

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

MARCH 20, 2007

ITEM J1

RULEMAKING

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

CHAPTER 3: PROPERTY TAX

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

For the Board
of Equalization:

Betty Yee
Chairwoman

Judy Chu
Vice-Chair

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John Chiang,
State Controller (per
Government Code
Section 7.9)

Gary Evans, Acting
Chief, Board Proceedings
Division

Board of Equalization
Staff:

Kristine Cazadd
Chief Counsel

Robert Lambert
Tax Counsel

Carole Ruwart
Tax Counsel

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1 Sacramento, California

2 March 20, 2007

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4 MR. EVANS: Next item is the Chief Counsel
5 Matters. Item J1 is an update or overview of the Board
6 of Equalization Rules for Tax Appeals, Chapter 3,
7 Property Tax.

8 Ms. Cazadd and Mr. Lambert will make the
9 presentation, along with Ms. Ruwart.

10 MS. CAZADD: Good afternoon. At the February
11 Board meeting the Board instructed staff to present some
12 alternatives to the current appeals process that's
13 written into the proposed Chapter 3 of the Rules for Tax
14 Appeals for State assessee petitions for reassessment.

15 And so, today we present -- we are presenting
16 you with three alternatives, all three of which are
17 discretionary rather than mandatory, and all three of
18 which would require the Division -- Valuation Division,
19 now the State Assessed Properties Division -- or to
20 allow them just to submit their writeups directly to the
21 Appeals Conference holders, the Appeals Division, rather
22 than going through a write-up -- separate write-up
23 process with the Tax and Fees Division, as we did last
24 year.

25 So, Bob Lambert and Carole Ruwart will address
26 the details of this.

27 MR. LAMBERT: Well, there's basically two areas
28 for decision. We're dealing just with Chapter 3. The

1 first issue has to do with under what circumstances
2 would there be a conference? Is it discretionary and if
3 so, at whose discretion?

4 And there's a chart attached to the paperwork
5 laying out the options.

6 Second issue would be, you know, does the Board
7 want -- want to give staff further direction as to
8 whether or not they want a firm recommendation from the
9 Appeals Division or not. Those are the two issues that
10 were raised last time. So those are the issues we have
11 today.

12 MS. YEE: Okay. Questions or comments from the
13 Members?

14 MS. CHU: Well, I'll just give my opinion.
15 I -- I think Alternative 1 is something I would favor.
16 I already think it's a step forward to make these
17 Appeals Conferences discretionary and not mandatory.

18 But I do think that on one hand you have to
19 have the ability for the taxpayer to -- to be able to
20 have some input into this process and -- and ask for an
21 appeals hearing.

22 At the same time, I would want to make sure
23 that if the Appeals staff has some kind of concern that
24 they can address it, as well. So, that's why I think
25 it's important to have both parties in that process.

26 On the second issue, it seems to me that most
27 everything else has a recommendation from the staff.
28 Everything that I've seen ends up with some sort of

1 recommendation. Well, anyway, just in -- in my years --
2 my 20 years being in elected office, normally when I see
3 a staff report I see a recommendation. So, I'm just
4 going from my experience.

5 And I would tend to think that it would be
6 better to have a staff recommendation.

7 MS. YEE: In this case when we're talking about
8 staff recommendation, is it the Valuation staff in your
9 alternative or what --

10 MR. LAMBERT: No, it would be Appeals Division.

11 MS. YEE: The Appeals Division.

12 MR. LAMBERT: Yeah, the summary would -- you
13 know, right now actually there's two types of documents
14 you get. One is a -- like a summary decision where it's
15 a non-appearance matter and there's definitely a
16 recommendation there because it's non-appearance.

17 But in the other type when there's an oral
18 hearing, there's a summary. And sometimes it gives
19 questions or issues or things that the -- that the
20 Appeals staff thinks are important, but they generally
21 don't say, "We recommend," you know, "the following
22 result."

23 MS. MANDEL: You know, you might recall some of
24 the comments that I've made before on this. Of course
25 with Alternative 3 taxpayer does have the burden of
26 proof, and so I think if the taxpayer feels that an
27 Appeals Conference would be useful, then fine. But if
28 they don't feel that an Appeals Conference would be

1 useful then, you know, they have the burden of proof and
2 so be it.

3 But property tax matters is the core
4 constitutional function of this Board. And for -- what
5 we get from staff for those property tax hearings, I
6 think the kinds of things that I've said before on the
7 issue is that, you know, I guess I can say this because
8 I'm a lawyer -- you know, putting another level of
9 lawyers making -- effectively making a decision up
10 before this Board when what's coming forward is -- on
11 the property tax cases, leaving aside -- most of the
12 ones that we see are unitary assessment cases that --
13 where the Board, itself, sitting as the Assessor, doing
14 its major job, the first job that it ever got, values
15 the property owned and used by those companies.

16 They come forward because they don't like the --
17 they think that there's something wrong with the
18 assessment. Our Valuation staff, if we get to hearing,
19 is there to defend the Board's original decision from
20 May. There may have been some adjustments that are
21 made. They sometimes reach some kind of agreement, and
22 the taxpayer presents their case. But that it is really
23 the Board that should make that decision as to whether
24 the Board's own assessment from May was correct or was
25 in some way based on, you know, new information, things
26 we didn't know, hadn't heard that argument before or
27 whatever basis -- but the Board is actually deciding a
28 case on which the Board, itself, had originally set the

1 number. Which is one reason why I really call it our
2 core constitutional function.

3 And to -- what I think -- you know, in some
4 other perhaps heated or whatever relevance I refer to as
5 we should not effectively delegate that to our Appeals
6 staff.

7 And so, those were the reasons why in these
8 cases -- and the reason I shook my head no is, as
9 Mr. Lambert described, we do have different types -- and
10 you've, you know, seen some of them -- of cases that we
11 get here. And we get different types of summaries.

12 And that appeals from Franchise Tax Board, the
13 hearing summaries, although I'm sure everybody who has
14 read one thinks one way or another about whether they
15 can discern how Appeals staff really feels about the
16 case, but there's not a definite recommendation in
17 those.

18 And in fact those have always -- there's always
19 been an effort to make sure that those are objective, if
20 you will, as opposed to the Business Tax cases where a
21 long time ago, and that's a different sort of statutory
22 function, the Board set up the Appeals Division or
23 whatever the predecessor of the Appeals Division was
24 called, and those do come forward with Decision and
25 Recommendations on them and a lot of times they are
26 resolved.

27 But because of the particular nature of
28 property tax cases, we felt that having -- it's not to

1 say that a case, if it winds up at an Appeals
2 Conference, can't find itself resolved. Or winding up
3 on a non-appearance calendar or can't find some issues
4 resolved between the parties. We have seen that happen
5 even before that Appeals Conference process was put in
6 last year. It feels like so long ago.

7 MS. YEE: Okay. Very good. Other questions or
8 comments?

9 Why don't we take each of these issues
10 separately. On the first issue of the discretionary
11 Appeals Conferences, is there a motion?

12 MS. MANDEL: I'll move Alternative 3, which is
13 taxpayer election.

14 MS. YEE: Okay. We have a motion by Ms. Mandel
15 to move Alternative 3. I will second that motion.

16 Please call the roll.

17 MR. EVANS: MS. Yee

18 MS. YEE: Aye.

19 MR. EVANS: Ms. Steel.

20 MS. STEEL: No.

21 MR. EVANS: Ms. Chu

22 MS. CHU: No.

23 MR. EVANS: Ms. Mandel

24 MS. MANDEL: Aye.

25 MR. EVANS: Motion fails

26 MS. YEE: Okay. I think we may have to put
27 this over until Mr. Leonard returns.

28 Okay, I'll put this matter --

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MS. CAZADD: Thank you very much.

MR. EVANS: Bring this back April?

MS. YEE: Yes, please.

MS. CAZADD: Thank you very much.

MS. YEE: Thank you.

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1 REPORTER'S CERTIFICATE

2
3 State of California)
4) ss.
5 County of Sacramento)
6

7 I, BEVERLY D. TOMS, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 March 20, 2007 I recorded verbatim, in shorthand, to the
10 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 9 pages
13 constitute a complete and accurate transcription of the
14 shorthand writing.

15
16 Dated: April 5, 2007.
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21 _____
22 BEVERLY D. TOMS
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