

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

MAY 17, 2006

ITEM J1

CHIEF COUNSEL MATTERS

RULEMAKING

PROPOSED AMENDMENTS TO STATE BOARD OF

EQUALIZATION RULES OF PRACTICE

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

For the Board  
of Equalization:

John Chiang  
Chairman

Claude Parrish  
Vice-Chair

Bill Leonard  
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Betty T. Yee  
Acting Member

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

Gary Evans  
Acting Chief, Board  
Proceedings Division

For Board of Equalization  
Staff:

Kristine Cazadd  
Chief Counsel

Lou Ambrose

Carole Ruwart

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1 Sacramento, California

2 May 17, 2006

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4 MR. EVANS: Next item are the Chief Counsel  
5 Matters.

6 MR. CHIANG: Okay. Very good.

7 MR. EVANS: J1 is the Request Concept Approval  
8 for Revised Procedures for Property Tax Appeals and new  
9 Rules of Practice, Chapter 3, Property Tax. Ms. Cazadd  
10 will make the presentation.

11 MS. CAZADD: Good afternoon.

12 MR. EVANS: Are there any speakers for this  
13 item?

14 Mr. Michaels.

15 MS. CAZADD: Good afternoon, Mr. Chairman,  
16 Members. For your approval this afternoon we are  
17 presenting to you a memo describing the concept that we  
18 have in mind for the State assessee -- and actually all  
19 property tax appeals. And the way that we would proceed  
20 this year. And also the way that we would develop the  
21 language -- in fact I've already developed it for  
22 purposes of Chapter 3 in the new Rules of Practice.

23 In the interested parties meetings that have  
24 occurred over the past six to nine months, it was agreed  
25 by all parties that State assessees would be permitted  
26 to have appeals conferences. And given our last  
27 interested parties meeting, those conferences would be  
28 discretionary upon request.

1           After further consideration, however, the staff  
2 has determined that Appeals Conferences are extremely  
3 valuable tools, in preparing matters for the Board's  
4 consideration, particularly in oral hearings. And that  
5 there are sufficient resources and that there is time in  
6 the calendar year to accommodate Appeals Conferences for  
7 a majority of the State assessee petitions.

8           Therefore, staff is requesting in this concept  
9 approval memo that has been presented to you approval  
10 for holding Appeals Conferences for all State assessees  
11 who request an oral hearing before the Board, the --  
12 beginning with this year.

13           So, the difference that you will see -- if you  
14 approve this concept, the difference that you will see  
15 between last year and this year is that all of the State  
16 assessees who check the box, if you will, on the  
17 petition for an oral hearing will also receive an  
18 Appeals Conference.

19           That gives the opportunity to the Appeals  
20 Conference holder to narrow the issues and possibly  
21 resolve the matter before it is brought to the Board.

22           For detailed questions and specific -- a  
23 specific summary of all the procedures, Tax Counsel Lou  
24 Ambrose is here and Senior Tax Counsel Carole Ruwart.

25           MR. CHIANG: Okay. Any questions? Comments?  
26 Is there a motion?

27           MS. MANDEL: You have a speaker.

28           MR. EVANS: Mr. Michaels would like to make a

1 comment.

2 MR. CHIANG: Oh, I'm sorry. Peter.

3 MR. MICHAELS: Thank you. For the record, this  
4 is Peter Michaels from the San Francisco law firm  
5 Cooper, White and Cooper. And I was actually -- I've  
6 worked collaboratively with staff, and this project has  
7 been ongoing now for a considerable period of time. And  
8 I was -- and I'm supportive of their efforts and think  
9 they're doing this in the best of good faith, and was  
10 asked to weigh in here since I will be working with a  
11 number of the State assessesees.

12 And in concept I would say that this is a  
13 experiment that we're willing and agreeable to work on  
14 with the staff and with the Board. And certainly this  
15 is a tentative fix and an experimental tentative fix at  
16 that, but we support what they're trying -- I support  
17 what they are attempting to accomplish, even though it's  
18 still very much in development.

19 The one thing I noticed here just now, and  
20 perhaps either one of -- one of the staff attorneys can  
21 address it, when Ms. Cazadd spoke a second ago she  
22 mentioned that whoever checks the box for a hearing will  
23 get a conference, but the conceptual memo, Kristine,  
24 also says, "For each petition that -- petition that  
25 requests an appeal conference but not an oral hearing."

26 And, actually, based on what's happened earlier  
27 today, I envision a number of appeals being filed where  
28 no hearing is requested but a conference would certainly

1 be welcome. We would like a conference but probably  
2 don't want to take the Board's time or spend the money,  
3 frankly, on a hearing.

4 So, is that in or out? You see what I'm  
5 talking about here on the top of page 3?

6 MS. CAZADD: Yes, I believe that's in. That  
7 is --

8 MR. MICHAELS: Okay. So, if we file an appeal,  
9 don't say that we would -- don't request a hearing, that  
10 would fit into this conference mode?

11 MS. CAZADD: That is correct.

12 The oral hearings -- if you request an oral  
13 hearing, as I understand it the Appeals Conference would  
14 be mandatory. If you don't request an oral hearing,  
15 it's written only that you want an appeal conference,  
16 then that's discretionary.

17 MR. MICHAELS: And presumably the substance of  
18 that conference would be reflected in whatever  
19 recommendation is made when the case is decided on the  
20 writings rather than on the oral arguments?

21 MS. CAZADD: That is correct. Lou, perhaps you  
22 could address that in more detail.

23 MR. AMBROSE: Right, that's correct. That  
24 would be the whole purpose of the conference is to  
25 develop a record and narrow the issues and so forth.

26 MR. MICHAELS: Yes. Well, I mean this puts a  
27 time crunch on us, we all know that, I think, and  
28 there's an inherent time crunch on State assessees,

1 anyway where by law you must decide the appeals during  
2 the calendar year, in this case the last Board meeting  
3 of the year is in early December.

4 MS. CAZADD: Early December.

5 MR. MICHAELS: And we're -- if we have these  
6 conferences we're not going to have the actual -- first  
7 actual Board hearing on the State assessee appeal at the  
8 earliest until October, is that right?

9 MR. AMBROSE: Actually, it would be November.

10 MR. MICHAELS: November would be the earliest.  
11 And the latest is December. So, it -- you know, I'm --  
12 I'm supportive of this but it -- we should go into it  
13 eyes wide open. It's going to put a time crunch on  
14 the -- on the -- on the process in -- in some respects,  
15 I would say.

16 In a way it will be advantageous, too, because  
17 it will accelerate much of the discussion at the front  
18 end and then we'll be talking in July and in August  
19 instead of waiting until October to start talking. We  
20 hope.

21 MS. CAZADD: That -- actually, that's part of  
22 the objectives. And one of the things that we  
23 considered was moving the time crunch from the last two  
24 months, November and December, to the fall, and getting  
25 the presentation of the evidence and going through all  
26 of the arguments at the earlier stage rather than later.

27 MS. MANDEL: I have a couple of questions.  
28 In -- well, I'll start from the back and go to the

1 front. In tax -- some taxpayers request written  
2 findings. We don't do written written findings unless  
3 they request them and it's statutory that they have to  
4 request written findings if they want them.

5 In the last few years the written findings have  
6 basically become you didn't prove your case. And they  
7 really don't say much more than that. And the way that  
8 this is set up now, it looks like we're going to be  
9 essentially through these summary decisions or hear --  
10 appeals hearing summaries effectively, although  
11 everything will be a recommendation to the extent  
12 there's a dispute of value or everything will be a  
13 recommendation to the extent there's a disputed fact  
14 with, as I understand it, a neutral discussion of the  
15 pros and cons and the reasons why one might find one way  
16 or another on those disputes. Same thing with any legal  
17 issue of which there are not generally these days too  
18 many legal issues.

19 So, we're -- in a sense, if the Board adopts  
20 this appeals recommendation ultimately we're essentially  
21 preparing much more extensive written findings for each  
22 matter, whether the person has requested written  
23 findings or not, and I don't know if there was anything  
24 over the last few years in terms of why the written  
25 findings became so much less explicit, or if that was  
26 just sort of like a workload thing, but I don't know if  
27 you've sort of given thought to the potential impact of  
28 those more extensive material preparation for the Board.

1 MS. CAZADD: I think -- and I'll have Carole or  
2 Lou answer the second part of it. I think the first  
3 part of your question relates to the Board's findings  
4 and decisions are actually presented to the Board for  
5 adoption at the conclusion of a hearing. If the hearing  
6 is held and then some time later, within -- usually it's  
7 30 days or 45 days we present to the Board, here are  
8 your findings and decisions on each of the hearings, the  
9 matters that came before you.

10 Those findings are indeed relatively brief in  
11 nature. And that was the direction -- it has been the  
12 direction of the Board for a number of years. But here  
13 I believe the findings that are -- or whatever comes out  
14 of Appeals Conferences is a different -- a different  
15 category.

16 Perhaps, Lou or Carole, you could address that.

17 MR. AMBROSE: Right. I -- I don't think it  
18 would be much different than what we presented to the  
19 Board last year, except for the fact that we're going  
20 to, you know, probably have additional documents and --  
21 and information, oral information, from the Petitioner,  
22 from the Department.

23 So, I -- I don't really think, you know,  
24 appearance-wise or even content-wise it's really going  
25 to change much.

26 MS. MANDEL: Okay. Thanks. The -- the other  
27 question I have, I don't know if it's a question as much  
28 as sort of a statement, and you've heard this out of me

1 before, is that whether we really need to be doubling up  
2 on attorney's staff for these Appeals Conferences. You  
3 know, if we have Appeals Conferences, if the model was  
4 the business tax side of the world, those Appeals  
5 Conferences you have the Auditor come in and the  
6 Taxpayer comes in who may or may not be represented, but  
7 the -- we don't have, as I understand it, Department  
8 Legal staff showing up at those Appeals Conferences.  
9 The Auditor is there to defend his audit or explain his  
10 audit and Valuation staff, you know, is -- most of these  
11 are sort of valuation issues, valuation judgment types  
12 of things.

13 I've always found Val. staff quite able and --  
14 and I'm wondering in the absence of a true legal issue  
15 in a case, what the -- what the need is to double up on  
16 attorney staff in the context of an Appeals Conference.

17 And maybe that's not really a --

18 MS. RUWART: Sure, I would say it's a valid  
19 comment. The rules of the Appeals Division attorney and  
20 the Valuation -- the Tax Fee Program Division attorney  
21 are obviously quite different, even though we're both  
22 Members of the same Legal Department.

23 The Appeals Division Conference-holder is a  
24 neutral conference-holder designed to evince or elicit  
25 the facts and positions of both sides. The thought is  
26 that while I'm sure that the Valuation Division is  
27 obviously very good at what they do, that there are  
28 sometimes legal issues that occur and the fact is, is

1 that Petitioners are frequently represented by their  
2 attorneys, as well.

3 And given the short timeframe of the -- the  
4 whole process that it is appropriate to bring the Tax  
5 and Fee Program Division attorneys in at an earlier  
6 stage rather than later.

7 MS. MANDEL: Okay. And --

8 MS. CAZADD: I have to say, also, if I may,  
9 that they -- we tried as much as possible to retain the  
10 existing working relationship that we had over the years  
11 between the Tax and Fee attorneys and the Valuation  
12 Division. Tax and Fee attorneys have always assisted  
13 the Valuation Division appraisers in preparing the case,  
14 and developing it for presentation.

15 MS. MANDEL: Yeah, they -- they've often  
16 assisted in --

17 MS. CAZADD: So --

18 MS. MANDEL: -- handling the function that  
19 you're now adding another attorney for --

20 MS. CAZADD: -- this --

21 MS. MANDEL: -- but that's --

22 MS. CAZADD: -- this would continue that  
23 practice and that relationship and then -- but add a  
24 neutral body, the Appeals Conference-holder.

25 MS. MANDEL: Okay. And I guess, just in the  
26 interest of time, the last thing is just a cute little  
27 correction for your memo, in terms of requests for  
28 rescheduling, and I assume that -- that in the next to

1 last paragraph on the fourth page when you said, "If  
2 possible, Board Proceedings would attempt to accommodate  
3 a request," you probably meant that if possible you  
4 would accomod -- if possible you would accommodate a  
5 request. You certainly will attempt to accommodate a  
6 request.

7 But I can hear the voice of the person I know  
8 who --

9 MS. CAZADD: So, you --

10 MS. MANDEL: -- speaks this way, but --

11 MS. CAZADD: You are right. Thank you very  
12 much, you're absolutely correct.

13 MS. MANDEL: Thank you.

14 MR. LEONARD: Mr. Chairman, I want to commend  
15 the staff for a great deal of hard work and -- and  
16 appreciate the comments that have been made. But it's  
17 also important to get this out to the public and to the  
18 affected parties as early as possible, because we're --  
19 we're going to try to use it this year, which will  
20 really break it in as to what works and what doesn't.  
21 And I think it's really critical.

22 My goal is to have less hearings before this  
23 Board, and more taxpayers and Department folks who will  
24 resolve the issues before they come to us. If they're  
25 issues of law, that they'll either be resolved or  
26 they'll be clarified by the time they get to us. If  
27 they're issues of evidence, that the -- the third party  
28 that's now formally part of this process, because you're

1 right, Ms. Mandel, they always were there in the past,  
2 will -- will be able to sharpen what the evidence area  
3 or the factual issues are, where the disagreements are,  
4 and either attempt to resolve them or again sharpen them  
5 so when they come before us that those hearings before  
6 us in December can be very, very brief, there's just the  
7 one issue remaining, here's what they say, here's what  
8 we say, here's what Appeals recommends on that, and we  
9 go forward from there.

10 And I -- and I think that will help resolve  
11 things earlier, as Ms. Cazadd pointed out.

12 I move adoption.

13 MR. CHIANG: Okay. We have a motion by  
14 Leonard. Is there a second?

15 MR. PARRISH: Second.

16 MR. CHIANG: Second by Mr. Parrish.

17 Any objection?

18 MS. MANDEL: Yeah, I'm -- you know, I'm going  
19 to object and maybe this year change my mind.

20 MR. CHIANG: Okay. Very good. Please take  
21 roll.

22 MR. EVANS: Mr. Leonard.

23 MR. LEONARD: Aye.

24 MR. EVANS: Mr. Parrish.

25 MR. PARRISH: Aye.

26 MR. EVANS: Ms. Mandel.

27 MS. MANDEL: No.

28 MR. EVANS: Ms. Yee.

1 MS. YEE: Aye.

2 MR. EVANS: Mr. Chiang.

3 MR. CHIANG: Aye.

4 Motion passes.

5 Next item.

6 MR. MICHAELS: Mr. Chiang, could I just  
7 clarify, that's this year? The motion didn't say what  
8 year. We're talking about doing this this year only for  
9 the -- for starters, is that correct?

10 MR. CHIANG: I don't know what you mean by  
11 "only," but --

12 MR. MICHAELS: Well --

13 MR. LEONARD: I was with you till "this year."

14 MR. MICHAELS: This year.

15 MR. LEONARD: We're starting this year.

16 MR. MICHAELS: This year, yeah. Your motion  
17 covered this year.

18 MR. LEONARD: No, my motion covered  
19 adopting --

20 MS. MANDEL: The --

21 MR. LEONARD: -- the staff recommendation in  
22 concept of the Rules of Practice for Property Tax  
23 Appeals.

24 MR. MICHAELS: Okay.

25 MR. PARRISH: Now, you know -- you know what?  
26 I -- I concur. My second, because I don't know if I  
27 want to saddle my predecessors --

28 MS. MANDEL: Your successors?

1 MR. CHIANG: Successors.

2 MR. PARRISH: Successors, yeah. My  
3 predecessors are already saddled, right?

4 MS. MANDEL: Yeah, they -- they saddled --

5 MR. PARRISH: My successors.

6 MR. CHIANG: They saddled off.

7 MR. PARRISH: Okay. So, I think -- that may  
8 change a vote, but I just want to do it for this year  
9 only. I only wanted to do it for this year. That's my  
10 motion.

11 MR. CHIANG: You want to expunge the record?

12 MR. PARRISH: Well, I'd like to -- I don't know  
13 if anybody will consent. He likes his motion. But I --

14 MS. YEE: I have a question.

15 MR. PARRISH: My thought was it was for this  
16 year.

17 MR. CHIANG: -- my vote.

18 MR. PARRISH: You're going to win anyway, so  
19 why worry about it? So --

20 MS. YEE: Can I just ask a question?

21 MR. CHIANG: You can move to reconsider it.

22 MR. PARRISH: Yeah, I move to reconsider it.  
23 Yeah, I -- I move to reconsider for this year  
24 only.

25 MS. YEE: Yeah, could --

26 MR. PARRISH: Is there comments?

27 MS. YEE: Well, I have a question. We're  
28 approving this in concept --

1 MS. CAZADD: Right.

2 MS. YEE: -- but we're actually putting this  
3 procedure in place for Appeals Conferences for property  
4 tax appeals this year.

5 MS. CAZADD: That's true.

6 MR. PARRISH: Yeah.

7 MS. CAZADD: It's a two-part request.

8 MS. YEE: So -- but I guess my -- my question  
9 is when does the actual proposal going forward for the  
10 actual rule change come back to us?

11 MS. CAZADD: That will be coming back to the  
12 Board either in July or August.

13 MS. YEE: I -- I would suggest that come  
14 back --

15 MR. LEONARD: You have another shot.

16 MR. PARRISH: I have another shot, okay.

17 MS. YEE: -- after --

18 MR. PARRISH: To correct. It looks good but,  
19 you know --

20 MS. CAZADD: Okay.

21 MR. PARRISH: -- we still have a right to  
22 reject it, right?

23 MS. CAZADD: Absolutely.

24 MR. PARRISH: Because there's been some valid  
25 concerns raised.

26 MS. CAZADD: Yes.

27 MR. PARRISH: Okay.

28 MS. CAZADD: Okay.

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MR. PARRISH: Thank you.

MS. CAZADD: Thank you.

MR. CHIANG: So, there's no motion to reconsider?

MR. PARRISH: No. No. We'll go for the -- we'll think about it when it comes up for --

MS. CAZADD: Right.

MR. PARRISH: -- for the rule change.

MR. CHIANG: Very good.

Next item.

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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 May 17, 2006 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 17  
13 pages constitute a complete and accurate transcription  
14 of the shorthand writing.  
15

16 Dated: June 1, 2006.  
17

18 \_\_\_\_\_  
19 BEVERLY D. TOMS  
20 Hearing Reporter  
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