and -- and I think that if they had the right, they would still exercise it properly, because in many cases they figure this is a questionable case, just move it to Appeals and wash our hands of it. Argue, and not have to worry about it.

So, I think that that still works well, but that is what I would do.

MR. VINATIERI: I think in that -- there is, and I think Brad is correct there, I don't -- I didn't find a statutory right to appeal an BFT penalty. But -- so -- so, it's not there. But I think on the other hand if we -- if there is some process that on certain situations would allow the right, whether it be the size of the -- the penalty or the circumstances of the penalty, and maybe Sales and Use Tax Department is not -- they don't feel good about relieving that penalty, then in that situation let Appeals do it after both parties have had an opportunity to set forth their position.

MR. YOUNG: Well -- this is Joe. But generally, you know, the Department's policy on relief of penalty request have been very generous. So,
the denial rate, even though the number of cases are
very big, but the denial rate is relatively small in
comparison to the total numbers.

So --

MS. ARMENTA-ROBERTS: That means less hearings
then.

MR. YOUNG: Well, true. But then, you know,
like you said, it's relative, also, because, you know,
we have so many cases that, you know -- there's still
going to be a workload issue.

But like I said to that, because of our liberal
policy with the relief requests, generally that most of
the cases are granted. And especially the first
time offender, that -- usually that we allow them a
little bit of break. But your repeat offenders, even
though there are circumstances that could justify
relief, but because, you know, you repeated so many
times, how many times is enough, that kind of view.

So, there's some discretion in there. But if
we deny it, generally the reason is pretty bad.

MR. LEVINE: So, you're saying that the
change -- it's going to be a rare case given that you've
already granted as many as you could, that you would
ever feel uneasy enough about a denial that you'd think
it's worthwhile to move it on?

MR. YOUNG: The chances are no.

That's -- that's my personal feeling, based on
the cases that I have reviewed.
MR. LEVINE: And, you know, just sitting -- and
I'm sure you've both seen this just sitting in the
Boardroom, just anecdotal, my recollection is the Board
Members have questioned grants more than denials. "Why
are you granting this?" "You're denying that, why
aren't you denying this, too?"

MS. ARMENTA-ROBERTS: That's which Board?
MR. LEVINE: I think that -- I think even --
even --

MS. ARMENTA-ROBERTS: And which Board Members?
MR. LEVINE: -- probably Dean Andal had done
that. But I don't remember -- but I've heard a few
Board Members bring that up of not too -- more often
than the reverse. But that's just my recollection.

MS. ARMENTA-ROBERTS: I -- I don't know that I
would agree with that.

MR. HELLER: We'll take the comments and we'll
try to look into seeing if there's something we can
develop.

MR. VINATIERI: I'm sorry, one last thing.
See, Joe, I hear what you're saying in terms about how
you've been liberal and that.

(Whereupon a phone rang.)
MR. VINATIERI: Hello.
MR. LEVINE: Come in.
MR. VINATIERI: Over. Those of us on this
side, I'm not aware of what your policies are or how
many are granted or how many are not granted and all

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that kind of thing.

I mean, I -- that's not a statistic that is -- is widely known. And so, I -- if -- I'm assuming
everything you say is correct. That's good, I like that
because I think there needs to be liberality when it
comes to first time or extenuating circumstances and all
that.

But the -- the problem is we're -- we're
looking at this here in the black and white, and that's
the institutional knowledge. And, you know, I don't
have that.

MR. YOUNG: Like you said earlier, you know,
obviously institutional knowledge is great, but when
there's no statute to allow a -- any further hearing
other than, you know, after the denial, I think we have
to stick with that in the Rule of Practice.

Otherwise -- unless, you know, the Board Member
want to suggest other administrative remedies, that's a
little different story.

But with this Rule of Practice, when there is
no statute to allow such appeal, you know, for a hearing
before the -- the Board, I mean as -- as far as, you
know, staff is concerned, we can't do anything about
that. Unless we're directed by higher up to do so.

And at this point in time, we have not been
directed to do that yet.

But get back to what I said earlier, that we
are adding, you know, the additional step of the -- they
allowed to request for reconsideration, which we didn't
have before. That -- you know, that new information.

Also I want to add that that second step is
going to be approved by the Deputy Director level. So
that you know that we're going to get scrutinized even
further.

So, it's not going to be the same staff person
that will be reviewing it.

MR. VINATIERI: Well, perhaps that -- that
ought to find its way into here. Or maybe you don't
want the straight jacket, but --

MR. YOUNG: No, I don't want a straight jacket.
I have enough straight jacket on me already.

MR. VINATIERI: No comment.

---oOo---
SECTION 2081

MS. PELLEGRINI: Okay. We'll move to Section 2081, Request for Relief For Reasonable Cause.

---oOo---

SECTION 2082

MS. PELLEGRINI: 2082, Request for Relief Due to Unreasonable Error or Delay.

MR. VINATIERI: I had one typo. Item (c) down at the bottom, "be in writing."

---oOo---

SECTION 2083

MS. PELLEGRINI: 2083, Request for Relief due to Reasonable Reliance on Written Advice.

MR. VINATIERI: I had a question relative to item (b) where it says, "Written advice from the Board may only be relied upon by the person to whom it was originally issued or legal or statutory successor to that person."

My -- my question essentially what's being said here is that it's the -- that the person being the taxpayer, the only other people who could rely on that is a successor to that person, who I'm assuming bought the business or stock of goods. Because that's the normal denotation of a successor.

I had a -- it was a unique situation a couple of years ago. You know what, let me just -- I'm going to -- let me withdraw my concern on that and let that go.
---oOo---

SECTION 2084

MS. PELLEGRINI: 2084, Request for Relief Due
to Disaster.

---oOo---

SECTION 2085

MS. PELLEGRINI: 2085, Addresses for Filing

Requests for Relief.

MR. HUDSON: Just one question, going back,
because I'm noticing where we list all these tax
programs over and over again. Do we have to do it that
way or is that --

MR. HELLER: Well, the way that we did it was
not every program has every provision in it, so --

MR. HUDSON: So, you really have to.

MR. HELLER: So, you really have to. Without
doing that, it would either apply broadly -- the way
that it would work is it would fall back on the general
authorizations at the beginning of this part, which says
it applies to all the different taxes and fees.

So, there has to be some way to delineate which
ones it doesn't apply to. And in these particular
choices, I just -- I made a choice to show which ones it
did apply to rather than which ones it didn't apply.

But we'd have to do one or the other, I think,
in most of these cases.

But also I think in many of these cases, what
I'm -- let me point this out, a few of them, like the
disaster relief, for instance, it does -- the statutes
that authorize relief refer to specific penalty
statutes.

And so it also helps by listing the actual
penalty statutes that relief is provided for. So, it
actually has a little extra cross-referencing use to it
besides just showing what -- what programs that relief
applies. Okay?

MR. HUDSON: Excellent.

MS. PELLEGRINI: Okay, 2085.

---o0o---

SECTION 2086

MS. PELLEGRINI: 2086, Assignment of Request
for Relief.

MR. VINATIERI: I had a question relative to
(a)(2). I didn't fully understand what -- what was
being said in (a)(2).

MR. HELLER: Well, in (a)(2) I was trying to
get the idea of basically if a taxpayer has already paid
an amount that they're trying to get relief for, so they
paid this penalty that they're trying to get relief of,
then in fact what they really are is they're really
trying to claim a refund. Because I'm sure that
they -- they hope if relief is granted they are going to
be paid back the money that they paid on a penalty
they're relieved of.

So, what I was really trying to do and probably
didn't do it as artfully as I should have, I tried to
point out that if we get that situation and verify that
there's a claim for refund, basically, being filed, to
treat it as a claim for refund and provide all the
additional process that goes along with reviewing a
claim for refund as opposed to just limiting that
taxpayer to a request for relief.

MR. VINATIERI: Okay. Can -- can I -- just --
just to clarify, can we make it a request for relief of
a previously paid penalty amount?

MR. HELLER: Paid -- sure.

MR. VINATIERI: I think that's what threw me
off. I wasn't -- even though this is a penalty, I
didn't -- wasn't looking at it from that context.

And then the other thing was down here under
item (c) I -- I said, once again, "the assigned staff
will promptly acknowledge receipt." I think that's
what's going on pretty much right now, but I always
liked that word.

MR. LEVINE: Is this supposed to be just for
penalty, or is for penalty and interest?

MR. HELLER: And interest.

MR. LEVINE: You got a choice of four.

MR. HELLER: It would apply to interest, as
well. Just depending on which -- because this is really
dealing with -- this provision 2086 just deals with the
review of requests and it doesn't especially -- it
applies to all the different ones. And some do apply to
just more than penalties. So, David is correct.
So, --

MR. VINATIERI: So, (a)(2) --

MR. HELLER: It's probably --

MS. RUWART: How about -- how about paid --
"amounts paid," you know, "pursuant to this section" or something like that? Like refer it to whatever you were referring to, this article or something.

MR. LEVINE: Well, you know, realistically --

MR. HELLER: -- paid --

MR. LEVINE: -- any amount that's paid that you want back in the claim for refund, and even if it's a 6596 request for relief of tax, it's going to be a claim for refund.

MR. VINATIERI: Right. Right.

MR. LEVINE: I mean, that's just --

MR. VINATIERI: Yeah, I see what you're saying Let's -- let's --

MR. LEVINE: Leave it with nothing or put them all down.

MR. HELLER: Put tax, interest and penalty.

MR. VINATIERI: Why -- why don't you just delete the penalties. I understand what the problem is. ---oOo---
MS. PELLEGRINI: 2087, Reviewing Request for Relief.

MR. VINATIERI: I -- I did have a question on item (d), and that was, as I put here, I said, is there an appeal from the denial? That's the question. Is there any type of relief or appeal? Yeah, when -- if it says "no" -- if someone says "no", then where do you go? Are you basically stuck at that point?

MR. HELLER: Well, I think --

MS. ARMENTA-ROBERTS: It's the penalty stuff?

MR. HELLER: -- there's a waiver -- this is -- well, this is just all request for relief, and I think -- I think the intention was to allow -- basically provide for a -- not a right to an Appeals Conference or oral hearing, but an ability to request one so it could be granted, in our discretion.

And I think they kind of just -- just hang loose at the end there and it doesn't really describe what would happen. So that can be explained further.

MR. VINATIERI: Could you -- why don't you -- when you go back here, why don't you go ahead and just look at that. Because I -- I think there should be some type of opportunity for someone else to look at it.

MS. ARMENTA-ROBERTS: Well, if those penalties -- you said if -- you'd either have to pay it, have it denied -- or pay it and put a claim for refund.
for the payment, and then have that denied and then have
an appeal.

MR. HELLER: That's --

MS. ARMENTA-ROBERTS: Right?

MR. HELLER: -- would get you into the Appeals
Division that -- through that method. But we are
talking about -- back on 2080, we talked about having
some discretion there, and we can tie that back through.
Because that's really dealing with the same article.

MR. VINATIERI: Right.

MR. HELLER: And so that at the end of the
article it wraps you back up with the idea that if you
have done one of -- made a request, that --

MS. ARMENTA-ROBERTS: Right.

And so in -- in the case that I had, I was
under the impression that the reason they had to pay it,
file a claim for refund, and have that denied and go
through the process that way, was because the Board
Members had already agreed with staff on the Consent
agenda. Not because it was a request for relief of a
penalty.

You know, it wasn't clear -- it wasn't clear
why they had to -- that they would have had to do that
regardless, if the Board heard it already or not.

MR. HELLER: Well --

MS. ARMENTA-ROBERTS: So, in that case, the
Board Members had already heard it, it was already in --
in a hearing, and there was no way for staff to fix it
at that point. That was what I was under the
impression, that that's why they had filed -- paid and
filed a claim for refund and go that route.

MR. HELLER: Correct.

MS. ARMENTA-ROBERTS: If they -- if that -- if
the Board hadn't heard it already, there would still be
other remedies. But today it sounds like you're saying,
oh, there wouldn't have been, you still would have to do
that.

MR. LEVINE: Once -- this is similar to like an
RFR or just if the Appeals thinks there's something
wrong with the D & R, as long as we have jurisdiction,
we're going to issue a supplemental whether it helps or
hurts the taxpayer, if we think it's wrong.

And at the point we lose jurisdiction is when
the Board hearing. Certainly Board decision. But once
the Board has heard it, we're not going to -- unless an
unusual case, they say, "Do a supplemental," we do an
analysis.

MS. ARMENTA-ROBERTS: But this was -- this was
a request for relief from penalty and what we were
talking about earlier --

MR. LEVINE: It was on the calendar.

MS. ARMENTA-ROBERTS: -- there was no remedy.

There's no hearing remedy.

MR. LEVINE: Right, but the problem you're
talking about is -- is trying to get a potential remedy
before it's put on the Board consent calendar.
MS. ARMENTA-ROBERTS: The agenda, yes.

MR. LEVINE: Once it's on the Board's calendar, for whatever reason, whether it was a regular thing where the taxpayer could have appealed or whatever -- once it's on the calendar, the Board adopts it --

MS. ARMENTA-ROBERTS: Right.

MR. LEVINE: -- the staff has lost jurisdiction --

MS. ARMENTA-ROBERTS: Right.

MR. LEVINE: -- and really shouldn't be making any changes --

MS. ARMENTA-ROBERTS: Right.

MR. LEVINE: -- even though I think sometimes the Department does when it helps taxpayers, they really shouldn't do anything to that without going back to the Board one way or the other --

MS. ARMENTA-ROBERTS: Right.

MR. LEVINE: -- and saying --

MS. ARMENTA-ROBERTS: Well, I understood that. That's my -- that was the only -- that's what I thought had happened, that's why we had to go the route. I didn't realize that if it hadn't got to the Board there still wouldn't have been a remedy to get to an appeal. And that's what you're saying today, that there is no appeal procedure for a request for -- denials of requests for relief of penalty.

MR. HELLER: There's just no --

MS. ARMENTA-ROBERTS: Other than to pay it,
which --

    MR. SHAH: David, this is Neil. I missed the last part of the answer, but if the Board has denied the penalty on a consent calendar and they paid and filed a claim for refund --

    MR. LEVINE: Oh, no, that's different. We're talking about --

    MR. SHAH: You're talking about staff automatically just states we were going to deny the claim for refund --

    MR. LEVINE: No, no, no, no.

    MR. SHAH: -- the Board decided this.

    MR. LEVINE: I meant once it goes to the Board during that part of the appeal, let's say it's a request for relief before a payment, there's nothing we can do about it without the Board's signing off and -- like sometimes you do it by petition for rehearing. On the consent calendar you wouldn't have that.

    But, yes, they certainly can pay it, file a claim for refund and then it goes back through the process.

    MR. SHAH: But if it's on the consent and it was denied earlier --

    MR. LEVINE: It -- it would -- let's say it was denied on consent and they pay it and ask for a Board hearing, so it comes to Appeals. Appeals does not say, well, Department recommended denial, the Department -- Board agreed, why are you wasting my time? We --
MR. SHAH: And it almost sounds like that's what was happening a few times.

MS. ARMENTA-ROBERTS: No -- Neil, this is Joan. What -- what happened to the taxpayer that I was working with, they -- they filed for a request for relief of penalty, and before -- before they actually had a full explanation of why it was denied, it was recommended by staff on a consent item that -- that the claim -- the request for relief be denied.

And the Board -- the Board approved staff's recommendation and then the taxpayer was notified. And so, it was too late for staff to have any remedies to -- because the Board Members had approved it. So, they had to pay the penalty, file a claim for refund and get back in the appeals process.

But my question was, if they -- if it had not gone to the Board Members and the taxpayer got wind of it, they -- they were communicated with the staff that it was going to be recommended for denial to the Board Members, it sounds like there would not have been a remedy for them to go through the -- into -- get into appeals, anyway. Follow that?

MR. SHAH: Yeah. Now I get it.

MS. ARMENTA-ROBERTS: So -- so I -- and it sounds like there isn't, there is no remedy. So you have to go through the whole long process.

And what -- where Joe was saying if you have somebody that has a million dollars in penalties and
they have to pay it, file a claim for refund, get in the
appeals process, and wait -- and if it's granted then
you got to wait another six, you know, months or not --
or longer to get that money back.

It just seems like there would be a -- good to
have another process.

MR. SHAH: Makes sense.

MR. SMITH: This is Steve Smith. This seems
analogous to a late protest where we don't really have
authority to consider it, but sometimes we do.

MR. HELLER: It's just somewhat analogous,
although we do have some authority in fact. But -- but,
yeah, I mean it's something where -- I think the whole
idea here, though, is it's just there are situations
where the taxpayer is not statutorily entitled
necessarily to the next level of review within a Board,
but it doesn't mean that the Board can't provide that
sort of review.

MR. LEVINE: And, actually, maybe, you don't
remember, but I believe that all requests for relief are
pure delegations of authority, and the only reason the
staff is doing it is because the Board did not want to
hear 10,000 requests for relief and assign it down.

Anything -- the Board can hold a hearing on
anything it has authority to hear.

MR. HELLER: Absolutely.

MR. LEVINE: And certainly it can have hearings
on these. It could require hearings on everything, if
it wanted.

MR. HELLER: Absolutely correct.

MR. VINATIERI: That's a good point.

MR. LEVINE: But that doesn't mean they wouldn't want to provide some mechanism for a discretionary --

MR. VINATIERI: Right.

MR. HELLER: That's right.

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

MS. ARMENTA-ROBERTS: So, is this like a committee -- Business Tax Committee issue or something? Take it elsewhere to see if the Board Members are interested in hearing these type of cases.

MR. HELLER: Well, you know, at this point, I am told --

MS. RUWART: You mean prior to the point they go to refund?

MR. LEVINE: Do you -- do you object to that?

MR. YOUNG: Well, I figure that -- that's an age old problem that many people have been working on it, and we have made several recommendations and got nowhere.

MS. ARMENTA-ROBERTS: I know there's a -- there's an internal -- there's just --

MR. YOUNG: Well, no, actually it's gone a lot higher than that, but --

MR. LEVINE: I'm not sure I follow. I was just wondering if you --
MR. YOUNG: We were working on -- see, just like, you know, this institutional knowledge. Refund claim before there was no Board hearing, no Appeals Conferences. There's no difference. Late protests the same thing. But we granted the claims for refund, we granted the late protests. So we are along the same lines, that these penalty reliefs could work the same way.

But after we work up the papers and have all the information, all the statistics I mentioned, that we present it -- you know, I don't want to tell you how high it went, but it got nowhere. It just -- say "just sit on it."

So, this is where it is right now. So, you know, I'm not the decision-maker here and I -- I'm just gathering the facts and presenting, you know, the -- the Board the number, workload issue, you know, like David mentioned earlier.

So we present all the information. The number of relief requests that we have received. See, not just the $50 -- $50,000 because those are the ones always go to the Board. But we have a lot of other small item, $100, $200, you know, up to $49,999, which the Board never saw. So, you know, those are the issues that, you know, are more encompassing than the big one.

So, -- but we had a lot of those statistics -- like I said, you know, the percentage of denial is very small. But when you look in the relative number of
small claims, that could be a sizeable number.

MR. LEVINE: Are -- are you saying that -- that
the Board didn't want to have any hearings on these?

MR. YOUNG: No, I'm not saying that. I'm not
saying that at all, so --

MS. ARMENTA-ROBERTS: He's cleaning fish.

MR. LEVINE: I didn't understand, Joe.

I was just wondering if the Department has a
problem with -- in theory, then maybe it's just a
theory, in saying -- in allowing the taxpayer to ask you
to forward it on to Appeals even though you're
saying -- even if we have the power, we may never
recommend it because we've given every single one we
think there's any possible chance.

Unless there was some -- I just figured that
if the Department have a problem and it was -- and
people didn't have a problem and it was put in that the
Board wouldn't object to it unless, of course, they got
a bunch of hearings and they were having three-day Board
hearing meetings when they wanted one-day Board
meetings.

You know, and I don't know what workload it
would be. It's not just the big -- some of the small
taxpayers with the $100 penalty who didn't get relief
are going to be as adamant about their right to a Board
hearing, maybe more adamant, than someone with a
representative to say you're going to lose, you can't
win this.
And that's a -- can be a workload issue just -- just responding to these things.

MR. YOUNG: No, I think definitely workload was an issue, as far as the number of cases that we -- you know, we presented to -- you know, to -- to Randy and, you know, presented to Wade and -- you know. As far as I know, we done our job, we done analysis and we presented the facts and we have not heard back as to what we need to do.

So, that's -- that's all I can tell you at this point. So --

MR. HELLER: Well, I think for right now we can do as -- you know, there is language for -- that basically has discretionary language already in 2080. So, we're going to work with that like we already -- based on the earlier comments right now, and try to the extent that that comes along to work it in with -- with the 2087, I believe.

And so that they at least are -- they don't conflict with each other or the person is wondering why it was there. And then to the extent that we're really talking about a broad -- something similar to a statutory right to Appeals Conferences and oral hearings, that's -- it probably would be more appropriate for a petition to the Board or request to the Business Taxes Committee. Or a discussion with the Board Members directly.

And, certainly, you know, we want to get their
input on that before increasing their workload
tremendously or -- and also the rest of their staffs.

MR. LEVINE: Just to -- Joe, you're not
thinking of someone should have an automatic right.
You -- you -- I don't mean to put words in your mouth,
but you accept the need for a discretionary?

MR. VINATIERI: Yes --

MR. LEVINE: So --

MR. VINATIERI: That's fine by me.

MR. LEVINE: -- and you hope that you can
convince them, so --

MS. ARMENTA-ROBERTS: Well, it would be nice to
see what are the internal -- I -- I kind of knew just
from when I worked here, when I worked for Mr. Andal,
that the -- I think it's the -- in Return Analysis, I
think at the time, the people that reviewed EFT
penalties, they had their little guidelines of, you
know, I think it was the first two as long as they were
reasonable cause, they would let -- let it go.

And I think even up to three sometimes, but
it's -- it seems kind of a gray area to -- you know,
what those policies are.

I know they are -- I think they are pretty
liberal, but then sometimes there's very unusual
circumstances that aren't taken into consideration.
And -- and someone that's used to reviewing the -- kind
of, okay, it's once -- three strikes you're out, you
know, they don't look at the -- they don't maybe have
that feel they have the discretion to look at what was
the circumstances on that third time. You know --

MR. LEVINE: But now -- now they all have a
right to ask for reconsideration, right?

MR. YOUNG: Right, right.

MR. LEVINE: Is it only if they have new
evidence? Or can they ask for reconsideration because
they just don't like the --

MR. YOUNG: Well, we put it that, you know,
they should have new information. But generally they
review it anyway, when they ask for request for
reconsideration.

MR. LEVINE: So --

MR. YOUNG: They will go up to the review by
the Deputy Director.

MR. LEVINE: So, you get the situation where
you have the third strike, that the lower level person
is just going to say that's on my list, you lose, it
still -- if you ask for reconsideration, it's still
going to go through a process, end up with the Deputy
Director --

MS. ARMENTA-ROBERTS: Right.

MR. LEVINE: -- who might feel more
comfortable --

MS. ARMENTA-ROBERTS: Granting it.

MR. LEVINE: -- interpreting the guidelines --

MS. ARMENTA-ROBERTS: Right.

MR. LEVINE: -- to cover it.
MS. ARMENTA-ROBERTS: Right. Right. Yeah, because it's -- it's more of a -- I wanted the -- the letter that went out before was just like, sorry -- like, no.

MR. VINATIERI: You lose.

MS. ARMENTA-ROBERTS: No, like a one-sentence or two so you'd know.

And no reason. So, it's unclear whether they even understood what the taxpayer was presenting. Except if -- if they went back and said, we're -- you said this, but we still think you -- you don't deserve because da-da-da-, well at least they'd know whether if they continue to fight it, the rules are this.

MR. HELLER: So, Joan, there's -- basically there is this right essentially after we make our initial determination for everybody requesting --

MR. YOUNG: Yeah, that they -- they could ask for request for reconsideration of the denial.

MR. HELLER: And that just goes to the same Department that's processing the (inaudible) --

MR. YOUNG: But then the -- the final decision will be made by the Deputy Director.

MS. ARMENTA-ROBERTS: Once the Deputy Director makes it, that sounds like that's final and the only recourse is to pay it, file a claim for refund --

MR. YOUNG: Right.

MS. ARMENTA-ROBERTS: -- and go before the Board.
MR. YOUNG: That is still the process.

MR. HELLER: Well, I'm going to definitely add the language about considering it, as well. Because it's just something that --

MR. VINATIERI: Yeah, I think -- I know there's no statutory right. That I think would take care of my concern. So, I know if there's somebody else I can go to other than the initial person who turned it down.

MR. HELLER: Yes.

---oOo---
ARTICLE 5
CLAIMS (INQUIRY) OF INCORRECT OR NON-DISTRIBUTION
OF LOCAL TAX
SECTION 2090

MS. PELLEGRINI: Okay, Article 5, Claims of
Incorrect or Non-distribution of Local Tax.

MR. YOUNG: I think the zip code on the address
is, you know, incorrect.

MS. PELLEGRINI: No, that one is wrong.

MR. KAMP: Yeah, it should be 94279 dash the
MIC number.

MS. PELLEGRINI: Right. This is 2090.

MR. KAMP: I think we should fire Koch, he's
not here.

MR. VINATIERI: Probably should.

MR. LEVINE: This should probably also refer to
1828 for district tax. And in case anyone here actually
cares -- the only person who I know cares is gone -- we
are revising 1807 and 1828, trying to get that moving
along parallel to this.

MS. PELLEGRINI: Hopefully will be entering the
interested parties meeting, we're hoping after the first
of the year. Not before.

---oOo---
ARTICLE 6
APPEALS CONFERENCE
SECTION 2100

MS. PELLEGRINI: So we are now on Article 6, which is the Appeals Conferences. 2100 is the Referral to Appeals Division for Appeals Conference.

MR. VINATIERI: This is Joe. I just had -- this is a question about the language on the last sentence of 2100. And I just put in there "or recommended denial of person's request for relief."

MS. RUWART: The typo part of it?

MR. HELLER: Yes.

MS. RUWART: Oh, yeah, the "e-d" -- you need an "e-d" and then you need to take out an "e-d".

MR. VINATIERI: Exactly.

---oOo---
SECTION 2101

MS. PELLEGRINI: 2101, Notice of Appeals Conference.

MR. VINATIERI: I had a problem with item (c), the last sentence, where it says, "the conference holder may not consider an argument or item of evidence that is withheld from the Hearing Officer until the date of the Appeals Conference or after."

I don't know what that means. I think I know what it means, but I --

MS. RUWART: Is not required to, is that what it means?

MR. HELLER: Where is that? Yeah, we're giving discretion.

MR. VINATIERI: My -- my --

MR. HELLER: You just have an objection to the whole, probably, concept, I would assume.

MR. VINATIERI: I do. I do.

MR. HUDSON: Brad, this didn't have that whole long list of taxes again. Is it liable to be the same as --

MR. HELLER: Of the Appeals Conferences?

MR. HUDSON: Yeah.

MR. HELLER: Yeah, the Appeals Conferences basically -- it deals with it by saying at the top, in 2100, "the petition for redetermination, petition for reconsideration, claim for refund or request for innocent spouse or other equitable relief will be
referred to Appeals." That's what really sets up the jurisdiction of the Appeals Division for reviewing all the -- the types of documents that we're talking about in Part 2.

But it's basically once we've -- we -- basically, all those documents are allowed or I should say people who have filed all those different types of documents requesting review are entitled to go through the Appeals process. And it's really a creature that we've created. It's not the Appeals Division had really established through statute. So, it's not -- there really wasn't a whole lot of statutory authority to break out based on each program.

Does that sound correct to you? That's basically how I saw it.

MR. VINATIERI: I would agree.

MR. HELLER: So we didn't have to go through and say, oh, and there's a special rule for appeals on Diesel Fuel Taxes, since there's no mention in this subdivision about fuel tax at all.

---oOo---
SECTION 2102

MS. PELLEGRINI: 2102, Rescheduling or Postponing Appeals Conference.

MR. VINATIERI: This is Joe. I -- I had a little -- the way it was written up, it didn't look to me like there is that much difference between a reschedule and a postponement. I note that the -- the current language of Regulation 5023, which is Appeals Conference -- splits it -- splits the concept into rescheduling and postponements. And I just -- you know, and, Brad, I'm just wondering if maybe we're bringing more complexity to the situation than we need.

MR. HELLER: I think so. I mean, basically, this really was an attempt to bring -- what?

MS. PELLEGRINI: We handle them differently.

MS. OLSON: There was a distinction made here, and it was a matter of them rescheduling to headquarters, where we are more liberal in the scheduling headquarter conference because we're able to hold conferences in Sacramento.

We only go to the districts -- some of them we only hit the districts one time a year, and that's why when it's inconvenient for the taxpayer we have a more liberal view of rescheduling. Not counting it as a postponement in Sacramento.

MR. LEVINE: You should probably realize -- and correct me if I'm wrong, postponement means it goes back on the shelf.
MS. OLSON: Right.

MS. PELLEGRINI: It goes back on the shelf, that's right.

MR. LEVINE: And reschedule means -- I think it's 30 or 60 days.

MS. PELLEGRINI: It's done within 30 days.

MR. SMITH: It remains with -- what's the name of the conference holder?

MS. PELLEGRINI: The same conference holder, but --

MR. VINATIERI: I --

MS. PELLEGRINI: A postponement means it could be six months before we go back to that particular district again.

MR. VINATIERI: Perhaps you ought to -- what -- what you just said ought to be in here. Because then that -- that makes it real clear.

I -- I didn't realize that -- I guess I intuitively knew that there was a difference between the two, but that -- that makes it real clear.

MS. PELLEGRINI: So, I think it's really expanding on the reschedule part -- rescheduling part.

Not putting it back into the inventory and scheduling within.

MR. VINATIERI: The -- the other concern I had, and I probably didn't put it in here, but we had this discussion -- how many years ago did -- the last time that we did this? Five or six -- seven years ago.
The issue of what is extreme hardship.
MS. PELLEGRINI: No, that was only two years ago.
MR. VINATIERI: Well --
MS. RUWART: I remember that one.
MR. VINATIERI: It seems like a long time ago.
I -- it might have been up a couple times now. In fact, I think it was, you're right, last -- last time.
And of course I'm always bothered by the concept of demonstrating extreme hardship. Other than, you know, the client or you dying, it's not extreme hardship. So --
MR. LEVINE: So you do understand what it means?
MR. VINATIERI: That's an extreme interpretation.
MR. LEVINE: If -- if you can prove it, it won't be possible for me to prove it. If you can meet the requirements, you won't be able to prove it.
MR. VINATIERI: Exactly. That's what's scary. Yeah, I would like to see something a little bit -- whatever extreme hardship is, I'd like it --
MS. ARMENDA-ROBERTS: Defined.
MR. VINATIERI: Yeah.
MR. SHAH: Exampled?
MR. VINATIERI: Yeah, I guess it's -- no, I better not go there. Never mind, I won't say it.
MS. PELLEGRINI: Well, the problem, as you
know, with writing this is that we do have some
criteria. Just so that we can --

MR. SHAH:  Ask for a list of acceptable
excuses.

MS. PELLEGRINI:  And the reason for that is to
ensure that we have consistency between the different
appeal conference schedulers. But then you get into the
situation of, you know, the including but not limited
to --

MR. VINATIERI:  Uh-huh.

MS. PELLEGRINI:  -- and writing a regulation
under that. That's why last time we decided this was
running okay.

MR. VINATIERI:  Is that what we decided?

MS. PELLEGRINI:  Uh-huh.

MR. VINATIERI:  Okay.

I still have some concerns, that's all I can
say.

MS. PELLEGRINI:  Okay.

---oo0---
SECTION 2103

MS. PELLEGRINI: 2013, Expediting an Appeals Conference.

MR. VINATIERI: Yeah, I've -- I've had a problem requesting -- or not a problem, I just requested within 60 days in Sacramento and it has not happened. In fact, the last time was -- it was six months.

So, I -- I'd like the idea that if you request it within six -- 60, you get it within 60 days. That's real good. I think it needs to be followed, is the problem. So, --

MS. PELLEGRINI: New supervisory staff will be happy to do that.

Any complaints, just e-mail me.

MR. VINATIERI: Wow. I'll look -- this is -- I like the way it is, I need -- we just need to follow it.

MS. PELLEGRINI: This is actually putting into a practice that wasn't here before.

MR. VINATIERI: Right.

MS. PELLEGRINI: So that everybody now knows they can do this.

MR. LEVINE: So, Joe, did you have a one-time problem or -- or you've only done this once?

MR. VINATIERI: It -- no, it happened twice.

MR. HELLER: Have you done this often?

MR. VINATIERI: No. No, but -- but --

MS. PELLEGRINI: Usually in Sacramento it's
usually not a problem.

MR. VINATIERI: That's why I was very surprised, because it happened twice. So --

MS. PELLEGRINI: E-mail Diane.

---oOo---
SECTION 2104

MS. PELLEGRINI: Okay. 2104, Conducting the Appeals Conference.

MR. VINATIERI: I had a -- a concern relative to item (b) Audit Representative. And my question was "Where appropriate, a representative of the Board's collection staff will be present at the Appeals Conference instead of a representative from the Board's audit staff."

I'm assuming this has got to be some type of, what, a --

MR. SHAH: Prop 6829.

MR. VINATIERI: Yeah, would this -- successor's liability situation then?

MS. PELLEGRINI: Yes.

MR. LEVINE: 6829 --

MR. SHAH: Yeah, 29.

MR. LEVINE: -- the corporate officer --

MR. VINATIERI: Corporate officer liability.

Okay.

MR. YOUNG: We just say Board representative, also. Staff representative.

MR. VINATIERI: Okay, that's -- that's fine.

And then the other one was down here on (d)(1).

This was -- this statement here was inconsistent with 2101, which I think we deleted -- or at least I suggested that we --

MS. RUWART: With the idea that you're not
going to consider anything that's brought at the time.

Mr. Vinatieri: Right. Right. If we -- if we delete 2101, then there's no -- there's no problem.

Ms. Pellegrini: For sub. (d).

Mr. Vinatieri: Right. So, I -- I objected to 2101(c), that last sentence. And if you delete that, then there is no inconsistency.

Mr. Levine: What about the first part of (c) that says you should get all your documents or all your evidence and arguments within -- I think it means within ten days. You don't have a problem with that one?

Mr. Vinatieri: I'm sorry, which one, Dave?

Mr. Levine: Back on 21, since you're bringing it up again -- 2101(c), the first part says that if you haven't already submitted your written arguments and documentary evidence, you should do it within the time limit specified above, which is within ten days.

Mr. Heller: The time to respond to the notice of --

Court Reporter: Can you speak up?

Ms. Pellegrini: Speak up, please.

Mr. Heller: Well, what he's referring to is it's the language in 2101(c) that talks about -- it's essentially the ten-day period he's referring to, was that you should submit your documents and evidence by the time that you respond to the notice of conference, which is ten days. The response time is a ten-day period from (c). So --