

INTERESTED PARTIES MEETING

REPORTER'S TRANSCRIPT

OCTOBER 26, 2005

IN RE

RULES FOR CALIFORNIA TAX ADMINISTRATION AND

APPELLATE REVIEW

PART 2, REVIEW OF SALES & USE TAX,

TIMBER YIELD TAX,

AND SPECIAL TAXES AND FEES

Reported by: Beverly D. Toms

No. CSR 1662

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ARTICLE 1  
APPLICATION OF THIS PART  
SECTION 2000

Sacramento, California  
October 26, 2005

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MS. PELLEGRINI: I'm Deborah Pellegrini. I'm the Chief of Board Proceedings. And we are gathered here to receive your comments on the Board of Equalization's Rules for the California Tax Administration and the Appellate Review.

And today we are receiving comments on Part 2, Sales and Use Tax, Timber Tax, Yield Tax, Special Taxes and Fees.

After we receive comments on this part, we will also take comments on the remaining parts.

As you can see we have Bev Toms here, and she is our transcriber or Court Reporter who will be doing a transcript.

So whenever you speak, we would really appreciate it if you would first identify your name. We will also be sending around another sign-in sheet to make sure we have everyone's name, so when the transcript is produced that we do your name correctly.

What I'd like to do to start with is to go around the room so that everyone can identify themselves. It's for the record, and also so we know who everyone is.

1           And we'll start by going around the table and  
2 then we'll go around the room. And if you could also  
3 state who it is that you represent.

4           MR. HELLER: Welcome. I'm Bradley Heller. I'm  
5 a representative from the Legal department.

6           MS. RUWART: Carole Ruwart, the Board's Legal  
7 Department.

8           MR. GOLOMB: I'm Abe Golomb. I'm President of  
9 Sales Tax Reduction Specialists.

10          MR. OKUMURA: David Okumura, Department of  
11 Insurance.

12          MS. ARMENTA-ROBERTS: Joan Armenta-Roberts of  
13 KPMG.

14          COURT REPORTER: Would you say that again.

15          MS. ARMENTA-ROBERTS: Joan --

16          COURT REPORTER: Yes, the department.

17          MR. ARMENTA-ROBERTS: KPMG.

18          COURT REPORTER: Thank you.

19          MR. SPIELMAN: I'm Philip Spielman. I'm the  
20 Supervisor of Petition Section for the Sales and Use Tax  
21 Division.

22          MR. YOUNG: I'm Joe Young. I'm the Chief of  
23 Headquarters Operations Division.

24          MR. GAU: David Gau, Deputy Director of  
25 Property and Special Taxes.

26          MS. KINKLE: Sherrie Kinkle, Property Taxes.

27          MR. TANG: Benjamin Tang, Property Taxes.

28          MR. MICHAELS: Peter Michaels, from Cooper,

1 White and Cooper in San Francisco office.

2 MS. STROH: Cathy Stroh, Board Proceedings.

3 MR. DAVIS: Kenneth Davis, Franchise Tax Board.

4 MS. FOX: Nancy Fox, Mattes & Associates.

5 MR. KAMP: Steve Kamp, First District, Board  
6 Member Yee's office.

7 MR. KOCH: Al Koch, MBIA.

8 MR. FULLWOOD: Travis Fullwood, Claude  
9 Parrish's office.

10 MR. KENNY: Perry Kenny, office of Claude  
11 Parrish.

12 MR. GILBERT: Arlo Gilbert, in Fuel Taxes  
13 Division.

14 MS. GORE: Anita Gore, Board of Equalization  
15 Communications Division.

16 MS. McCALEB: Sandy McCaleb, Sales and Use Tax  
17 Department.

18 MS. CASAZZA: Teresa Casazza, California  
19 Taxpayers Association

20 MR. HIRSIG: Ray Hirsig, Executive Director,  
21 Board of Equalization.

22 MR. LEVINE: David Levine, Appeals Division.

23 MR. SMITH: Stephen Smith, Appeals Division.

24 MS. STANISLAUS: Selvi Stanislaus, Tax and Fee  
25 Programs.

26 MR. HUDSON: Tom Hudson, Bill Leonard's office.

27 MR. BUNTJER: Bob Buntjer, Audit Determination  
28 and Refunds.

1 MS. WAGGENER: Michele Waggener,  
2 PriceWaterhouse Coopers.

3 MS. PELLEGRINI: Anyone else that did not  
4 identify themselves for the record?

5 UNIDENTIFIED SPEAKER: Anyone on the phone?

6 MS. PELLEGRINI: Yes, and who also is on the  
7 phone.

8 MS. REESE: Tonya Reese from Board Member Betty  
9 Yee's office.

10 MS. PELLEGRINI: Thank you. Anyone else?

11 MS. CROCETTE: Sabina Crocette with Board  
12 Member Betty Yee's office.

13 MS. PELLEGRINI: Thank you.

14 MR. HERD: Also Jim Herd from the same office.

15 MR. SMITH: Chris Smith from the same office,  
16 as well.

17 MS. PELLEGRINI: Thank you.

18 What we -- we had four handouts outside. We  
19 had the meeting agenda; copy of the BOE rules for the  
20 California Tax Administration and also two public  
21 comments. We hope that you have received those.

22 And we are going to be taking -- we want this  
23 to be an informal meeting, but at the same time we also  
24 want to make sure that we get all of your comments.

25 And we are going to be taking the comments by  
26 article and by topic, and we'll move through each one.

27 My role today is to be the moderator for the  
28 meeting. And the State staff is also here to -- after

1 we receive your comments, if they need any clarification  
2 or want any additional information.

3 We are looking to have a dialogue back and  
4 forth. The only thing that we do ask is each time you  
5 speak, if you could just state your name again.

6 And before we get started I would like to offer  
7 Mr. Hirsig an opportunity to say anything, and then also  
8 Mr. Heller.

9 MR. HIRSIG: Well, thank you. I was just  
10 pleased you're all here and look forward to a very  
11 interactive session. Thank you.

12 MR. HELLER: Did somebody just join us?

13 MS. PELLEGRINI: Whoever just joined us, could  
14 you please identify yourself.

15 MR. SHAH: Neil Shah, Mr. Parrish's office.

16 MS. PELLEGRINI: Thank you, Neil.

17 Bradley.

18 MR. HELLER: Yes. Thank you. My name is  
19 Bradley Heller, as I said earlier. And I want to thank  
20 you all for attending today and your comments are  
21 greatly appreciated and we hope it will help make a  
22 better product for everyone.

23 Basically, today we're discussing Part 2, which  
24 is the rules dealing with business taxes. And we're  
25 going to take it article by article.

26 And this part is designed to provide the  
27 procedural rules for the -- for administrative review  
28 starting from the filing of petition for

1 redetermination; request for relief of penalties,  
2 interest or tax; and/or the filing of a claim for  
3 refund. And take that process from the initiation of  
4 review all the way through to the end of the  
5 appeals process -- the Appeals Division's function in  
6 the process.

7           And the -- the portions dealing with the actual  
8 Board hearing on one of those matters are discussed in  
9 Part 5, and we'll be discussing that again and taking  
10 more comments in December.

11           As of today we're just focused on the  
12 administrative process up to the Board hearing. And we  
13 have received some very valuable comments thus far, and  
14 we're -- we're open to hearing more today and help --  
15 hopefully giving you a chance to elucidate on some  
16 comments that have been made and submitted already.

17           With that I'll go ahead and turn it on back  
18 over to Debbie.

19           MS. PELLEGRINI: Okay. So what we're going to  
20 do is I'm just going to say the first article is Article  
21 1, "Application of this Part." If anyone wants to make  
22 any comments, if you'll just indicate and I'll just kind  
23 of go around and I'll look and state, "Does anyone want  
24 to make comments on this article?"

25           Yes.

26           MR. MICHAELS: I don't want to make a comment  
27 on this article, but could you just give us a contextual  
28 sense of beyond the meeting that's going to happen today

1 and the meeting on the 16th and the meeting on the 14th,  
2 I guess it is -- what's beyond the horizon there as far  
3 as the elected Board goes, and what gets presented or  
4 would help the Board

5 MS. PELLEGRINI: What our goal is, is to bring  
6 the package back for authorization to publish at the  
7 January 31 - February 1 Board meeting.

8 At that time we will be presenting a time line  
9 to the Board Members, asking them to either take it as a  
10 whole package or breaking it up into the individual  
11 parts, to then enter the public hearing process.

12 And at the present time it seems like it might  
13 be more feasible to break it up and do a part of 2 at  
14 the subsequent Board meetings.

15 Our goal is to get through the Board meetings  
16 by around June or July, to then be able to get these  
17 rules in place.

18 MR. MICHAELS: Before their terms of office run  
19 out.

20 MS. PELLEGRINI: When we can implement them.

21 MS. ARMENTA-ROBERTS: Joan Armenta-Roberts of  
22 KPMG. Can -- as we go through these, can you  
23 identify -- I know you were -- we had asked you to  
24 identify where there's changes. Since we don't have  
25 that document yet, can you maybe do that, tell us where  
26 those changes are as we get to each article?

27 MR. HELLER: I'm sure I can charge it.

28 MS. PELLEGRINI: Marcy, did you have a comment?

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MS. MANDEL: No.

MS. PELLEGRINI: Okay.

MS. MANDEL: I haven't read the whole --

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1 ARTICLE 2A

2 PETITIONING NOTICES OF DETERMINATION  
3 AND NOTICES OF DEFICIENCY ASSESSMENT

4 SECTION 2010

5 MS. PELLEGRINI: So, I think we'll move on to  
6 Article 2A. And that is the Petitioning Notice of  
7 Determination and Notice of Deficiency Assessment. And  
8 I'll then start by turning it over to Brad for his kind  
9 of summary.

10 MR. HELLER: This provision -- this article  
11 really doesn't necessarily have changes. We really  
12 haven't -- the Board previously hasn't had a regulation  
13 dealing with exactly who can file Petitions for  
14 Redetermination. And this is actually just something I  
15 created from scratch and it really just draws directly  
16 from the various statutes and all of the different  
17 business taxes and fees that are governed by this part.

18 And so, it really just tries to take a  
19 coordinated effort to just review all the different  
20 types of tax and feepayers who are allowed to file  
21 petitions and try to summarize for them all their  
22 limitations periods.

23 The provisions where there's a successor  
24 liability, successors can petition and explain in a  
25 broad way what all the requirements for an adequate  
26 petition are; explain the -- the tax and feepayer's  
27 right to amend their petition; explain that the filing  
28 of petitions don't stop the accrual of interest,

1 similar information like that.

2 It also describes the scope of a few petitions  
3 in areas where the law limits the scope of what the  
4 Board's -- what issues the Board should be addressing on  
5 a Petition for Redetermination.

6 And it even identifies a few instances where a  
7 petition needs to be filed with another agency.

8 But it really isn't -- it's all substantially  
9 new in the sense that there really hasn't been a  
10 regulation on point with any of this and it's directly  
11 from the statutes.

12 Yes, Peter.

13 MR. MICHAELS: Well, just -- it says any -- it  
14 can be any person directly interested.

15 MR. HELLER: Uh-huh.

16 MR. MICHAELS: Do we know what "directly  
17 interested" means? Does that mean if you pay the --

18 MS. RUWART: Could you refer to the article  
19 number.

20 MR. MICHAELS: The page -- the one we were  
21 talking about. Page 2, Article 2A.

22 MS. MANDEL: 2010(b) he's talking about.

23 MS. RUWART: Thank you.

24 MS. MANDEL: Any person directly interested.

25 MR. HELLER: Yes, I note that language comes  
26 straight from the statutes and -- you know, I don't --

27 MR. MICHAELS: Does that mean if you pay the  
28 tax, you're directly interested?

1 MR. HELLER: You know, I -- I believe what  
2 happened, looking at this exactly --

3 MR. MICHAELS: Or someone else.

4 MR. HELLER: I haven't really seen any case law  
5 or anything that defines exactly what "directly  
6 interested" means.

7 MS. MANDEL: Is it the same as, see, in the  
8 property tax law?

9 MR. MICHAELS: Yeah, in the property tax law it  
10 comes up all the time.

11 MS. MANDEL: Yeah.

12 MR. MICHAELS: Whether you have the right to  
13 appeal if you are a third -- real party interest.

14 MS. MANDEL: And I know that what I used to do  
15 with a contractor where it was the subcontractor that  
16 was paying -- you know, where it was the subcontractor  
17 that the Board considered the taxpayer. But the main  
18 contractor was really the one who was fighting it and  
19 paid all the taxes.

20 We always filed on behalf of both. It was a  
21 combined petition. And then the -- but the Board always  
22 considered the taxpayer to be the one who --

23 MR. MICHAELS: Well, it varied from County to  
24 County.

25 MS. MANDEL: Yeah.

26 MR. MICHAELS: But directly interested --

27 MS. MANDEL: Well, this was with the State --  
28 this was with the State Board, you had to file -- we

1 filed in both names and the State Board always insisted  
2 it was only the --

3 MR. LEVINE: David Levine for Appeals. It's  
4 not the -- you're contemplating someone -- for example,  
5 the purchaser who ultimately owes tax reimbursement,  
6 paying the tax and being able to file a petition --  
7 that's not what this means.

8 I don't --

9 MR. MICHAELS: What does it mean?

10 MR. LEVINE: There is a statute -- I don't have  
11 the number on, I'm guessing it's the one that Brad said  
12 it came from, that talks about an interested par --  
13 directly interested party filing a -- a petition. And I  
14 don't have an answer for you because I haven't reviewed  
15 it, but there is a specific --

16 MR. MICHAELS: Okay.

17 MR. LEVINE: -- type of situation. I don't  
18 remember --

19 MR. MICHAELS: -- you should clarify up front.

20 MS. MANDEL: Yeah.

21 MR. LEVINE: -- like a successor who steps in  
22 and isn't paying -- it's a successor liability but  
23 literally is taking over the business, says, "We're  
24 going to pay it. We want to petition it. If we lose  
25 we'll pay it," we would let that type of person file a  
26 petition even if otherwise they wouldn't be able to.  
27 And I think that was what's directed to.

28 MS. MANDEL: Well, then you should clarify

1 because these other situations do -- do come up.

2 MS. PELLEGRINI: We will note that. And,  
3 again, it is helpful when you're bringing one up to say,  
4 you know, page such and such, article this.

5 MR. MICHAELS: Okay.

6 MS. PELLEGRINI: And that way we can all be on  
7 the same page. Other comments on Article 2A?

8 MS. MANDEL: Keep turning the page, Peter,  
9 because Article 2A goes on for pages.

10 MS. PELLEGRINI: It goes -- it's page 2  
11 through -- I believe it's 8.

12 MS. MANDEL: Yeah. So, when she talks about  
13 article, she's talking about where it's in bold face,  
14 and then under that there's going to be a lot of  
15 separate divisions.

16 MR. VINATIERI: Probably it would be easier if  
17 you did it just based upon --

18 MS. MANDEL: Section by section.

19 MS. PELLEGRINI: Yeah.

20 MR. GOLOMB: By Section, yeah. That's what I  
21 was hoping for.

22 MS. PELLEGRINI: Okay.

23 MR. HELLER: So, any more comments on 2010?

24 MS. PELLEGRINI: Page -- 2010.

25 MR. HELLER: Page 2.

26 ---oOo---

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1 SECTION 2011

2 MS. PELLEGRINI: Okay, on 2011, Successor's  
3 Petition for Reconsideration.

4 MS. MANDEL: Oh, I'm sorry, back on 2010(a),  
5 I -- I'm assuming that the representative who requested  
6 a Notice of Determination when they file a petition,  
7 they're -- they're not -- that they're somehow saying  
8 they're filing on behalf of the taxpayer and we won't  
9 have taxpayers coming and screaming he's not authorized.  
10 There's -- there's something in the law that -- make  
11 sure that --

12 MR. HELLER: Yeah, those are authorized  
13 representative there, is the people -- if you have to be  
14 an authorized -- well, the Board will only send notice  
15 to an authorized representative after they requested it.  
16 If it was somebody who was not authorized to act on  
17 behalf of the petitioner --

18 MS. MANDEL: So the fact that they've  
19 already --

20 MR. HELLER: -- we shouldn't be --

21 MS. MANDEL: -- the fact that they've already  
22 been authorized and requested it means they don't  
23 necessarily have to file another POA with the --

24 MR. HELLER: Right. In the normal cases --

25 MS. MANDEL: That's fine.

26 MR. HELLER: -- your representative from the  
27 audit process.

28 MS. MANDEL: Yeah, that's fine.

1 MR. HELLER: You said, "Please send me a  
2 notice -- a copy of the notice, as well."

3 MS. MANDEL: That's fine. It just sort of read  
4 funny to me.

5 MR. HELLER: Oh, I'm -- yes. This is the time  
6 to ask questions. So --

7 MR. VINATIERI: Okay -- I'm sorry, I -- I  
8 get -- got in here late. I had indicated under 2010(a)  
9 that the feepayer ought to be in there, also.

10 MR. SHAH: I'm sorry, who is that, please?

11 MR. VINATIERI: It's Joe Vinatieri.

12 MR. SHAH: Oh, Mr. Vinatieri. Good morning.  
13 Neil Shah.

14 MR. VINATIERI: Oh, Mr. Shah.

15 MR. SHAH: How are you?

16 MS. MANDEL: Okay, lovefest later.

17 MR. VINATIERI: We're very task oriented.

18 MR. SHAH: Yes.

19 MR. VINATIERI: I thought we -- we ought to put  
20 "feepayer" in there, because there is references to a  
21 lot of feepayers. So --

22 MS. PELLEGRINI: Any other comments on 2010 or  
23 2011?

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SECTION 2012

MS. PELLEGRINI: Then we will move on to 2012, Limitation Period.

MR. GOLOMB: I have a comment. This is Abe Golomb with Sales Tax Reduction Specialists. Under (d) -- 2012(d) it says, "A petition for determination is not timely if it is filed before the notice of determination, notice of" et cetera, et cetera "is issued."

What causes this to occur is in the Sales and Use Tax program, when an audit is completed and has cleared review, the District sends the taxpayer and/or representative a cover letter and the copies -- first few pages of the audit. And taxpayers who have not dealt with this agency previously assume that is the billing.

So one of the key problems is explaining -- either having the auditor explain or put in the cover letter that this is not the billing, the notice of determination. It will follow subsequently.

Because I've had situations where taxpayers receive that document, file a petition, no one tells them they shouldn't, and then when they get the formal bill --

MS. MANDEL: They don't --

MR. GOLOMB: -- they don't file because --

MS. MANDEL: I think I had a case like that, correct.

1 MR. GOLOMB: -- they don't know that's the  
2 formal bill.

3 MR. SHAH: Is this Abe?

4 MR. GOLOMB: It is Abe.

5 MR. SHAH: Abe, this is Neil.

6 I think I remember that case --

7 MS. MANDEL: Yeah.

8 MR. SHAH: -- where the taxpayer had done that,  
9 like a -- did in fact too quickly, before the bill came  
10 in --

11 MR. GOLOMB: Yeah.

12 MR. SHAH: -- and we accepted that, you know,  
13 as a special --

14 MS. MANDEL: Right. But what they're -- what  
15 they have in the rule, Neil -- it's Marcy -- is that a  
16 petition would not be timely if it was filed  
17 prematurely. So that that --

18 MR. SHAH: Right.

19 They -- they treat it as a late protest and  
20 then we just --

21 MS. MANDEL: Right, but -- right, but if  
22 they change -- if they put it in an actual regulation  
23 that we will -- that that will not be a timely --

24 MR. GOLOMB: You can't do that.

25 MS. MANDEL: -- petition, then if the person  
26 doesn't follow up and file a petition after the actual  
27 Notice of Redetermination comes out -- or the Notice of  
28 Determination comes out, then they're -- then they're

1 out of luck because what they filed was premature and  
2 they didn't file again.

3           And what Abe is saying is if you're going to  
4 have this regulatory provision that says premature  
5 petitions are no good, that -- that the Board has to do  
6 something in what goes out to taxpayers after the audit  
7 that's causing them to file prematurely, that that --  
8 you know, all of our sort of letters and things the  
9 taxpayers really have to get information to make clear  
10 to them that says wait for that special document that's  
11 called Notice of Determination and file from that.

12           MR. GOLOMB: I would also suggest that whatever  
13 goes out, that a sample --

14           MS. MANDEL: So, they know what it looks like.

15           MR. GOLOMB: Yeah, know what they look like,  
16 because I have to explain to my clients it's a  
17 computer-generated piece of paper that comes from  
18 Sacramento. It will say "Notice of Determination."

19           You know, we go through the whole shpiel.

20           MS. MANDEL: Yeah.

21           MR. GOLOMB: But if a sample is provided, then  
22 taxpayers will have an idea of what they're supposed to  
23 be looking for. Because this is not uncommon and,  
24 unfortunately, not every district lets them know that,  
25 yes, thank you for filing this, but this is really not  
26 the appropriate time to file it.

27           MS. PELLEGRINI: Okay. Noted.

28           MR. MICHAELS: Just as this is an occasional

1 problem on the property tax side, where property tax  
2 appeals are filed locally, prematurely. And they're  
3 routinely rejected.

4 And the -- at least property tax assessment  
5 notices or Notices of Determination always routinely say  
6 this --

7 MR. LEVINE: Aren't we going to deal with that  
8 in the Property Tax area?

9 MR. MICHAELS: -- "This is not a tax bill."

10 Well, I'm wondering if there's anything we can  
11 learn from that example here, since it seems to be a  
12 common problem.

13 MS. MANDEL: Well --

14 MR. LEVINE: Just my -- my observation is that  
15 it doesn't matter whether it's in the reg. or not unless  
16 the Board were to do a reg. to the contrary, a memo  
17 opinion, a petition is premature if it's before the  
18 determination. And the solution is, as Abe suggests,  
19 that it's not the problem with putting this in the reg.,  
20 it's that taxpayers have to understand when they can  
21 file a petition, and we need to do a proper job  
22 explaining it to them.

23 MR. MICHAELS: Well, the -- what I was almost  
24 finished saying, David, is that the notices that are  
25 sent out in the property tax context clearly say, "This  
26 is not a" --

27 MS. MANDEL: You're just suggesting that --

28 MR. MICHAELS: -- "tax bill. Do not file an

1 appeal. Wait.

2 And it's a minim -- it's not a big problem at  
3 the local level for that reason.

4 MS. MANDEL: Well, the -- the question then, if  
5 you're putting it in the reg., David, is does -- does  
6 making the -- the regulation really clear going to  
7 somehow change practice, like Neil was saying, oh, then,  
8 the -- our practice has just been to take it as a late  
9 petition.

10 MR. LEVINE: Well, it can always be a late --  
11 it can always be regarded as a late protest filed early.  
12 But I mean -- as far as being a technically correct  
13 Petition for Redetermination, it's got to be within 30  
14 days after --

15 MS. MANDEL: No, I understand that, but once  
16 we're all gone, and we just have things in the -- in the  
17 regulation, which admittedly are just sort of statutory  
18 law now -- but -- but we don't have an explicit  
19 statement anywhere that says it's not timely if it's  
20 early, it's just sort of that's just the way, you know,  
21 it -- it works.

22 Because, of course, you don't have the right to  
23 file until you get the notice. But once you put it in a  
24 regulation that says it's not timely and, you know, all  
25 of our good offices, you know, notwithstanding our  
26 history of taking sort of late protests, we're all gone,  
27 some are going to look at a reg. and go, "Oop, it's not  
28 timely. You don't have a valid, we can't do anything."

1           So that's why it then raises the question --

2           MR. LEVINE: Well --

3           MS. MANDEL: -- of just making sure taxpayers  
4 are fully informed and maybe that issue goes away,  
5 right?

6           MR. LEVINE: I would also not use the term "not  
7 timely" because I think it's confusing.

8           MS. MANDEL: Right.

9           MR. LEVINE: I'd be explicit.

10          MS. MANDEL: Just say it's pre--

11          MR. LEVINE: It's premature and it's not a  
12 valid Petition for Redetermination. But I think --

13          MS. MANDEL: Well, that's a nice suggestion.

14          MR. LEVINE: -- once you introduce into our  
15 system of clearly notifying taxpayers every -- most  
16 people here are familiar with once it's in our  
17 institutional way of doing things, it's going to be hard  
18 to get rid of. 50 years later it's still going to be  
19 there and people are going to be saying, "Why do we do  
20 this?" and maybe someone will figure out, well --

21          MS. MANDEL: Okay. I won't -- anyway,  
22 that's --

23          MR. HELLER: I would add, also, I think as far  
24 as having the desire to -- trying to codify it -- well,  
25 I wouldn't codify it, putting this into a regulation is  
26 that our intent here is to actually create clear enough  
27 regulations that really follow a logical enough order  
28 that -- that a wider range of people will be able to

1 utilize them and understand what's going on.  
2 So, we are hoping that it will reach a broader audience  
3 than we currently get for most of our regulations.  
4 Because a lot of our regulations are really buried in a  
5 lot of substantive law and you kind of have to have a  
6 feeling for the overall scope of the Sales and Use Tax  
7 to even maneuver through the regulations to figure out  
8 where is the information that you need to figure out  
9 your -- your tax issue.

10           What we're trying to do here is reorganize  
11 things as saying, you just have to figure out that you  
12 have a pure -- you have received a notice and you need  
13 to petition it. Once you do, we take you from the start  
14 to the finish and a taxpayer -- tax or feepayer can  
15 really theoretically come in here without a lot of, you  
16 know, professional help or expertise and take themselves  
17 through at least the basics and understand those.

18           And then on top of that, the -- as we -- as we  
19 go forward it does create a regulation for accepting  
20 late protests. So that does become a regulation. So,  
21 it's not something that --

22           MS. MANDEL: Okay

23           MR. HELLER: -- a particular staff will be able  
24 to just take out of our -- our procedures --

25           MS. MANDEL: Okay.

26           MR. HELLER: -- five or six years from now and  
27 defeat some taxpayer's right to an administrative  
28 review. So --

1 MS. MANDEL: Okie-doke.

2 MS. PELLEGRINI: Okay

3 MR. HELLER: Perfect.

4 MS. PELLEGRINI: Any other comments on 2012,  
5 Limitation Period?

6 MR. MICHAELS: Just one question. 2011 refers  
7 to petitions for reconsideration. I don't see the word  
8 "reconsideration" anywhere else in here. Does this  
9 cover that, too? Or not?

10 MR. HELLER: Yes, it does. And it basically  
11 says --

12 MR. MICHAELS: Where?

13 MR. HELLER: Well, what it does is it  
14 allows for -- it allows a -- it says a successor -- it  
15 covers successor's petitions and then it basically  
16 provides that they'll be treated like other petitions.  
17 And that's all in 2011. So, it basically --  
18 they just fall into the scope.

19 MR. MICHAELS: But the -- the concept of  
20 reconsideration carried forward to 12?

21 MS. MANDEL: Successor --

22 MR. HELLER: On 12.  
23 Well, what is --

24 MS. RUWART: In other words, there should be a  
25 petition for redetermination or reconsideration, is that  
26 kind of what you're saying? Or --

27 MR. MICHAELS: I'm asking.

28 MS. MANDEL: Well --

1 MR. HELLER: But it's -- basically what we say  
2 here in -- or we'd have to do -- Marcy, did you want to  
3 say something?

4 MS. MANDEL: Well, yeah, maybe I just say it  
5 shorter, I don't know.

6 MR. BUNTJER: Is there a difference between  
7 redetermination and reconsideration?

8 MR. HELLER: It's a statutory term.

9 MS. MANDEL: Well, the -- the successor  
10 liability technically is a petition for reconsideration,  
11 right?

12 MR. HELLER: Yes, it is.

13 MS. MANDEL: 2011 says a successor may file a  
14 petition for reconsideration in the same manner provided  
15 in the article for petitioning any other liability.

16 So that's where Brad is saying it.

17 Then you can drop the phrasing "petition for  
18 reconsideration" and everything else flows.  
19 That's right?

20 MR. HELLER: That was the goal.

21 MS. MANDEL: Yeah.

22 MR. VINATIERI: I -- I think it does that.

23 MR. HELLER: Everybody may not agree with that.

24 MR. VINATIERI: I had a question on 2011 about  
25 wanting to delete the word "its" because that's a --  
26 almost conclusory and that's the whole point, are they a  
27 successor or not.

28 MR. HELLER: Okay.

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MR. VINATIERI: So I'd like to delete the "its."

And in 2012, once again the word "feepayer" needs to be in there, in 2012(a).

MR. HELLER: Okay. I'm working off your comments right now, Joe, so --

MS. PELLEGRINI: Any other comments on 2012, Limitation Period?

---oOo---

1 SECTION 2013

2 MS. PELLEGRINI: Okay, as we go to a new item,  
3 which will be 2013, if you're starting to make a  
4 comment, if you could state your name again. And it can  
5 just be your first name and last name, and not who you  
6 represent.

7 Once you enter into a conversation, Bev can  
8 keep track of everyone. So, 2013, the Contents for the  
9 Petition for Redetermination and Supporting  
10 Documentation.

11 This is on page 3 and 4.

12 MR. VINATIERI: This is Joe. I had a problem  
13 with item (a)(2), where it identified the amounts  
14 petitioner wishes to contest. I just indicated that's  
15 not in the statute, and I -- for purposes of  
16 redetermination. Sometimes you don't -- you're not  
17 absolutely sure what the numbers are going to be because  
18 it's still to some extent a moving target, even though  
19 there's a Notice of Determination.

20 But there's other issues sometimes involved  
21 that don't raise their ugly head until you actually get  
22 to Appeals Conference.

23 So, my view is that -- to just delete item 2  
24 because the specific grounds are as it says in the  
25 statute, writing, specific grounds and then sign it.

26 MR. LEVINE: David Levine. I agree that it --  
27 it's not in the statute and a petition shouldn't  
28 be refused just because it doesn't state this.

1           But I'd like to find some middle ground, kind  
2 of like the resale certificate, where we say it has to  
3 have -- I think has to have a date, but it doesn't  
4 really.

5           The dollar amount sometimes are hard to -- to  
6 say, but I'd like to try and get people to actually give  
7 us as much information about their grounds as possible,  
8 like saying the petition must include the grounds and  
9 the amount to the extent possible, but it won't be  
10 refused because it doesn't have it, or some middle  
11 ground to try and get people to put it in automatically,  
12 if we can possibly get it.

13           The reps. normally do. But if we get taxpayers  
14 who happen to find these regs. reading it, it's kind of  
15 like a guideline for them to follow.

16           MR. GOLOMB: This is Abe Golomb. I agree with  
17 Joseph Vinatieri.

18           Most times you look at an audit, you may  
19 disagree with resales. Let's say there's a resale test.  
20 And you're not going to know how much you disagree with  
21 until, you know, the -- the transactions in question are  
22 deleted or not deleted.

23           So, you know, if they're disallowing \$5 million  
24 in resales and we're arguing over, let's say, half of  
25 that, or whatever percentage, you're not going to know  
26 that.

27           So, it's very difficult to do that. The other  
28 thing that I disagree with is (d). At this point a

1 petitioner should not be submitting documentation. What  
2 we want to do is keep the petition as simple and clean  
3 as possible.

4 Because further on you talk about submitting  
5 documentation. So, item "d" should be dumped.

6 What we're talking about here is  
7 a taxpayer/feepayer whoever, receives a Notice of  
8 Determination, Notice of Successor's Liability, they  
9 want to disagree with it. They want to ask the agency  
10 to reconsider all the liability or a portion thereof.

11 What the petition does is formally ask them to  
12 do that. And we try -- we should keep that process as  
13 simple and clean as possible. Otherwise it's going to  
14 become a nightmare of, you know, paper coming in, paper  
15 getting lost.

16 And I don't think this is the point that you  
17 want to start getting into all that.

18 Once the petition has been accepted and  
19 referred to whoever is going to deal with it, that's at  
20 the point when documentation be talked about, issues can  
21 be talked about. But I think it's premature here.

22 MR. LEVINE: It's only a "should" and the goal  
23 is to get that -- and I assume that throughout these it  
24 keeps saying "documents" because the goal is always to  
25 get as many documents as soon as possible for the  
26 potential of resolving it at the soonest possible level.

27 MS. MANDEL: Well, then -- then -- then, you  
28 know each one can be -- you know, the old rule, when

1 you're in Court and, you know, it's like what is -- what  
2 is this thing going to look like on a page standing  
3 alone. And to somebody it would look like it does to  
4 Abe, which is I -- I have to submit anything I've got,  
5 any supporting documents with my petition.

6 And what he's saying is the petition is set up  
7 and the code is sort of a notice pleading --

8 MR. GOLOMB: Right.

9 MS. MANDEL: -- to the Department that, you  
10 know, "I got those problems with what you're doing."

11 And you've seen people come into the Board room  
12 with, you know, four boxes of documents. They could  
13 send four boxes of documents if they have them at the  
14 time, all their records, with the petition if they think  
15 they have to send everything in.

16 So, if it's more like a way of trying to say  
17 the -- the best way to -- to move your case along and  
18 help us is -- to the -- you know, to the extent you can  
19 put the documents in, if that's sort of the view of what  
20 it should be.

21 MR. GOLOMB: Right.

22 MS. MANDEL: But this view is going to be --  
23 just based on what he said, that the petition's really --  
24 notice -- notice pleading to the Board.

25 MR. VINATIERI: This is Joe --

26 MS. MANDEL: It doesn't mean that your  
27 represented people, you know, aren't going to try  
28 to give you a package so that, you know, when -- when

1 the Appeals Officer first looks at it or whoever first  
2 looks at it, they might call him back and say, yeah, you  
3 know what, this is messed up.

4 But, and that's -- that's the only thing I  
5 always think about when I see each one, what would --  
6 what does it look like to someone if that's -- that's  
7 the thing that they read.

8 Because then when they -- if any kind of  
9 correspondence goes out, then this is the thing that  
10 they're going to read.

11 MS. STANISLAUS: Selvi Stanislaus, from Legal.  
12 We can change the word "should" to "may". And --

13 MR. GOLOMB: I think it should be done,  
14 totally. I think it should be done totally.

15 MR. VINATIERI: I'm -- I'm in agreement with  
16 Marcy. This is just --

17 MS. MANDEL: Well, I'm just -- I'm not -- I'm  
18 just --

19 MR. VINATIERI: This is basically just putting  
20 everybody on notice, so --

21 MS. MANDEL: I'm not saying one way or -- I  
22 mean, that's -- that's what he's really saying and  
23 that's --

24 MR. VINATIERI: Right.

25 MS. MANDEL: -- I know that that's the view  
26 that's going to come forward.

27 MR. VINATIERI: I -- I personally don't have a  
28 problem with it. I think it does bollix up the works

1 maybe a little too early.

2 But if a taxpayer wants to do that, that's why  
3 I suggested "may" as kind of a -- a stand-down kind of  
4 situation.

5 MS. MANDEL: Yeah, because --

6 MR. VINATIERI: So that you're trying to get  
7 things resolved, but it's something Marcy said earlier,  
8 is I'm -- I'm looking at this from the standpoint that  
9 people who are going to read this are going to say,  
10 "This is the rule. This is what I have to follow."

11 And I think to the extent that we can make  
12 these rules as simple as possible, if -- if that's  
13 possible -- you got that -- then -- then that's what we  
14 need to do.

15 So I -- I would suggest we just go with "may".

16 MS. MANDEL: Yeah. Because then the other --  
17 the other type of thing we've seen besides the four  
18 boxes of documents is sometimes people do say, "I didn't  
19 know when I was supposed to bring it. I didn't," you  
20 know, if they're getting hassled about, "Why are you  
21 just bringing this today," you know, sometimes it's  
22 someone who missed an Appeals Conference, "Why are you  
23 just" -- "Well, I didn't know when I was supposed to  
24 submit it." So, that's --

25 MR. HELLER: Maybe if it's just something like  
26 you're not required to but you may --

27 MR. LEVINE: Well, use just the --

28 MR. HELLER: -- so it makes it clear that --

1 MR. LEVINE: -- the "may" does it.

2 MS. MANDEL: May.

3 MR. HELLER: The "may" does, all right.

4 MR. LEVINE: It makes it -- standing alone it  
5 makes it clear it's not required. We don't get the  
6 person looking at the list and saying, "I -- it's only  
7 one document -- one letter. Proves my case," but they  
8 don't submit it, and it makes it clear, submit it, you  
9 don't have to, it's still a valid petition.

10 MR. VINATIERI: I might also suggest regarding  
11 (a)(2), where you talk about identifying amounts, as I  
12 indicated, I don't -- that's not in the statute, but I  
13 understand the reason for having that there.

14 Perhaps we can take that and put that in item  
15 (d), where we've just gone to "may" so that a petitioner  
16 may submit any supporting documentation and may identify  
17 the amounts that's subject to the petition, or something  
18 like that. So --

19 MR. SHAH: Like claims for refund, they put in  
20 \$1 or more sometimes, you know, so --

21 MS. MANDEL: Yeah, because then a claim you are  
22 required, I think, aren't you, to state an amount?

23 MR. GOLOMB: Yeah, to list -- list something.

24 MS. MANDEL: Yeah.

25 MR. LEVINE: I --

26 MR. GOLOMB: Or you can even do it unstated.  
27 There are --

28 MR. VINATIERI: You can do it unstated, yes.

1 MR. GOLOMB: There are unstated claims. Yes.

2 MR. LEVINE: It's like in Abe's example -- I'm  
3 not necessarily concerned about dollar amounts because  
4 sometimes --

5 MS. MANDEL: Right.

6 MR. LEVINE: -- you just can't know.

7 But if you have a three-item determination and  
8 you're only disputing resales, it really is helpful to  
9 know that's what you're disputing so we can focus on  
10 that, ask for documents if we need it on that, at the  
11 lowest level possible, so that we're trying to in -- in  
12 D & Rs make -- make the conference-holder list what's  
13 agreed and what's not so we're sure we cover everything.

14 But until we did that, things got past us, too.

15 MS. MANDEL: Right.

16 MR. LEVINE: Because it just didn't come up.

17 MR. GOLOMB: I want to make one additional  
18 comment. My biggest concern is let's say an uninformed  
19 taxpayer receives a bill and they want to file their own  
20 petition.

21 And they read this and it says, "You may submit  
22 documents." What if they submit original documents and  
23 those documents get lost or misplaced?

24 So, one of the things I suggest is that you put  
25 in there "copies" because if the Board loses the  
26 documents, the famous is, "Well, we never got them."

27 "How do you know -- how do you know you sent  
28 them?"

1           And now they don't have the originals. The  
2 Board can't find them, they got lost in the system or  
3 misplaced or whatever happened, and now the taxpayer  
4 loses because those documents are not available.

5           So, I would -- if you're going to keep that in  
6 there, which I personally don't like, use the word  
7 "copies."

8           MR. VINATIERI: Might I suggest --

9           MS. PELLEGRINI: Thank you.

10          MR. VINATIERI: -- maybe "a petitioner may  
11 submit copies of any supporting documentation along with  
12 his Petition for Redetermination and identify the  
13 amounts in question."

14          So, you're responsive to David's concern and  
15 still in the -- in the "may" standpoint, it's not  
16 mandatory.

17          MR. GOLOMB: You could even put in that a -- a  
18 petition is not invalid if these items are not included.

19          MR. KAMP: Steve Kamp came from Board Member  
20 Yee's office. I would just follow up Mr. Golomb's  
21 suggestion. I would put an admonition that any original  
22 documents submitted are -- become -- they go into the  
23 possession of the Board and we can't -- the Board cannot  
24 guarantee that it wouldn't lose them.

25          Therefore, taxpayers are admonished to submit  
26 always true and correct copies.

27          I'm really -- I'm serious, because I hate to be  
28 in a situation where some taxpayer feels for

1 authentication purposes they want to submit an original  
2 and it's the only thing they have.

3 MR. LEVINE: If -- if we say "copies" in the  
4 regulation, it seems to me that that's clear enough.  
5 We've got a -- even though we're trying to make these as  
6 easy to understand as possible, we have to assume that  
7 they'll actually look at the words, and "copies" rather  
8 than putting in an admonition --

9 MR. KAMP: But --

10 MR. LEVINE: -- like "you can't trust us"  
11 and --

12 MR. KAMP: People might assume originals. And  
13 there are times you can't tell the difference, anyway,  
14 but -- but I really think the admonition -- I think  
15 just -- just to put people on notice, yeah.

16 MR. GOLOMB: Because once it's lost, it's lost.

17 MR. VINATIERI: Isn't -- isn't --

18 MR. LEVINE: Sometimes things that are lost  
19 show up a few years later.

20 MR. VINATIERI: Isn't --

21 MR. GOLOMB: It's always after the case is  
22 decided.

23 MR. VINATIERI: Isn't that admonition in the  
24 section relative to Board hearings? I think it's in  
25 there, about copies and that you get -- you take your  
26 originals back

27 MS. MANDEL: Well, because I have actually had  
28 people, you know, say they sent -- they sent -- and I'm

1 going, "You sent original documents" -- well, maybe that  
2 could be people I know. I know personal things. But  
3 I'm always shocked when I hear that someone sent  
4 original documents. Well, it said to send the  
5 documents.

6 MR. GOLOMB: You could keep a copy.

7 MS. PELLEGRINI: Any other comments on this  
8 section?

9 MR. GOLOMB: Yeah, I have --

10 MS. MANDEL: And didn't keep a copy, yeah,  
11 that's the other thing. They send the originals and  
12 don't keep a copy.

13 MR. GOLOMB: I have one more comment, and this  
14 is just a comment. In (b), you know, "Petition shall  
15 include a request for an Appeals Conference with the  
16 Appeals Division and/or oral hearing before the Board,  
17 or both."

18 If the original petition includes a request for  
19 both, what seems to be happening is that taxpayers and  
20 their representatives are repeatedly requested to  
21 reconfirm this. And my understanding is that an oral  
22 hearing before the Board is part of the statute.

23 And once you ask for it, in theory you don't  
24 have to ask for it again. And so, one of my concerns is  
25 that if you ask for it, that if -- how many times do you  
26 have to reconfirm this?

27 And so, somewhere in here that should be  
28 addressed.

1           MR. LEVINE: That's -- that's -- David Levine.  
2 That was something that happened up to a couple years  
3 ago at the Appeals level. We don't do that any more.  
4 Any time --

5           MR. GOLOMB: Okay.

6           MR. LEVINE: -- unless it's just missed, if the  
7 system says the taxpayer asked for a hearing, which  
8 sometimes they do orally, the case it's a Board  
9 proceedings, it gets into our system or we see the  
10 letter, either in the petition or a later letter that  
11 they ask for a hearing -- the only time they would be  
12 asked to repeat that is in the rare case where there's a  
13 denial that's agreed to -- so there's no disputes  
14 left -- we would send a letter saying, "As far as we  
15 know, you have no disputes left, so we're not going to  
16 schedule for a hearing."

17           MR. GOLOMB: Don't have a problem there. Yeah,  
18 that's --

19           MR. LEVINE: Now, as long as there's any  
20 denial, except in the rare case where it's agreed --  
21 everything is agreed to, they get the letter saying,  
22 "We're going to schedule you for a hearing unless you  
23 tell us to the contrary."

24           And this is something that is different from a  
25 couple years ago. As far as below the Appeals level, I  
26 can't speak to that.

27           MS. PELLEGRINI: And -- Debbie Pellegrini --  
28 the other example is once they are sent the hearing

1 notice and they do not respond, then the item is  
2 submitted.

3 MR. GOLOMB: That's different --

4 MS. PELLEGRINI: We have to --

5 MR. GOLOMB: -- because they -- you're now  
6 scheduling a hearing, and if they don't respond to the  
7 scheduling -- but, you know, that's at that level.

8 That's not what I'm trying to say is that if  
9 they ask for it, you know, they don't have to every step  
10 of the way --

11 MS. PELLEGRINI: As David said, we changed that  
12 a couple years ago.

13 MR. GOLOMB: Okay, I just want to make certain  
14 that's resolved.

15 MR. SHAH: Debbie, this is Neil. We had a --  
16 something similar about a year ago, another taxpayer  
17 other than Abe had called us -- initially during the  
18 Petition for Redetermination had asked for an oral  
19 hearing, but didn't quite identify which one, like  
20 Appeals or Board hearing. And once they finished their  
21 Appeals Conference they had a D & R that they'd agreed  
22 with -- they agreed with at the Appeals Conference, but  
23 then confirmed that when the D & R went out.

24 And so, they all waived, waived, waived and  
25 then finally they called us and said, "Where's our Board  
26 hearing?"

27 So, what was the resolution you said? You've  
28 been to us --



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SECTION 2014

MS. PELLEGRINI: Moving along to 2014,  
Amendments for Petitions for Redetermination.

Any comments?

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SECTION 2015

MS. PELLEGRINI: 2015, Accrual of Interest.

MR. SCHUTZ: This is -- Chris Schutz  
from Chairman John Chiang's office. I have a quick  
question.

Does it -- does it say in there as far as if  
payments are made you need to file a protective claim  
for refund? And the Petition for Redetermination  
doesn't necessarily cover that.

MR. HELLER: This -- there's no mention of  
claims for refund in the portion dealing directly with  
petitions.

MR. GOLOMB: This is Abe Golomb. Once a notice  
of determination has been issued, a valid petition has  
been filed and accepted. Any payments made after  
that -- and if the taxpayer prevails, they automatically  
get their money back.

The only time they have to file a claim is if  
the payments are made prior to the issuance of the  
Notice of Determination.

So, they don't have to file a claim for  
payments being made --

MS. MANDEL: What if they make payments -- I'm

1 so old, I don't remember -- what if they make payments  
2 and they lose?

3 MR. HELLER: Well, they get -- the way that our  
4 current Statute of Limitations works is, is in general  
5 there's a -- you get six months from the finality date  
6 of your Notice of Determination to file a claim --

7 MS. MANDEL: To file for all that money.

8 MR. HELLER: -- for refund --

9 MR. GOLOMB: Yeah, you can file that.

10 MR. HELLER: -- for payments that you made in  
11 response to that notice.

12 So, a taxpayer doesn't have to file a  
13 protective claim, they can wait until after the Board's  
14 redetermined the tax.

15 MS. MANDEL: And then all those kind of  
16 limitations periods are in --

17 MR. HELLER: They are in the Claim for Refund  
18 section --

19 MS. MANDEL: -- the refund section.

20 MR. HELLER: -- which we are going to get to in  
21 a bit.

22 MS. MANDEL: -- which we're going to get to.

23 MR. HELLER: But there's no specific mention  
24 that you've made a payment, that you might want to  
25 file --

26 MR. GOLOMB: No, you shouldn't mention.

27 MR. HELLER: -- a claim at that point.

28 And really --

1           MR. LEVINE: I don't think that Abe's view is  
2 correct, and maybe the Department can tell us if they  
3 have been treating that. But my understanding is that  
4 any payment requires a claim to get back even on a  
5 petition.

6           MR. GOLOMB: That's wrong. That is incorrect.

7           UNIDENTIFIED SPEAKER: It is a non-final  
8 liability. And if it's a voluntary payment on a  
9 petition, they would automatically pay it back.

10          MR. HELLER: That makes sense. Okay.

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SECTION 2016

MS. PELLEGRINI: Okay. We're on now 2016.

MR. OKUMURA: I have a question now. I was just wondering if we can ask --

MS. PELLEGRINI: Your name, please.

MR. OKUMURA: Oh, David Okumura, Department of Insurance. On the -- after "the Commissioner" can we add like "premium tax audit bill," because sometimes the letters to the Commissioner don't really get sent down to me, and then -- or to the taxpayer, not me, but it takes --

MR. HELLER: What was that again?

MR. OKUMURA: -- it takes a while. A premium tax audit bill.

MR. HELLER: Premium tax --

MR. LEVINE: If you promise not to change the name of your -- we have that problem where we name one of our own, and the next week it's different.

MR. OKUMURA: Yeah, yeah. Well, hopefully we won't change the bill, but I think that will help the taxpayer because we -- we end up working on the petition and the sooner we get it, the sooner we can work on it.

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1 SECTION 2017

2 MS. PELLEGRINI: Okay. 2017, Scope of Petition  
3 for Redetermination.

4 MS. MANDEL: Oh.

5 MR. MICHAELS: Hazardous substance.

6 MS. PELLEGRINI: Hazardous Substance Tax Law.

7 MR. VINATIERI: This is -- this is Joe. I  
8 had several concerns that I wrote in my -- in my  
9 write-up.

10 First of all, concerning (b), it -- it appears  
11 to me the way this is written, (b)(1), that the only  
12 basis for filing a Petition for Redetermination is items  
13 (a), (b) or (c) below. And there are -- could be a  
14 myriad of other reasons.

15 So my suggestion was to change the language so  
16 that it -- the language says, "is founded upon", delete  
17 "the" -- but "is founded" -- "is founded upon various  
18 grounds including," and it could be these three -- when  
19 it comes to childhood lead, there's a lot of us that  
20 believe it's not even a valid tax -- or, excuse me, a  
21 fee that's a tax and -- under Proposition 13.

22 So, I wanted to make sure that on this --

23 MS. MANDEL: But didn't the Court already  
24 decide that?

25 MR. VINATIERI: I'm sorry?

26 MS. MANDEL: Okay.

27 MR. VINATIERI: It was a bad decision.

28 MS. MANDEL: Oh, he still disagrees with the