

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION  
450 N STREET  
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT  
JANUARY 31, 2006

ITEM J3  
REQUEST APPROVAL OF NEW RULES  
CHAPTER 1, TITLE  
CHAPTER 2, SALES AND USE TAX, TIMBER YIELD TAX, AND  
SPECIAL TAXES AND FEES

ITEM J4  
STATUS REPORT ON PROPOSED REVISIONS TO  
SBE RULES OF PRACTICE

Reported by: Juli Price Jackson  
CSR No. 5214

P R E S E N T

For the Board  
of Equalization:

John Chiang  
Chairman

Bill Leonard  
Member

Betty T. Yee  
Acting Member

Marcy Jo Mandel  
Appearing for Steve Westly,  
State Controller (per  
Government Code  
Section 7.9)

Deborah Pellegrini  
Chief, Board Proceedings  
Division

Ramon J. Hirsig  
Executive Director

Kristine Cazadd  
Chief Counsel

Bradley Heller

SPEAKER:

Joseph Vinatieri  
Attorney

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1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 JANUARY 31, 2006

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5 MS. PELLEGRINI: The next item is J3 and J4,  
6 and that's to request approval for the BOE rules for the  
7 California Tax Administration and Appellate Review,  
8 Chapter 1, Title, and Chapter 2, Sales and Use Tax  
9 Yield -- Timber Yield Tax, and Special Taxes and Fees;  
10 and also for a status report on the project.

11 And Miss Cazadd will present these items.

12 MS. CAZADD: Good afternoon parts 1 and 2 of  
13 the Rules and Practice are submitted to you this  
14 afternoon for your approval.

15 Part 1 is the statement of intent with regard  
16 to the rules.

17 And Part 2 is the business taxes procedures and  
18 the revisions.

19 And there is a recommendation for a briefing  
20 schedule and alternative -- staff recommends  
21 alternative 1 for your consideration. If the Board  
22 determines today to approve Parts 1 and Part 2, this  
23 will only be a vote of approval, this is not adoption or  
24 direction for authorization for publication.

25 The reason is that based upon our schedule for  
26 the remainder of the rules, we would like to bring all  
27 parts -- Parts 1 through 5 -- to the Board in June, at  
28 the Board's meeting in June for formal adoption. So

1 that once everything is adopted and noticed for  
2 publication, it will move through the OAL process as a  
3 complete package.

4 So, this is brought forward to you because  
5 we've completed the interested parties meetings on this  
6 particular -- these particular sections and we have  
7 consensus from all parties -- taxpayers as well as the  
8 Department.

9 And Carole Ruwart and Brad Heller are here to  
10 answer any questions.

11 MR. CHIANG: Very good.

12 MS. PELLEGRINI: We do not have any speakers  
13 that signed up for this item.

14 Is there anyone who would like to address the  
15 Board on this issue?

16 MR. LEONARD: Mr. Chairman?

17 MR. CHIANG: Yes.

18 MR. LEONARD: I've been trying to better  
19 understand this.

20 And been working and appreciate Ms. Ruwart and  
21 Mr. Heller's work on this. I typed up my notes to hand  
22 out to you and extra copies if Board Proceedings wants  
23 to put some out for others.

24 I am not sure how you best wish to handle it.  
25 I had suggested changes in eight items.

26 MS. MANDEL: Okay, I -- I had talked to staff  
27 because I was reading through these again and there were  
28 some -- there were a bunch of things that I noticed --

1 some of them were grammar, some of them looked like  
2 there were incomplete thoughts.

3 And staff suggested that there would be an  
4 opportunity to sort of go over all of those with them.

5 MR. LEONARD: Right, I had some of those too.

6 MS. MANDEL: You managed to type yours up.

7 MR. LEONARD: This list is a little more policy  
8 than just style. And I am not sure there's any  
9 surprises, but I wanted to put them before the Board and  
10 I appreciate Miss Cazaad's point that -- and I don't  
11 mind voting to move forward. I think this body of work  
12 here is well done, but I would like to bring these  
13 before you and -- either now or whenever you deem  
14 appropriate -- to speak to them.

15 MS. MANDEL: Well, and I noticed just from  
16 looking at it real fast, your first one, I also have an  
17 issue with the staff recommendation on the briefing  
18 schedule.

19 MR. LEONARD: Right.

20 There is one point and that's my No. 1, in  
21 which the staff has given us three alternatives,  
22 recommended one of the three, it's the only point in the  
23 whole document in which we've been given choices.

24 MR. CHIANG: What's the sense of the Board  
25 about how we want to handle these? Do you want to  
26 continue? Do you want to discuss them at a future date?

27 MS. PELLEGRINI: In addition, Mr. Vinatieri has  
28 -- would like to speak, make a public comment.

1 MR. LEONARD: My comments got you to do that?

2 MS. MANDEL: Well, on the briefing schedule, my  
3 concern with the staff recommendation, which was a  
4 briefing schedule that keyed off D & R was that was sort  
5 of -- had several things.

6 The first was the D & R is not necessarily done  
7 when its's issued because there is often opportunity  
8 from the D & R for the taxpayer to bring in further  
9 documentation. There is often in the D & R a request to  
10 the Department to re-audit.

11 So, IT'S sort of not a done thing when the  
12 D & R is issued.

13 MR. LEONARD: Right.

14 MS. MANDEL: Also you might have a lot of  
15 unrepresented taxpayers or, perhaps taxpayers who  
16 weren't happy with the representation, who, when they  
17 see the D & R, think, oh, my goodness, if I am to go  
18 forward to a Board hearing, I really better get some big  
19 guns on my side -- or at least some guns on my side.  
20 And they need time to, you know, hire counsel or find a  
21 CPA or whatever they need to do before they -- they  
22 brief and they also need time to digest the D & R, even  
23 if it is a done deal before they decide whether they're  
24 going to go ahead and write a brief.

25 So, my preference was for something like we  
26 have currently, that keys off of the hearing date for  
27 the briefing.

28 Now what did hear in the interested parties

1 process was that people wanted to have a little more  
2 time for that briefing and also maybe there was some  
3 interest from the Board's side that the last brief not  
4 come in, you know, five days before the hearing or  
5 whatever.

6 So, I know you've got alternative 3 because of  
7 the current briefing schedule.

8 MR. LEONARD: Status quo.

9 MS. MANDEL: because of what I had heard in the  
10 interested parties meetings of the -- you know, have a  
11 little bit more time, I kind of went towards  
12 alternative 2. I didn't really like the alternative 1  
13 off the D & R.

14 MR, LEONARD: I share that alternative 1 and  
15 the reason I recommended to the Board alternative 3,  
16 which is basically the current process is I thought we  
17 were also pretty flexible as a Board in scheduling the  
18 timing of briefs, even allowing late briefs with proper  
19 notice or a bigger case asking for more time to brief  
20 that called the Chairman, talked to him and, basically,  
21 done that we -- that this is what we'd like to see  
22 happen, which is what I think our rules of practice  
23 should be, but it's also part of our culture.

24 We want to get at the truth and we'll be  
25 flexible to do that.

26 And the other two seem to provide other ways of  
27 trying to do the same thing that wouldn't be as cost  
28 effective on most of the cases.

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MR. CHIANG: Joe?

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JOSEPH VINATIERI

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MR. VINATIERI: Yes, very quickly, I've been involved in the rules of practice from when Don Hennessey and --

MR. CHIANG: Joe, your name for the record, please?

MR. VINATIERI: I'm sorry, Joe Vinatieri.

For purposes of Matt Fong and Don Hennessey, back in -- a long time ago.

And I just wanted to indicate I am one of the proponents that responded probably more than anybody else on at least this section of the rules. And I have gone through them and I obviously don't see Mr. Leonard's -- haven't seen his changes yet, but just as a general proposition, the rules, at least relative to the changes that I had proposed, it looked -- most of them had been incorporated into the draft, which I appreciate.

There is a couple of areas that I think we might end up agreeing to disagree, but then you have to ask yourself, "How material is it in light of the large undertaking that is taking place here?"

So, I just wanted to indicate that I'm relatively pleased with what I have seen so far. And I appreciate the fact the way Mr. Heller and staff has

1 handled this so far because it's been very wide open and  
2 as Marcy -- excuse me, as Miss Mandel knows, we've spent  
3 a little bit of time around the table knocking these  
4 things out.

5 And I was concerned about trying to do this too  
6 fast, especially before Christmas, and I appreciate the  
7 fact now that it's been -- and I think we're going to  
8 get it done and it will be done probably with even a  
9 little bit better quality because we do have time now.

10 So, thank you.

11 MR. HELLER: Mr. Chairman, could I address the  
12 Board briefly?

13 MR. CHIANG: Please?

14 MR. HELLER: First off, I just wanted to say  
15 and point out also -- and I meant to speak before Joe --  
16 but I wanted to thank Joe Vinatieri who has provided  
17 written comments to every one of our proposed  
18 regulations and has been very helpful throughout the  
19 process, also Abe Golomb, Joan Armenta-Roberts, Kai  
20 Mickey, Marty Dakessian, Kenneth Davis from the  
21 Franchise Tax Board and also on our staff David Levine,  
22 Phil Spelman and Arlo Gilbert, who have all been  
23 invaluable in the process.

24 And I think it's really generated a much better  
25 product, even if it's not absolutely complete at this  
26 time, although I kind of hoped it was.

27 But, anyhow, on the briefing issue, though, I  
28 just wanted to address what staff's thoughts were and I

1 think that really David Levine did raise the same exact  
2 concerns that Marcy's -- Miss Mandel is raising right  
3 now.

4 And, you know, our feeling is that people are  
5 just essentially just tied to what we currently do, but  
6 if the D & Rs did advise taxpayers on what the options  
7 were at the point the D & R was issued, which would, I  
8 think, be helpful to taxpayers anyway to advise them  
9 what all their options are, whether we've asked for a  
10 re-audit, where we're requesting additional information  
11 from the Department or the taxpayer, it would be  
12 beneficial to explain that the taxpayer could file a  
13 request for reconsideration and if it did so, then the  
14 briefing period wouldn't start.

15 If no one files a request for reconsideration,  
16 then your brief would be due. Also we can do other  
17 things here to, like, for instance, stretch the period  
18 out to sixty days for the original brief so that we  
19 would know if somebody had filed additional documents or  
20 requested relief for anything -- or requested  
21 reconsideration.

22 So, there are ways to move with alternative 3  
23 and still treat it as an improvement. The reason that  
24 Staff recommended it, although --

25 MS. MANDEL: You mean --

26 MR. HELLER: -- I'm sorry, they were renumbered  
27 recently, so, I apologize.

28 Yes, alternative 1, which has the -- which keys

1 off the decision and recommendation, but essentially  
2 what we were thinking as staff is that we were looking  
3 more at the appeals from the Franchise Tax Board  
4 approach, which does complete the briefing process  
5 before we schedule and oral hearing. And that provides  
6 the Appeals Division with all of the information that it  
7 needs to prepare the hearing summary and provides for  
8 more information and it also gives the Appeals Division  
9 the time to identify any information that hasn't been  
10 included in a briefing that they may want to request or  
11 that they may want to recommend that the Board request.

12 Under our current system, we like -- like we  
13 were saying earlier, we may not get that final brief  
14 until at the -- under our current schedule, fifteen days  
15 before the hearing, which essentially gives the Appeals  
16 Division a real hurry up and look, don't ask for  
17 anything unless you have to kind of an attitude because  
18 we've already scheduled a hearing and we're going to  
19 have to change our whole calendar, we're going to have  
20 to re-notice the taxpayer and they're going to have to  
21 shift all their plans if we decide to go ahead and  
22 postpone things to go ahead and get additional  
23 information.

24 Under our current -- under Alternative 1  
25 everything would be completed before we scheduled the  
26 hearing. And we would have all of the information so  
27 that cases could come in a more organize fashion and  
28 that all of the information that would be relevant would

1 already be provided in advance.

2           However, with that aside, those were just the  
3 basis for our recommendation. We do think that, you  
4 know, Alternative 2 would also be good. And as  
5 Miss Mandel pointed out, there was some support from the  
6 interested parties for at least a little bit more time,  
7 especially since, as far as I understand it, their time  
8 period runs from the mailing of the notice of hearing.

9           And, so, they may or may not get that notice  
10 for a few days, five days, whatever, but their time is  
11 running. And so, in many cases they may not get exactly  
12 the same amount of time as the Department to respond,  
13 even though it looks like everybody has the same amount  
14 of time. In fact, the Department is told to respond  
15 from when the brief comes into the Board of  
16 Equalization. So, there is only lag time between Board  
17 Proceedings talking to the Department and the Department  
18 starting to prepare the brief; whereas the taxpayer has  
19 to wait for the mail to come and their representative to  
20 get the -- get notice of the hearing and then start the  
21 briefing process.

22           So, there are some hitches either way that we  
23 go and we just thought that would be an improvement and  
24 we did expect to have to do a little work to make it --  
25 to implement it. But that was our suggestion there.

26           And, in addition, staff would be more than  
27 happy to work with Mr. Leonard's comments and  
28 Miss Mandel's comments to revise this proposal.

1           And we could probably present it either at the  
2 next Board meeting or the one after that if we want to  
3 make sure that, you know, we've had a chance to share  
4 the revisions before we bring it back for a full Board  
5 meeting and approval, so that that both Mr. Leonard and  
6 Miss Mandel can be sure that we have incorporated their  
7 comments in the manner that they intended them to be  
8 incorporated and then present it Board again or --  
9 either on those particular provisions or on the entire  
10 proposal for those two chapters, if that's what would be  
11 appropriate.

12           MR. CHIANG: Thank you. Any other questions?  
13           Anybody want to take any action?

14           MR. LEONARD: Just to further comment on the  
15 change in briefing schedule, absent a compelling reason,  
16 I like the accelerated one, with flexibility.

17           I wish we could do a better job with our  
18 taxpayers in telling them that the interest is still  
19 accruing on most of these appeals unless they paid.

20           Now under the amnesty penalty period we could  
21 be talking about a lot of money and in going from a 45  
22 day process to a 75 day process could make -- could make  
23 substantial difference in interest and if it wasn't  
24 necessary and that the briefing schedule could be  
25 truncated because it was a easy factual or easy legal  
26 case, I would hope we would be able to do that.

27           But if we adopt the one that say no --  
28 basically, the maximum becomes the minimum. If it's

1 thirty days for each side, you're going to take it all.  
2 And you're not going to start the clock again until the  
3 time you've taken it all. So, you have that issue. If  
4 it's fifteen days, you'll do it in fifteen and so will  
5 the taxpayer.

6 So, that's the -- as you think -- I appreciate  
7 the offer and would love to sit down with you, but that  
8 was my concern -- and maybe do some research on how many  
9 of these have interest running, how many of these really  
10 had a problem getting done in the fifteen day deadline  
11 on Department side, on taxpayer side or came in -- just  
12 by postmark came in right at that point of submission  
13 date and how many were well within the period -- just to  
14 get a sense of the workload as well as the accrued  
15 interest issue.

16 MS. CAZADD: Given the issues here before you,  
17 would you like us to bring this back to you next month  
18 with additional work?

19 MS. YEE: I guess I have a question.

20 Is there some magic with the June time frame?

21 MS. CAZADD: Not necessarily, that's just the  
22 schedule that we agreed with interested parties that --  
23 that we would be able to accomplish the work by that  
24 time.

25 We have schedule tentatively another interested  
26 parties meeting on the Part 3, a separate one on Part 4  
27 and 5.

28 So, in order to schedule those and make further

1 changes and then bring those changes in modified format  
2 back to Board, we assume that we would need that amount  
3 of time.

4 MS. YEE: Okay, I mean -- I think given the  
5 level of interest in trying to look at some of these  
6 proposed amendments in more detail, I think we should  
7 defer action with respect to approval of the first two  
8 parts and have an opportunity to at least get some  
9 better understanding as to, certainly, Mr. Leonard's  
10 proposed amendments and comments as well.

11 I mean I just don't want the conversation to be  
12 piecemeal. I think it's -- I support the notion that  
13 all of the different parts of the rules move together  
14 ultimately to OAL, but I don't think we should cut  
15 ourselves short with respect to having the opportunity  
16 to get some of these comments more fully.

17 MS. CAZADD: All right, I'll be happy to do  
18 that.

19 MR. CHIANG: Okay.

20 MS. MANDEL: Defer.

21 MR. CHIANG: Next -- just put it over until  
22 next month?

23 MS. YEE: I mean I don't know that I want to  
24 put a time frame on it. I really would like to have  
25 some discussion and really understand the rationale  
26 behind any proposals to amend what's currently in place.

27 So, whatever that process is -- it may be part  
28 of -- incorporated into the next interested parties

1 meeting -- since these look like they're discrete issues  
2 that are being raised and there might be others that may  
3 want to raise --

4 MS. CAZADD: Certainly --

5 MS. YEE: -- additional ones.

6 MS. CAZADD: -- we can do that. That's fine.

7 And then I think our schedule for returning to  
8 the Board the next time would be April, with part 3.

9 So, we could -- if it's your decision --  
10 to bring back Parts 1 and 2 at that time, at least to  
11 air it and let you know where we are and what the  
12 progress is.

13 MS. MANDEL: Right, and if -- if -- I mean,  
14 Mr. Leonard's are -- you know, they're more  
15 policy-oriented types of things. So, if the rules stay  
16 recommended the way it is, presumably, unless he gets an  
17 explanation that he's satisfied with, he's still going  
18 to have the issue and then the Board could just discuss  
19 and decide which one of these are left.

20 MR. LEONARD: Exactly.

21 MS. MANDEL: Is that your idea?

22 MS. CAZADD: Okay.

23 MR. LEONARD: And if you want to schedule,  
24 Mr. Chairman, for the hearing, the March hearing, I will  
25 do my work to be ready -- be ready for them.

26 MR. CHIANG: Whenever you're ready.

27 MS. CAZADD: Okay. We'll do that. We'll work  
28 together and figure it out and bring it back to you when

1 it's ready.

2 MR. CHIANG: Very good.

3 Next item.

4 MR. LEONARD: Mr. Chairman, I just had an idea,  
5 I'm not sure how to deal with this, I only brought so  
6 many copies -- I will make -- if anybody here wants one,  
7 I will get them to them -- but maybe Mr. Hirsig, could  
8 you will help me post these on my web page so it's not  
9 confused that it's anybody else's proposal?

10 If I get it on my web page and we could direct  
11 people that are searching for comments on this that they  
12 can get it for themselves?

13 MR. HIRSIG: I can do that.

14 MR. LEONARD: Thank you very much.

15 So, for everybody that's listening, it should  
16 be up on the internet soon.

17 MS. CAZADD: Thank you very much.

18 MR. CHIANG: Thank you.

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1 REPORTER' SCERTIFICATE

2  
3 State of California )  
4 ) ss  
5 County of Sacramento )  
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7 I, JULI PRICE JACKSON Hearing Reporter for the  
8 California State Board of Equalization certify that on  
9 JANUARY 31, 2006 I recorded verbatim, in shorthand, to  
10 the best of my ability, the proceedings in the  
11 above-entitled hearing; that I transcribed the shorthand  
12 writing into typewriting; and that the preceding pages 1  
13 through 19 constitute a complete and accurate  
14 transcription of the shorthand writing.  
15

16 Dated: March 12, 2006  
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21 JULI PRICE JACKSON  
22 Hearing Reporter  
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