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MR. VINATIERI: So --

MR. HELLER: Basically, it's requesting in 2101 that you submit your documents if you haven't already. 2104 seems to be saying, you know, that you still could submit them as late as the actual Appeals Conference.

MR. LEVINE: I was just wondering why you didn't object to the whole of 2101(C). Just to be quite honest, I've suggested deleting the whole --

MR. VINATIERI: Well, to be quite honest, I missed it. Let's delete the whole thing; how's that?

2101(c). I think it's nice if you could do it. But you want to put "may" in there. But I'll tell you, it's pretty darn hard to do. It's just difficult.

MS. PELLEGRINI: Any other comments on 2104?

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SECTION 2105

MS. PELLEGRINI: Then we would be on 2105, Issuing the Decision and Recommendation.

MR. VINATIERI: My only concern rela-- was relative to item (d), and what constitutes a significant factual error or what about an error of law?

MR. LEVINE: What this is -- error of law is you didn't agree with the analysis, do an RFR. This is something like we got the wrong date, it's critical. A typo that is critical. Some -- some fact is just -- I mean, it could be something we just didn't know and you call us up and it's an important thing.

Now, if it changes, what's going to happen with this -- and I've only seen one or two and -- one or two I -- and they should always say, and they don't always revise, so there's no confusion.

But it's not a supplemental. It doesn't really change anything except it corrects the misstatement.

If you call -- if you contact us and said there's a critical fact -- let's say we're -- we're talking -- well, the purchase date's important, and we have January 31, 2004 and it's really 2003, and it changed the whole analysis, it's going to result in some of the tax not being assessed -- we're going to issue a supplemental for that.

But let's say it doesn't change anything, it's just wrong, then unless it's just an inconsequential error, we are going to issue a revised Decision and

1 Recommendation that will include a correct statement of
2 the facts.

3 I mean, if some -- if you tell us you
4 misspelled someone's name, we probably aren't going
5 to -- but when it's something that can cause someone
6 confusion, or it's a critical fact that we got wrong,
7 it's revised.

8 If it's something else, we do a supplemental,
9 if it's going to lead to anything else?

10 MR. VINATIERI: Should there be any kind of
11 discussion of those rules about the distinction between
12 a supplemental versus a revised? Does it really matter?
13 Is it just more of a procedural thing?

14 MR. LEVINE: Well, I have suggested some
15 language for supplemental and I don't remember if
16 there's anything in here. But I suggested we add
17 something for when we do a supplemental.

18 MR. VINATIERI: It might not be a bad idea to
19 put just a -- a sentence in there about that.

20 MS. PELLEGRINI: Okay.

21 MR. SHAH: Is there a request for
22 reconsideration?

23 MR. LEVINE: Well, that's a little bit down a
24 little bit.

25 MR. VINATIERI: No, this is a -- yeah, this is
26 a --

27 MS. PELLEGRINI: It's a recommendation then
28 we'll consider it.

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MR. VINATIERI: Right, revised D & R.

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1 SECTION 2106

2 MS. PELLEGRINI: Okay, we are now on 2106,
3 Conference Holder Recommendations.

4 MR. VINATIERI: Yeah, I -- I had put some
5 language in here relative to section (b), and this is in
6 a situation where the -- the D & R recommends denial
7 and, you know, in -- in the good old days, whenever that
8 was, you had a period of time in which to ask for a
9 reconsideration by the Appeals Division. And that kind
10 of went by the wayside because things got so -- there
11 was such a backlog that that was kind of like we're
12 going to get this thing out and if you don't like it,
13 you need to go to the Board.

14 I don't know, does it make -- does it make any
15 sense to have a specific reconsideration --

16 MR. LEVINE: Deadline? No, and I'll tell you
17 why. Because it's -- like I said before, if we think
18 there's something wrong with the Decision and
19 Recommendation, we will issue a supplemental D & R 20
20 minutes -- well, not 20 minutes before the Board
21 hearing, but we've done it the day before. And it could
22 be because the Department asked or the taxpayer asked or
23 we figure it out. And we certainly wouldn't want to
24 preclude a taxpayer from filing a request for
25 reconsideration or the Department at any time, or
26 preclude us and make anyone think that we're tying our
27 hands from correcting what we decide is a mistake.

28 So, if a taxpayer were to -- if a taxpayer were

1 to ask for reconsideration the day before a hearing,
2 unless we decided to actually change our mind, we're not
3 going to issue a supplemental.

4 We might just tell the Board we got some more
5 submissions. But -- and normally we -- we issue a
6 supplemental D & R on an RFR, whether it's going to lead
7 to a change or not.

8 But a time limit would -- would give people the
9 wrong idea. On the other hand, if a taxpayer is going
10 to file a -- a request or the Department, we'd rather
11 have it in 30 days. It -- it certainly eliminates a
12 kind of seeming contradiction with the 30-day rule for
13 the Board hearing.

14 Because once we issue a supplemental, it opens
15 up that 30-day period again.

16 But that's basically how --

17 MR. VINATIERI: I think I was -- when I did
18 this, I think I was thinking of the latter. In other
19 words, if the Department has got a problem or the
20 taxpayer has a problem, it ought to be done as soon as
21 possible after the D & R comes out, or forever hold your
22 peace. And then you can deal with -- you can deal with
23 the Board at a later point in time.

24 MR. LEVINE: Except that won't work because we
25 need to put all the -- the matters in dispute before the
26 Board. You know, the Board doesn't want it -- I'll just
27 give you an example.

28 I had two cases where it was something left

1 over that the -- the D & R recommended denial and the
2 taxpayer agreed. And it had a letter saying, "We're
3 going to schedule you for a hearing because you asked
4 for one.

5 So, I get it to review and there's nothing. I
6 take it back to the conference holder and say, "What do
7 you want me to do with this?" "Huh?"

8 I've got to tell the Board what the issue is,
9 but you're telling me there's no issue. So, either get
10 the taxpayer to waive the hearing or get me his issue
11 and then you need to do a supplemental D & R. Because
12 we don't put something, if we know it, before the Board
13 with an issue we haven't addressed. When someone brings
14 up a new issue at the last minute, we can't do a D & R,
15 we try to get Debbie to pull it off calendar. Because
16 the Board does not like -- and they shouldn't have to
17 deal with --

18 MR. VINATIERI: Right.

19 MR. LEVINE: -- with a case we haven't
20 addressed all the issues.

21 MR. VINATIERI: Right.

22 MR. LEVINE: I mean, I see your -- your point,
23 and it would be nice to have it clean cut, but it just
24 doesn't work like that in -- in reality.

25 MR. VINATIERI: Okay.

26 I -- it's -- it's more window dressing than
27 anything else.

28 MR. HELLER: I think it -- I also think it

1 would be unfair to say to you, you can't ask me to
2 change my mind but I can at any time. So we just leave
3 it open for anyone.

4 MR. VINATIERI: That's fine.

5 I also had a concern regarding (b) (2) and
6 perhaps this is surplusage, also, that this -- what I
7 suggest is not necessary, but it's this whole concept
8 that if you request an oral hearing, then that -- that
9 particular request still continues forward to a Board
10 hearing even if they don't reassert it at -- right after
11 the D & R comes out.

12 So, you can see what I added there.

13 MR. SMITH: This is Steve Smith. I don't know,
14 I think it was covered somewhere else. But our practice
15 is if we're aware that the Board hearing request was
16 made at the time, say, that the petition was filed, and
17 the conference holders are told to look at the file --
18 in the petition and see if the hearing was requested.

19 MR. VINATIERI: Right.

20 MR. SMITH: The cover letter contains the
21 presumption that they want -- the taxpayer wants a
22 hearing unless they tell us otherwise.

23 MR. VINATIERI: Right, you're --

24 MR. SMITH: They have to affirmatively tell us
25 they don't want a hearing.

26 MR. VINATIERI: Right. So, you're -- you're
27 carrying it out. I mean, it's --

28 MR. LEVINE: But there is the one exception

1 which I just mentioned, and you don't see it too often,
2 except I saw two in a couple days where we're
3 recommending the denial, taxpayer had asked for a
4 hearing, but the taxpayer tells the conference holder,
5 "Just deny, I agree with all the adjustments, so I'm not
6 really disputing anything further."

7 So, our recommendation really is make the
8 adjustments in the reaudit, or whatever, and then deny
9 the rest. The taxpayer had originally disputed
10 everything, had originally asked for a hearing, but what
11 I've been telling our conference holders, when you have
12 that, you don't give them the automatic hearing, you
13 say, "My understanding is that you don't dispute
14 anything else so if I'm wrong tell me why I'm wrong,
15 otherwise you won't have a hearing."

16 But besides that we always do as Steve says.

17 MR. VINATIERI: Right. Right.

18 MR. LEVINE: -- we look through, we try and
19 figure out if they've asked for a hearing at any time
20 during the appeals process and then it's an automatic
21 hearing.

22 But we agree, once you ask for hearing, you
23 don't need to keep reminding us. We don't do like they
24 used to do in the old days.

25 MR. VINATIERI: Right.

26 MR. LEVINE: And I'm sure Petitions doesn't,
27 but it used to be every time Petitions would send a
28 letter, they'd say, "If I don't hear from you in ten

1 days, I assume you dropped your appeal and we're denying
2 it.

3 MR. VINATIERI: It was 30 days.

4 MR. LEVINE: No, it was 10.

5 MR. VINATIERI: I remember when they used to --

6 MR. LEVINE: Over and over.

7 MR. VINATIERI: Yeah, I just want to make sure
8 that the proceeding -- that the procedures utilized now
9 continue that way, because that's -- it is the right way
10 of doing it. So, that's why I had added this one line
11 in here, because it -- in my view it formalized the
12 current process.

13 You know, once again, with the idea being that
14 we're not all going to be here 50 years from now.

15 MR. LEVINE: I want to tweak it a little bit
16 more to make sure that it's -- if they still dispute, is
17 to allow us to not schedule one that we -- that we think
18 is disputed. But I -- I don't care; if Brad doesn't
19 object to it, I certainly don't.

20 MR. HELLER: No, I don't object at all.

21 We're definitely trying to incorporate our
22 current procedures to the extent we can. So, I --

23 MR. VINATIERI: Right.

24 MR. HELLER: That's what we're doing. We
25 wouldn't have any objection to incorporating that.

26 MS. RUWART: I was just looking at this. I'm
27 not -- maybe you guys just covered it, but just to say
28 that the -- the Division would schedule no hearings

1 before the Board unless the petitioner specifically
2 withdraws the request. So, if we put that specifically
3 in there then that --

4 MR. VINATIERI: Yes.

5 MS. RUWART: -- it takes care of it.

6 MR. VINATIERI: Yeah, that's good language,
7 let's do that.

8 MR. HELLER: Before we move on, I just want to
9 point out 2106 at least does take a stab at what
10 supplemental decisions and recommendations are. I don't
11 know if you consider it actually a definition, but since
12 we're addressing that earlier --

13 MR. VINATIERI: You're right, I see that there.
14 I'd forgotten about that.

15 I just had a concern at the top of 41 on this
16 application for administrative hearing. This is where
17 he said, for example, the Board has discretion to grant
18 or deny an oral hearing, a late protest. That goes back
19 to what I think we talked about earlier, so we will just
20 incorporate that into -- if we could, into this.

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SECTION 2107

MS. PELLEGRINI: We're on the last section, 2107, Post Appeals Conference Notices.

MS. ARMENTA-ROBERTS: Oops, sorry. Not really throwing weapons.

MR. VINATIERI: I was okay with that.

MS. RUWART: Right here.

MS. PELLEGRINI: Any comments on the last section?

Okay. Then I would like to also reiterate that we welcome written comments. We really would certainly like to have them by mid-December. The sooner the better, because when they start working --

MR. VINATIERI: You're talking about written comments of everything we did here today?

MS. PELLEGRINI: No, if you have anything else that you would like to add on this section.

MR. VINATIERI: On this section?

MS. PELLEGRINI: On this section.

MR. HELLER: (Inaudible)

COURT REPORTER: I can't hear you, Brad.

MR. HELLER: I'm sorry. Basically, what it is, we are still planning on holding two more interested parties meetings, one next month and one in December. And that we will be stating comments on all of the proposed rules, including this Part 2; Part 1 through -- through at least mid-December. And those can be forwarded to me or -- or Diane Olson, as well.

1 And all of our information is on the web site.
2 But anything that we can receive, the sooner
3 the better, just because we're going to attempt to make
4 some revisions to incorporate those comments, and the
5 sooner we get them, the more it will help us proceed in
6 incorporating them.

7 MR. VINATIERI: So from -- from here you're
8 going to take what you heard today, and change -- make
9 some modifications, leave some things alone.

10 When are those going to come out? Will that be
11 in December?

12 MR. HELLER: Well, the way it is set up right
13 now is we are actually looking at having these
14 incorporated into an actual rulemaking proposal that
15 will go to the Board probably the very end of January.

16 So, you'll actually see that, a regular notice
17 going out for rulemaking -- or an actual item on the
18 Board's agenda to vote "yes" or "no" on -- on beginning
19 the formal rulemaking process.

20 And you'll see all the comments that we've
21 incorporated into those proposals. And it's really just
22 due to the time constraints and the fact that we really
23 didn't have time to do more interested parties meetings
24 and didn't want to create a series of comments on
25 comments since we just don't have the time; not
26 because -- just because I didn't think they were
27 valuable.

28 But at that point that would start the formal

1 rulemaking process, which then allows for additional
2 comments that we would have to address again. So there
3 will be time for more comments. It just won't be prior
4 to the rulemaking process.

5 MR. VINATIERI: Right. Okay.

6 MS. PELLEGRINI: Thank you all for coming.

7 MS. RUWART: Yes, thank you.

8 MR. VINATIERI: Thank you.

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on October 26, 2005 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 205 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: November 13, 2005.


BEVERLY D. TOMS
Hearing Reporter