

1 administrative due process in a situation like that.

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

4 MR. VINATIERI: How many cases?

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

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

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

25 And there -- there -- you know, thankfully
26 things were resolved because the staff decided. But we
27 didn't know which way the staff was going to go, because
28 it's all kind of cloaked in secrecy and all that. And

1 there's no effective way of -- I mean, there's no legal
2 right as -- as I understand it here, to even be able to
3 go and talk to somebody about it from a -- an
4 administrative standpoint.

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

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

14 MR. HELLER: Can I just -- Brad Heller.
15 Basically, so we're thinking though you don't need to
16 necessarily create a right for every single person to
17 have an -- an Appeals Conference and an oral hearing,
18 but a right to request one and have it remain so that
19 certainly if any of our cases or complex issues came
20 down, we could make sure that the additional due process
21 would be available where appropriate.

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

27 MR. HELLER: Does that sound feasible, Joan,
28 or --

1 MS. ARMENTA-ROBERTS: Mine wasn't -- it's
2 relative, the amount of money depending on the size of
3 the taxpayer's business.

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

6 MR. VINATIERI: Right.

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

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

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

25 You all up and complain to me and I say, "Yeah,
26 that's a" -- I don't know. I still would not call Bob
27 and say, "Give me that case." Because we take what's
28 given to us.

1 So, I certainly would not want the request to
2 come to us to -- to -- to grant it, because that would
3 require us to do a review to decide whether to do a
4 review.

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

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

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

26 MR. YOUNG: Well -- this is Joe. But
27 generally, you know, the Department's policy on relief
28 of penalty request have been very generous. So,

1 the denial rate, even though the number of cases are
2 very big, but the denial rate is relatively small in
3 comparison to the total numbers.

4 So --

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

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

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

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

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

26 MR. YOUNG: The chances are no.

27 That's -- that's my personal feeling, based on
28 the cases that I have reviewed.

1 MR. LEVINE: And, you know, just sitting -- and
2 I'm sure you've both seen this just sitting in the
3 Boardroom, just anecdotal, my recollection is the Board
4 Members have questioned grants more than denials. "Why
5 are you granting this?" "You're denying that, why
6 aren't you denying this, too?"

7 MS. ARMENTA-ROBERTS: That's which Board?

8 MR. LEVINE: I think that -- I think even --
9 even --

10 MS. ARMENTA-ROBERTS: And which Board Members?

11 MR. LEVINE: -- probably Dean Andal had done
12 that. But I don't remember -- but I've heard a few
13 Board Members bring that up of not too -- more often
14 than the reverse. But that's just my recollection.

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

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

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

23 (Whereupon a phone rang.)

24 MR. VINATIERI: Hello.

25 MR. LEVINE: Come in.

26 MR. VINATIERI: Over. Those of us on this
27 side, I'm not aware of what your policies are or how
28 many are granted or how many are not granted and all

1 that kind of thing.

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

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

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

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

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

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

27 But get back to what I said earlier, that we
28 are adding, you know, the additional step of the -- they

1 allowed to request for reconsideration, which we didn't
2 have before. That -- you know, that new information.

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

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

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

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

14 MR. VINATIERI: No comment.

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SECTION 2081

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

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SECTION 2082

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

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

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SECTION 2083

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

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

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

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

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SECTION 2084

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

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SECTION 2085

MS. PELLEGRINI: 2085, Addresses for Filing Requests for Relief.

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

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

MR. HUDSON: So, you really have to.

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

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

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

But also I think in many of these cases, what I'm -- let me point this out, a few of them, like the

1 disaster relief, for instance, it does -- the statutes
2 that authorize relief refer to specific penalty
3 statutes.

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

9 MR. HUDSON: Excellent.

10 MS. PELLEGRINI: Okay, 2085.

11 ---oOo---

12 SECTION 2086

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

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

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

27 So, what I was really trying to do and probably
28 didn't do it as artfully as I should have, I tried to

1 point out that if we get that situation and verify that
2 there's a claim for refund, basically, being filed, to
3 treat it as a claim for refund and provide all the
4 additional process that goes along with reviewing a
5 claim for refund as opposed to just limiting that
6 taxpayer to a request for relief.

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

10 MR. HELLER: Paid -- sure.

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

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

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

21 MR. HELLER: And interest.

22 MR. LEVINE: You got a choice of four.

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

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So, --

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

MR. HELLER: It's probably --

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

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

MR. HELLER: -- paid --

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

MR. VINATIERI: Right. Right.

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

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

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

MR. HELLER: Put tax, interest and penalty.

MR. VINATIERI: Why -- why don't you just delete
the penalties. I understand what the problem is.

---oOo---

SECTION 2087

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2 MS. PELLEGRINI: 2087, Reviewing Request for
3 Relief.

4 MR. VINATIERI: I -- I did have a question on
5 item (d), and that was, as I put here, I said, is there
6 an appeal from the denial? That's the question.

7 Is there any type of relief or appeal?

8 Yeah, when -- if it says "no" -- if someone
9 says "no", then where do you go? Are you basically
10 stuck at that point?

11 MR. HELLER: Well, I think --

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

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

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

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

26 MS. ARMENTA-ROBERTS: Well, if those
27 penalties -- you said if -- you'd either have to pay it,
28 have it denied -- or pay it and put a claim for refund

1 for the payment, and then have that denied and then have
2 an appeal.

3 MR. HELLER: That's --

4 MS. ARMENTA-ROBERTS: Right?

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

10 MR. VINATIERI: Right.

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

14 MS. ARMENTA-ROBERTS: Right.

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

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

25 MR. HELLER: Well --

26 MS. ARMENTA-ROBERTS: So, in that case, the
27 Board Members had already heard it, it was already in --
28 in a hearing, and there was no way for staff to fix it

1 at that point. That was what I was under the
2 impression, that that's why they had filed -- paid and
3 filed a claim for refund and go that route.

4 MR. HELLER: Correct.

5 MS. ARMENTA-ROBERTS: If they -- if that -- if
6 the Board hadn't heard it already, there would still be
7 other remedies. But today it sounds like you're saying,
8 no, there wouldn't have been, you still would have to do
9 that.

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

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

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

23 MR. LEVINE: It was on the calendar.

24 MS. ARMENTA-ROBERTS: -- there was no remedy.
25 There's no hearing remedy.

26 MR. LEVINE: Right, but the problem you're
27 talking about is -- is trying to get a potential remedy
28 before it's put on the Board consent calendar.

1 MS. ARMENTA-ROBERTS: The agenda, yes.

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

6 MS. ARMENTA-ROBERTS: Right.

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

9 MS. ARMENTA-ROBERTS: Right.

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

12 MS. ARMENTA-ROBERTS: Right.

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

17 MS. ARMENTA-ROBERTS: Right.

18 MR. LEVINE: -- and saying --

19 MS. ARMENTA-ROBERTS: Well, I understood that.
20 That's my -- that was the only -- that's what I thought
21 had happened, that's why we had to go the route.

22 I didn't realize that if it hadn't got to the
23 Board there still wouldn't have been a remedy to get to
24 an appeal. And that's what you're saying today, that
25 there is no appeal procedure for a request for --
26 denials of requests for relief of penalty.

27 MR. HELLER: There's just no --

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

1 which --

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

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

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

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

12 MR. SHAH: -- the Board decided this.

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

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

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

24 MR. LEVINE: It -- it would -- let's say it was
25 denied on consent and they pay it and ask for a Board
26 hearing, so it comes to Appeals. Appeals does not say,
27 well, Department recommended denial, the Department --
28 Board agreed, why are you wasting my time? We --

1 MR. SHAH: And it almost sounds like that's
2 what was happening a few times.

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

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

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

23 MR. SHAH: Yeah. Now I get it.

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

27 And what -- where Joe was saying if you have
28 somebody that has a million dollars in penalties and

1 they have to pay it, file a claim for refund, get in the
2 appeals process, and wait -- and if it's granted then
3 you got to wait another six, you know, months or not --
4 or longer to get that money back.

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

7 MR. SHAH: Makes sense.

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

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

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

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

26 MR. HELLER: Absolutely.

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

1 it wanted.

2 MR. HELLER: Absolutely correct.

3 MR. VINATIERI: That's a good point.

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

7 MR. VINATIERI: Right.

8 MR. HELLER: That's right.

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

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

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

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

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

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

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

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

27 MR. LEVINE: I'm not sure I follow. I was just
28 wondering if you --

1 MR. YOUNG: We were working on -- see, just
2 like, you know, this institutional knowledge. Refund
3 claim before there was no Board hearing, no Appeals
4 Conferences. There's no difference. Late protests the
5 same thing. But we granted the claims for refund, we
6 granted the late protests. So we are along the same
7 lines, that these penalty reliefs could work the same
8 way.

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

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

19 So we present all the information. The number
20 of relief requests that we have received. See, not just
21 the \$50 -- \$50,000 because those are the ones always go
22 to the Board. But we have a lot of other small item,
23 \$100, \$200, you know, up to \$49,999, which the Board
24 never saw. So, you know, those are the issues that, you
25 know, are more encompassing than the big one.

26 So, -- but we had a lot of those statistics --
27 like I said, you know, the percentage of denial is very
28 small. But when you look in the relative number of

1 small claims, that could be a sizeable number.

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

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

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

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

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

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

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

1 And that's a -- can be a workload issue
2 just -- just responding to these things.

3 MR. YOUNG: No, I think definitely workload was
4 an issue, as far as the number of cases that we -- you
5 know, we presented to -- you know, to -- to Randy and,
6 you know, presented to Wade and -- you know.

7 As far as I know, we done our job, we done
8 analysis and we presented the facts and we have not
9 heard back as to what we need to do.

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

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

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

28 And, certainly, you know, we want to get their

1 input on that before increasing their workload
2 tremendously or -- and also the rest of their staffs.

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

7 MR. VINATIERI: Yes --

8 MR. LEVINE: So --

9 MR. VINATIERI: That's fine by me.

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

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

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

23 I know they are -- I think they are pretty
24 liberal, but then sometimes there's very unusual
25 circumstances that aren't taken into consideration.
26 And -- and someone that's used to reviewing the -- kind
27 of, okay, it's once -- three strikes you're out, you
28 know, they don't look at the -- they don't maybe have

1 that feel they have the discretion to look at what was
2 the circumstances on that third time. You know --

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

5 MR. YOUNG: Right, right.

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

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

13 MR. LEVINE: So --

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

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

22 MS. ARMENTA-ROBERTS: Right.

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

25 MS. ARMENTA-ROBERTS: Granting it.

26 MR. LEVINE: -- interpreting the guidelines --

27 MS. ARMENTA-ROBERTS: Right.

28 MR. LEVINE: -- to cover it.

1 MS. ARMENTA-ROBERTS: Right. Right. Yeah,
2 because it's -- it's more of a -- I wanted the -- the
3 letter that went out before was just like, sorry --
4 like, no.

5 MR. VINATIERI: You lose.

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

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

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

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

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

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

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

26 MR. YOUNG: Right.

27 MS. ARMENTA-ROBERTS: -- and go before the
28 Board.

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MR. YOUNG: That is still the process.

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

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

MR. HELLER: Yes.

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

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

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

MS. PELLEGRINI: No, that one is wrong.

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

MS. PELLEGRINI: Right. This is 2090.

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

MR. VINATIERI: Probably should.

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

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

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ARTICLE 6
APPEALS CONFERENCE
SECTION 2100

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

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

MS. RUWART: The typo part of it?

MR. HELLER: Yes.

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

MR. VINATIERI: Exactly.

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1 SECTION 2101

2 MS. PELLEGRINI: 2101, Notice of Appeals
3 Conference.

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

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

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

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

15 MR. VINATIERI: My -- my --

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

18 MR. VINATIERI: I do. I do.

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

22 MR. HELLER: Of the Appeals Conferences?

23 MR. HUDSON: Yeah.

24 MR. HELLER: Yeah, the Appeals Conferences
25 basically -- it deals with it by saying at the top, in
26 2100, "the petition for redetermination, petition for
27 reconsideration, claim for refund or request for
28 innocent spouse or other equitable relief will be

1 referred to Appeals." That's what really sets up the
2 jurisdiction of the Appeals Division for reviewing all
3 the -- the types of documents that we're talking about
4 in Part 2.

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

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

16 MR. VINATIERI: I would agree.

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

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1 SECTION 2102

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

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

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

15 MS. PELLEGRINI: We handle them differently.

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

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

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

1 MS. OLSON: Right.

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

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

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

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

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

11 MR. VINATIERI: I --

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

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

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

21 MS. PELLEGRINI: So, I think it's really
22 expanding on the reschedule part -- rescheduling part.
23 Not putting it back into the inventory and scheduling
24 within.

25 MR. VINATIERI: The -- the other concern I had,
26 and I probably didn't put it in here, but we had
27 this discussion -- how many years ago did -- the last
28 time that we did this? Five or six -- seven years ago.

1 The issue of what is extreme hardship.

2 MS. PELLEGRINI: No, that was only two years
3 ago.

4 MR. VINATIERI: Well --

5 MS. RUWART: I remember that one.

6 MR. VINATIERI: It seems like a long time ago.
7 I -- it might have been up a couple times now. In fact,
8 I think it was, you're right, last -- last time.

9 And of course I'm always bothered by the
10 concept of demonstrating extreme hardship. Other than,
11 you know, the client or you dying, it's not extreme
12 hardship. So --

13 MR. LEVINE: So you do understand what it
14 means?

15 MR. VINATIERI: That's an extreme
16 interpretation.

17 MR. LEVINE: If -- if you can prove it, it
18 won't be possible for me to prove it. If you can meet
19 the requirements, you won't be able to prove it.

20 MR. VINATIERI: Exactly. That's what's scary.

21 Yeah, I would like to see something a little
22 bit -- whatever extreme hardship is, I'd like it --

23 MS. ARMENTA-ROBERTS: Defined.

24 MR. VINATIERI: Yeah.

25 MR. SHAH: Exemplified?

26 MR. VINATIERI: Yeah, I guess it's -- no, I
27 better not go there. Never mind, I won't say it.

28 MS. PELLEGRINI: Well, the problem, as you

1 know, with writing this is that we do have some
2 criteria. Just so that we can --

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

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

10 MR. VINATIERI: Uh-huh.

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

14 MR. VINATIERI: Is that what we decided?

15 MS. PELLEGRINI: Uh-huh.

16 MR. VINATIERI: Okay.

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

19 MS. PELLEGRINI: Okay.

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SECTION 2103

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2 MS. PELLEGRINI: 2013, Expediting an Appeals
3 Conference.

4 MR. VINATIERI: Yeah, I've -- I've had a
5 problem requesting -- or not a problem, I just requested
6 within 60 days in Sacramento and it has not happened.

7 In fact, the last time was -- it was six
8 months.

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

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

15 Any complaints, just e-mail me.

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

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

20 MR. VINATIERI: Right.

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

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

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

26 MR. HELLER: Have you done this often?

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

28 MS. PELLEGRINI: Usually in Sacramento it's

1 usually not a problem.

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

4 MS. PELLEGRINI: E-mail Diane.

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SECTION 2104

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

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

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

12 MR. SHAH: Prop 6829.

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

15 MS. PELLEGRINI: Yes.

16 MR. LEVINE: 6829 --

17 MR. SHAH: Yeah, 29.

18 MR. LEVINE: -- the corporate officer --

19 MR. VINATIERI: Corporate officer liability.

20 Okay.

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

23 MR. VINATIERI: Okay, that's -- that's fine.
24 And then the other one was down here on (d)(1).

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

28 MS. RUWART: With the idea that you're not

1 going to consider anything that's brought at the time.

2 MR. VINATIERI: Right. Right. If we -- if we
3 delete 2101, then there's no -- there's no problem.

4 MS. PELLEGRINI: For sub. (d).

5 MR. VINATIERI: Right. So, I -- I objected to
6 2101(c), that last sentence. And if you delete that,
7 then there is no inconsistency.

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

12 MR. VINATIERI: I'm sorry, which one, Dave?

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

18 MR. HELLER: The time to respond to the notice
19 of --

20 COURT REPORTER: Can you speak up?

21 MS. PELLEGRINI: Speak up, please.

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