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MEETING

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

BOARD OF EQUALIZATION

450 N STREET

AUDITORIUM

SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 23, 1999

10:00 A.M.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764

APPEARANCESBOARD MEMBERS PRESENT:

Kathleen Connell, Chairwoman, State Controller

B. Timothy Gage, Director of Finance, represented by
Annette Porini

Johan Klehs, Chairman, State Board of Equalization, later
represented by James R. Tucker

STAFF PARTICIPATING:

Doug Bramhall, Counsel

Mike Brownell, Legal

Gerald Goldberg, Executive Officer

Megan Hall, Board Secretary

Benjamin Miller, Counsel

Johnnie Lou Rosas, Director of Legislative Services

Brian Toman, Chief Counsel

Titus Toyama, Chief Financial Officer

John Vranna, Chief, Accounts Receivable

PUBLIC PARTICIPATING:

David Doerr, Cal Tax

Richard Harris

Eric Miethke, Nielsen Merksamer

Gina Rodriguez, Spidell Publishing

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P R O C E E D I N G S

1
2 CHAIRWOMAN CONNELL: We'll call this meeting to
3 order. Can we take roll, please.

4 SECRETARY HALL: Member Klehs.

5 BOARD MEMBER KLEHS: Here.

6 SECRETARY HALL: Member Porini representing
7 Director Gage.

8 ACTING BOARD MEMBER PORINI: Here.

9 SECRETARY HALL: Chair Connell.

10 CHAIRWOMAN CONNELL: Here.

11 We have the presence of all three Board members,
12 obviously a quorum has been established, and the FTB is now
13 in session.

14 Let's move to Item 1, which is approval of the
15 minutes, and we have two sets of minutes to approve, the
16 minutes of December 15th, 1998, Taxpayers' Bill of Rights
17 hearing, and the minutes of the December 16th, 1998, Board
18 meeting.

19 Do I have a motion to approve the minutes?

20 BOARD MEMBER KLEHS: On A and B.

21 ACTING BOARD MEMBER PORINI: Second.

22 CHAIRWOMAN CONNELL: It's been moved and seconded.
23 Unanimous vote to approve the minutes.

24 Let's move to Item 2, application for voluntary
25 disclosure.

1 And I believe, Mr. Toman, you are going to present
2 this item?

3 MR. TOMAN: Yes, I am, Madam Chair. Thank you.

4 This is a basically a typical voluntary disclosure
5 application. Nothing unique about it. Staff recommends
6 that it be approved unless the Board has any questions.

7 CHAIRWOMAN CONNELL: Do I have a motion to
8 approve?

9 BOARD MEMBER KLEHS: So moved.

10 CHAIRWOMAN CONNELL: It's been moved. I'll second
11 it. And it has -- Annette, do you wish to vote on that?

12 ACTING BOARD MEMBER PORINI: Yes.

13 CHAIRWOMAN CONNELL: Item 2. Okay. We have
14 approved unanimously the staff recommendation.

15 Let's move to Item 3, which is legislative
16 matters.

17 And Johnnie Lou Rosas will present this item.

18 Johnnie, I'm a little confused. Why are we coming
19 to the Board at this time with all of these proposals? We
20 are already -- the deadline for submitting a bill has
21 passed. What are we doing with these proposals?

22 MS. ROSAS: There's three. The first one is the
23 Taxpayer Bill of Rights proposal, which was a huge staff
24 effort to try to bring through that bill last year and we
25 tried valiantly to get it to you in December and just didn't

1 make it, is what happened on that one, trying to get all the
2 department input and trying to get it in.

3 The other two are issues that have arisen since
4 then that staff thought were important to bring forward at
5 this time.

6 We believe that the Taxpayer Bill of Rights has a
7 home if it's -- if it's the pleasure to go forward with it.
8 There are vehicles waiting for this one. We made sure that
9 there would be something available for that.

10 The other two sort of depends upon your pleasure
11 on how we proceed.

12 CHAIRWOMAN CONNELL: Taxpayers Bill of Rights has
13 got a lot of different items to it.

14 BOARD MEMBER KLEHS: Right.

15 CHAIRWOMAN CONNELL: Some of which I support and
16 some of which I don't support. So I guess, I don't know
17 what the pleasure of the Board is, I think we almost have to
18 go through it provision by provision.

19 BOARD MEMBER KLEHS: Well, I guess I'm not sure
20 about other people on this, but I understand that there is a
21 desire to delete the burden of proof items because
22 California is not going to conform, and that can perhaps be
23 worked out later in the legislative process.

24 CHAIRWOMAN CONNELL: I don't support item 1, which
25 is burden of proof.

1 I have problems with item 7, which is suspension
2 of interest and failure to notify the taxpayers.

3 And I would just go with either RAR, the 18 months
4 straight up on that. I don't know what other members of the
5 Board feel about that.

6 And the other item that I have a problem with
7 would be, let's see, item 12, attorney-client privilege,
8 because I think there is a bill already pending, isn't
9 there?

10 MS. ROSAS: There is.

11 BOARD MEMBER KLEHS: If you want --

12 CHAIRWOMAN CONNELL: I would, 1 and 7 and 12 are
13 the ones that I don't want to support, and I'd like to
14 discuss item 21, which is -- and, Annette, if you have
15 anything, indicate.

16 Item 21 is procedures for seizure of residences
17 and businesses, and I need to discuss that, because we've
18 had some issues in the past, as you know, Jerry, about
19 people having their residences attached for minor tax
20 claims, and I keep getting these letters from people and
21 it's distressing to me. So while I may support that, I do
22 need to discuss that.

23 So, 1, 7 and 12 would be the ones that I would --
24 Mr. Klehs, you too have --

25 BOARD MEMBER KLEHS: Yeah. I'll make a motion we

1 go ahead with the staff recommendation on all of them except
2 for 1, 7 and 12, and drop those at this point.

3 MS. ROSAS: No. 7, could I get clarification? Do
4 you want to proceed with it as 18 months as at the federal
5 level, but still exclude the RARs from it, or do you want to
6 exclude it totally?

7 CHAIRWOMAN CONNELL: I'd go with the RARs 18
8 months straight up.

9 MS. ROSAS: And keep the RARs out of it?

10 CHAIRWOMAN CONNELL: Right.

11 MS. ROSAS: That only adds about 1.5 million to
12 the cost, if we do it that way.

13 CHAIRWOMAN CONNELL: Okay. Now, let's go through
14 this item 21, which is the procedures for seizure of
15 residences and businesses.

16 And, Jerry, you remember the incident?

17 MR. GOLDBERG: In my history with the Board we
18 have never seized and sold a personal residence. And while
19 we do some property, it is not all that common. Obviously,
20 we attempt to use other remedies before we attempt to seize
21 any property.

22 CHAIRWOMAN CONNELL: I just would like to make
23 sure that that is clearly understood as a policy. I'm sure
24 my other Board members would agree with me, seizure of a
25 residence should be a last case situation after a great deal

1 of notification, great deal of communication in writing, and
2 hopefully on the phone, and in person, if necessary.

3 In the case that I was referring to was a
4 troubling situation where a woman had a conversation with a
5 representative of the FTB in which they indicated they were
6 going to be seizing her property, and I believe it was her
7 teen-age daughter's car, wasn't it, which was troubling.

8 We do not want this to happen, because it just
9 creates the image out there that we're all trying to negate
10 of an onerous tax agency.

11 Fine. I'm glad we have clarification on that,
12 then I can support that as well.

13 And I will move that -- we need a motion, the
14 motion is clear to you, Johnnie?

15 Let us go forward with the next item, which is, I
16 believe, LP 99-47, which is the --

17 MS. ROSAS: It's capital loss limitation and how
18 we deal with those.

19 CHAIRWOMAN CONNELL: Just a moment here. I
20 apologize. We appear to have some people who wish to speak
21 to the legislative proposals. And I was too hasty in not
22 calling on them.

23 David Doerr from Cal Tax. Eric Miethke and Gina
24 Rodriguez, do you want to all come forward.

25 I didn't mean to exclude your opportunity to

1 comment. Perhaps we took action that you wanted us to take,
2 but, if not, you will have a chance to persuade us if we
3 have to reconsider.

4 Why don't we start, David, with you. And if you'd
5 identify yourself for the record, please.

6 MR. DOERR: I'd like to state we appreciate what
7 the staff did on that.

8 Dave Doerr, representing Cal Tax.

9 We appreciate the work the staff did on the
10 Taxpayers' Bill of Rights and that was a monumental effort.

11 The proposal that I think both Mr. Miethke and I
12 would talk on is the -- find the number of it.

13 MR. MIETHKE: 99-50.

14 MR. DOERR: 99-50, which seeks to overturn the
15 Wertin case.

16 Basically I think we need to talk about the
17 underlying problem and the underlying problem is that, one,
18 taxpayers are not required to keep their tax returns.

19 CHAIRWOMAN CONNELL: You're speaking about item 3?

20 MR. DOERR: Overturn the Wertin case where the
21 staff lost the decision on the appellate court.

22 CHAIRWOMAN CONNELL: You're right.

23 MR. DOERR: And I think we need to look at the
24 underlying problem is that there's no requirement for
25 taxpayers to keep tax returns.

1 Two, there's no requirement that the FTB keep the
2 tax returns either, and in general they keep them for three
3 years.

4 But I think the public, if you ask 99 out of
5 hundred people, they would think that the Franchise Tax
6 Board does keep the tax returns. They're not -- basically,
7 the public is not aware that they don't keep them.

8 So under that kind of a situation, you can end up
9 with neither party having a tax return and you get an IRS
10 change, and then the question is how do you look and find
11 out if that impacts their state tax returns or it doesn't.

12 What kind of adjustment should be made, to what
13 extent, and neither party has the information.

14 And I think this is a complex issue that we really
15 need to have some meetings on. We can go to the FTB
16 Advisory Board or some other body to really talk about how
17 this can be fixed so that we do have a record of some kind
18 in which the proposed change can be made.

19 And maybe as we move into electronic filing,
20 records can be kept electronically. There may be some
21 opportunities for some changes.

22 But it seems to me that we need to talk about the
23 underlying problem before we move forward on a bill like
24 this.

25 CHAIRWOMAN CONNELL: Dave, are you comfortable

1 with the recommendation of staff today, which is to support
2 modified language to make clear the electronic records can
3 be used, or do you think that's too broad?

4 MR. DOERR: We don't know what electronic records
5 are available. And that's what we need to talk out with the
6 staff.

7 I'd like to see if they file electronic returns
8 and the whole return be saved, that would be fine. But if
9 it's just one item out of a return, or two or three, what is
10 involved, what kind of information are they going to use to
11 make adjustments? I mean, that's what we need to have. I
12 think we need to have a meeting on it and talk it out.

13 CHAIRWOMAN CONNELL: You prefer a meeting rather
14 than getting an answer today from our staff?

15 Mr. Goldberg, would you like to try to address
16 this problem today or do you agree that this is a more
17 extended discussion?

18 MR. DOERR: You might want to hear from
19 Mr. Miethke before --

20 CHAIRWOMAN CONNELL: Mr. Miethke, are you speaking
21 on the same item?

22 MR. MIETHKE: Yes, I am, Madam Chair.

23 CHAIRWOMAN CONNELL: And, Gina, are you speaking
24 on the same item?

25 MS. RODRIQUEZ: I hadn't planned on it, but I can

1 add a comment to it.

2 CHAIRWOMAN CONNELL: I appreciate that, this
3 spontaneous ability to communicate.

4 Eric, why don't you go ahead, and could you
5 identify yourself for the record, please.

6 MR. MIETHKE: Indeed so. Madam Chair, members,
7 I'm Eric Miethke, partner at Nielsen, Merksamer, Parrinello,
8 Mueller and Naylor, here in Sacramento.

9 I don't have -- I'm representing just myself as a
10 practitioner on this.

11 I read the Wertin case when it came out, and I
12 read the legislative proposal. I think I've two concerns
13 and ask you to consider those.

14 First of all, this case is not final, and it's
15 always a little sketchy to try to go into the Legislature
16 and ask them to change a law when a case may be overturned
17 at the Supreme Court.

18 My understanding is that this case is still under
19 review, it's still an active case, and I don't know if that
20 has changed since the LP was drafted, but that's the first
21 point.

22 The second point is I don't think the remedy
23 that's suggested in the LP matches the problem of the Wertin
24 case. As I understand it, the Wertins actually had their
25 return, they said to the staff we would be happy to produce

1 our returns, but it's in storage right now, we need some
2 time to go get it.

3 The staff did not ask the Wertins to extend the
4 statute of limitations, they did not ask the Wertins to go
5 produce the return. They issued the deficiency without
6 doing any of those things.

7 And in fact those are things the court all seized
8 on.

9 Let me just read one brief section. Finally, we
10 note the FTB cannot complain that it did not seek an
11 extension of the statute of limitations from the Wertins
12 while they produced their returns, which was their duty to
13 do, and they cite the section of the Revenue and Tax Code,
14 duty of the taxpayer to produce returns, 19067, extension of
15 statute of limitations.

16 We won't excuse the FTB's failure to follow these
17 statutory guidelines and condone its attempt to collect
18 taxes when it has not followed the legislatively mandated
19 procedures.

20 I don't think the issue was did the FTB have no
21 other remedy but to rely on the electronically generated
22 information.

23 I think the court took issue with the fact that
24 the returns were available, the taxpayer had the return, it
25 would just take them a little time to get it, but rather

1 than saying, gee, we have a statute of limitations problem,
2 would you extend the statute of limitations for us
3 voluntarily while you go get your return, they chose instead
4 to issue the deficiency notice.

5 For those reasons, I agree with Mr. Doerr. I
6 think that this is way premature for both reasons. I would
7 think that the remedy here may be far worse than the ill
8 it's seeking to cure.

9 Thank you.

10 CHAIRWOMAN CONNELL: Gina.

11 MS. RODRIQUEZ: Madam Chair, thank you. Gina
12 Rodriguez, the Sacramento editor for Spidell Publishing.

13 I've prepared an article to come out in our
14 newsletter of next month on this particular case, and our
15 concern is is it going to jeopardize the success of the
16 e-filing, and that's when we read this case we thought
17 there's a big concern with regard to e-filing since the FTB
18 records are all electronic once they get the returns in, and
19 especially the e-file returns, you only have electronic
20 data.

21 I think the problem with this case is possibly
22 that the FTB used some incorrect data in initially assessing
23 the Wertins, because when they revised the assessment, they
24 revised it downward by \$50,000 in tax.

25 So I think that maybe the problem was the data,

1 good data that they were using. I'm not sure.

2 So I think there's a couple different issues we
3 need to address with this particular legislative proposal.

4 But I do have that concern of whether or not we
5 are jeopardizing the success of the e-filing program.

6 CHAIRWOMAN CONNELL: Mr. Harris, did you want to
7 speak to this issue as well, Richard, or are you waiting for
8 another legislative issue?

9 MR. HARRIS: It's the retaliation.

10 CHAIRWOMAN CONNELL: If I can conclude this, then
11 I will bring you forward for the next one.

12 All right. Mr. Goldberg, how would you like to
13 respond to these comments?

14 MS. ROSAS: I'm not an attorney, so I can't speak
15 to the facts of the case.

16 CHAIRWOMAN CONNELL: We will always give you
17 credit for that.

18 MS. ROSAS: I always point that out.

19 MR. MILLER: Benjamin F. Miller, counsel,
20 Franchise Tax Board.

21 In terms of Mr. Miethke's comments, I think he
22 accurately describes areas that were of concern to the
23 court. The Wertins apparently did have a return, they
24 indicated it was in storage. We wound up with a impending
25 statute of limitations. We actually issued the NPA about a

1 week prior to when the statute of limitations expired.

2 We were criticized for not requesting an extension
3 of the statute of limitations and in hindsight we certainly
4 wish we had.

5 The Wertins did in fact produce their return.

6 We had computed a tax based upon the electronic
7 data we had available for that time period, 1984 income
8 year.

9 It turned out the Wertins had a significant
10 preference tax item which affected the rates that were
11 involved. As soon as the return was supplied, that was
12 corrected. So there was never a question as to the correct
13 amount of tax being assessed, or ultimately assessed, and
14 paid, the subsequent refund, it's just a question of the
15 timing of this.

16 While Eric is correct as to the circumstances of
17 the case, the problem is the broad language the court used
18 in this decision, which indicated it could be construed in
19 the -- I think it will be argued that we will not be able to
20 make assessments unless we actually examine a paper return,
21 with respect to each individual taxpayer. This could be a
22 very detrimental effect with respect to our RAR program,
23 which in a case like the Wertins is not unusual, we find out
24 eight, nine, ten years after the return was filed that the
25 federal government has finally made an adjustment to it. We

1 typically do -- or we don't maintain returns for that period
2 of time.

3 If we had reason to know there was a federal
4 adjustment ongoing, we would have kept the return. We have
5 made efforts to try and be made aware of that, trying to
6 establish contact with the federal government and those have
7 not proven effective.

8 So it's a situation where we were not aware that a
9 federal adjustment was ongoing until we received the final
10 adjustment.

11 We did request a return. We probably could have
12 done it in a more forthcoming manner. Yes, per the court,
13 if we had requested an adjustment, or excuse me, an
14 extension of the statute of limitations, it probably would
15 have been fine. But we didn't, it was done with a statute
16 of limitations about to run.

17 As I say, our concern is the very broad language
18 of the decision which indicates we should have looked at the
19 return, examined the return before we made any adjustment.

20 It would affect not only the federal RAR program,
21 but also our automated office, head of households, things of
22 that nature, where we reviewed the return, send out
23 questionnaires and make adjustments just shifting from a
24 head of household to a single filer when people provide
25 information to indicate they weren't qualified for head of

1 household.

2 So there's broad implications here.

3 As Gina said, we're also concerned that it may
4 impact upon the electronic filing situation. Again, we will
5 not have hard copy returns.

6 MR. GOLDBERG: What is the status of the case?

7 MR. MILLER: It's before the Cal Supreme Court.
8 We have petitioned the Cal Supreme Court for a hearing on
9 that, filed the petition about the 1st of February, they
10 have 60 days to act on it, so some time around April 1st
11 they should act on it. They can extend for another 30 days
12 if they want to.

13 We also requested of the appellate court that the
14 opinion not be published because of its broad implications
15 beyond Wertin. Wertin may have been a situation where the
16 court perhaps reached the right result, but the implications
17 are, we think, much too broad. That request for
18 depublication is also pending before the Cal Supreme Court.

19 So there could be action taken on this, yes.

20 CHAIRWOMAN CONNELL: So let's try to summarize the
21 last ten minutes.

22 Basically what we need to do here is have further
23 staff discussion to clarify language; is that correct?

24 MR. GOLDBERG: Well, we feel that the language in
25 the proposal is adequate. Obviously, we have critics that

1 we were unaware of prior, candidly, prior to today, with
2 regard to that language. So it may be in everyone's best
3 interest that we talk further.

4 But we have a major concern with regard to this
5 particular item.

6 CHAIRWOMAN CONNELL: I would prefer, it's always
7 my desire to have industry meet with you, you've done a
8 remarkable job of always congealing opinions of industry,
9 and I would like to use that format if other Board members
10 don't have a problem.

11 Is this a time sensitive matter? Can we afford to
12 have this kind of under discussion?

13 MR. GOLDBERG: I think we can certainly afford to
14 have some --

15 CHAIRWOMAN CONNELL: Is that comfortable with all
16 of you?

17 May I have a motion in that regard?

18 BOARD MEMBER KLEHS: So moved.

19 CHAIRWOMAN CONNELL: Move to the Board.

20 We are now on item 3, and we're going to go back
21 to item 2, because we didn't know these gentlemen were
22 speaking to 3. So we are taking action now on item 3, which
23 is LP 99-50, deficiency assessments, and we are moving.
24 It's been seconded.

25 ACTING BOARD MEMBER PORINI: I'm abstaining.

1 CHAIRWOMAN CONNELL: Okay. You're abstaining.
2 Okay.

3 Moving, I'll second, that we ask staff to meet
4 with industry representatives and work out language issues
5 regarding this regulation.

6 Let's move back to LP 99-47, which is the repeal
7 of capital loss limitation and carryover provisions for
8 corporations.

9 And, Johnnie, do you want to speak to this issue?

10 And, Mr. Harris, were you going to speak to this
11 issue?

12 MR. HARRIS: No, this is on 98-02.

13 CHAIRWOMAN CONNELL: Fine. Then we have no one in
14 the audience who needs to speak to this? Because we have
15 three different papers here of people speaking.

16 BOARD MEMBER KLEHS: I'll make a motion to approve
17 99-47.

18 CHAIRWOMAN CONNELL: Okay.

19 ACTING BOARD MEMBER PORINI: Abstain.

20 CHAIRWOMAN CONNELL: I will support it. So it
21 moves forward.

22 We are now on TP 99-01, qualified transportation
23 fringe benefit ride sharing exclusion conformity.

24 And I believe that, Mr. Harris, you wanted to
25 speak on this, and, Gina, you wished to speak on this, but

1 before we do that, can we have staff report?

2 MS. ROSAS: This was a proposal from Gina from
3 Spidell, at our Taxpayer Rights Hearing, and she is asking
4 that we look at the complexities imposed upon taxpayers,
5 particularly payroll agents, in the fact that our
6 transportation benefits in California and federal are
7 somewhat different, so there's separate exclusions for
8 California.

9 We had looked at this in sort of a narrow way,
10 looking at what -- it is different from the federal
11 conformity, but it was a choice of the Legislature to be
12 different in this fashion. So we weren't recommending a
13 change.

14 I have since talked to Gina and she was suggesting
15 we be a little bit more creative, look at -- if we can pull
16 those six items of differences out, and do something that we
17 have a credit for those, perhaps, as opposed to an exclusion
18 of income. That would make it simpler for taxpayers and the
19 employers.

20 We would like to come back later with that kind of
21 a proposal and see how it works.

22 BOARD MEMBER KLEHS: Do you know offhand how many
23 people claim these ride sharing tax credits? Because
24 several years ago there were, I think, two.

25 MS. ROSAS: Apparently it's enough it's a problem,

1 from what Gina has been telling me. I don't know. I will
2 check.

3 BOARD MEMBER KLEHS: So here's what I will
4 recommend. I was the one who wrote this law last time.

5 MS. ROSAS: I know.

6 BOARD MEMBER KLEHS: You basically want to find
7 out how many taxpayers, both individual and corporate, are
8 claiming the ride sharing tax credit, and then measure that
9 number up against the number of commuters in California on a
10 daily basis. And you'll probably find that they don't have
11 much of an impact, even though we always try to pretend that
12 they do.

13 And, Gina, you wanted -- I want to ask, you wanted
14 to basically also have a credit for parking passes, was it?

15 MS. RODRIQUEZ: You know, my problem is the
16 difference between the employment and the income tax laws.
17 This, the law as it reads right now, is very difficult, if
18 not impossible to implement.

19 BOARD MEMBER KLEHS: I apologize.

20 MS. RODRIQUEZ: It was a good idea at the time.

21 BOARD MEMBER KLEHS: Blame Andy Myers. He's not
22 here.

23 MS. RODRIQUEZ: But if you ask any of these
24 payroll services or any of the accounting services, they can
25 probably tell you they are unable to implement the law as it

1 MS. ROSAS: That's correct.

2 BOARD MEMBER KLEHS: You might want to also find
3 out from the federal government how many Californians claim
4 the federal credit.

5 CHAIRWOMAN CONNELL: We are now on item TP 99-02,
6 Taxpayers' Bill of Rights, and this is Mr. Harris' item,
7 prohibits staff retaliation.

8 Johnnie, do you want to explain this?

9 MS. ROSAS: We had, Mr. Harris, at the Taxpayers'
10 Bill of Rights hearing, had suggested an amendment to the
11 Taxpayers' Bill of Rights that would actually preclude staff
12 from retaliating if the taxpayer or taxpayer's rep had
13 criticized the staff.

14 We have drafted a proposal that is broader than
15 that. It goes to the issue of if they give us factual
16 information, not just opinion in the form of criticism. I
17 believe Mr. Harris' particular concern is that we used the
18 terms in good faith, which we modeled after the Government
19 Code in those sections in which under current law employees
20 can be actually fired if they retaliate against someone.

21 So we were trying to model it how it apparently
22 worked in other areas. So we are little bit broader than
23 what Mr. Harris had intended.

24 We made no recommendation.

25 CHAIRWOMAN CONNELL: Yes, Mr. Harris, can you

1 reads.

2 So I was -- my alternative was there's a statement
3 in here that we did not want to undermine the state's effort
4 to curb air pollution. Well, if that's what we're trying to
5 do, then let's look at a different alternative, and the only
6 other alternative I could come up with was providing a
7 credit.

8 BOARD MEMBER KLEHS: Right. Because there is also
9 an argument why don't we provide a credit for parking
10 passes, and what we found was that it's kind of silly to
11 have it both ways. You can't offer -- you don't want to
12 offer people both passes to ride public transit, and at the
13 same time give them a credit or an exclusion for parking
14 passes, because parking passes encourage people to drive the
15 car in, and you don't want them to do that.

16 So just bear that in mind as you're developing a
17 proposal.

18 MS. ROSAS: You want us to look at ride sharing,
19 internal ride sharing credit?

20 BOARD MEMBER KLEHS: Right. How many people
21 actually claim it.

22 MS. ROSAS: Get info on it?

23 BOARD MEMBER KLEHS: Right.

24 CHAIRWOMAN CONNELL: Actually, no action is needed
25 today on this item; is there?

1 identify yourself for the record.

2 MR. HARRIS: Yes. Richard Harris. I'm a tax
3 litigator here in the State of California.

4 I have three questions. One is about status, one
5 is about the suggested language, the language suggested by
6 the staff, and I guess the third one is not a question, but
7 a suggestion.

8 By inclusion of this in the package, does this
9 mean that this has now become part of the Board's
10 legislative package or legislative proposal?

11 MS. ROSAS: No.

12 MR. GOLDBERG: Not until it is approved by the
13 Board.

14 MR. HARRIS: Okay. I would urge that the Board do
15 adopt, as part of its legislative proposal, the
16 anti-retaliation amendment to the Taxpayer Bill of Rights.

17 The need for it or the wisdom of doing so, I think
18 is reflected in the CFO magazine's poll results about the
19 fear that taxpayers have that criticism of state tax
20 agencies will lead to retaliation.

21 It would be useful for the Board to go on record
22 to say, hey, in California you should neither expect nor
23 fear such retaliation if you provide information or
24 criticize the Board's administration or the conduct of any
25 Board employee.

1 Now, that may not reassure everybody, but it would
2 be, I think, useful.

3 The language, however, that has been proposed by
4 the staff, I think has an inappropriate limitation in it. I
5 now understand the model that they used. I have looked at
6 the model, and it is not apposite.

7 The model comes from the Government Code and it
8 deals with something very different. It deals with the
9 issue of employees', government employees', First Amendment
10 rights, which are different from taxpayers' First Amendment
11 rights.

12 There may be a good faith limitation in the
13 Government Code dealing in the disciplinary section. It may
14 be appropriate, but as the Supreme Court has noted since at
15 least 1968, the free speech, or First Amendment right, the
16 right to petition, considerations, are very different for
17 first for government employees than for members of the
18 citizenry.

19 My proposal goes solely to the question of
20 taxpayers, taxpayer employees, and taxpayer representatives
21 speaking out.

22 To ingraft or to encrust the good faith limitation
23 from the Government Code, not only is, I think, logically
24 and legally inappropriate, I think it is both politically
25 inappropriate, because it suggests a limitation on this

1 Board's commitment to avoid such conduct.

2 And I think it is constitutionally inappropriate,
3 because there is no such limitation on the First Amendment
4 right to petition for redress of grievances.

5 Accordingly, I would hope that you would, one,
6 make such an amendment part of your proposal, take a public
7 stand, say, hey, our policy doesn't countenance such
8 retaliation, and we make this our commitment. We will not
9 retaliate against -- we are going to propose this to the
10 Taxpayer Bill of Rights, we were not going to retaliate
11 against anybody who criticizes the conduct of the Board and
12 we're not going to second guess the motive for their
13 criticism.

14 The way it's drafted now, it would suggest that
15 only those criticisms that the Board or that the staff felt
16 were made in good faith would prevent retaliation, and
17 politically you have the result that it's suggesting that
18 you would countenance retaliation against people whose
19 motives you didn't trust or you didn't accept.

20 I'd be happy to answer any questions.

21 I've tried to lay this out in a couple of the
22 letters. The reason for the letters is that this new
23 language was proposed without my having had any opportunity
24 to discuss with the draftsman the intent of my suggestion,
25 which I understood they had tried to follow.

1 CHAIRWOMAN CONNELL: Are there any questions of
2 staff regarding Mr. Harris' comments?

3 MR. GOLDBERG: Well, staff would simply note that
4 there are various code sections that deal with employee
5 behavior. There's also FTB policy that seems to deal with
6 these issues.

7 My concern is with the use of the word retaliation
8 and what it might mean.

9 For example, we have tax protesters, who, I'm sure
10 certainly Mr. Klehs and Controller Connell at this point,
11 given your tenure on the Board, you probably have seen
12 letters from. Insofar as we take any action to investigate,
13 is that retaliation? Insofar as a taxpayer is irate and is
14 subsequently audited, does that mean that we are
15 retaliating?

16 I just have a great deal of difficulty with the
17 word retaliate, in addition to Mr. Harris' concerns with
18 regard to in good faith, when I think that there are already
19 provisions in the law and in FTB policies that clearly would
20 not countenance such behavior.

21 BOARD MEMBER KLEHS: I would make a motion to
22 table this, because I hate to do duplicative law, but it
23 seems that at some point in the future when you're
24 considering this you might want to identify the code
25 sections in the law that deal with that and incorporate that

1 into the Taxpayers' Bill of Rights by administratively here.

2 CHAIRWOMAN CONNELL: I don't have a problem with
3 that suggestion.

4 I am concerned about what is perhaps ambiguous
5 language as it relates to retaliation as well.

6 We certainly have had circumstances in the past
7 where that issue has come up, and it has led to security
8 concerns of Board members and, you know, being able to
9 protect Board members at both the BOE and the FTB from
10 someone who is irate about their tax situation, I think as a
11 matter of civil rights, and I don't think that you would
12 want to have that construed as retaliation. I mean, there
13 are circumstances where we've had that, unfortunately.
14 Obviously, that's why this building and others are so
15 secure.

16 BOARD MEMBER KLEHS: Also if we go after organized
17 crime, I don't want them to be able to say I'm retaliating
18 against them.

19 MR. HARRIS: May I respond to the Board's
20 comments?

21 CHAIRWOMAN CONNELL: Yes.

22 MR. HARRIS: With all due respect, I think that
23 the tax protester issue is certainly irrelevant to my
24 suggestion. I understand the concern about it.

25 There already are use of the term retaliation in

1 the Government Code, so that that term itself is, you know,
2 has something, you know, has some foundation.

3 Moreover, what I have been suggesting is something
4 that would be prohibited and is acknowledged by the staff to
5 already be prohibited by your policy and by your law.

6 What I am trying to do is to address a very
7 different issue.

8 The CFO magazine commented and confirmed, the
9 article in the Journal of State Taxation confirmed, things
10 that are negative about the reputation of the State of
11 California and its aggressiveness and the perceptions of it
12 being capricious.

13 One element that permeates the entire country is
14 this perceived fear that criticizing a state tax agency will
15 in some way, subtle or otherwise, result in some type of
16 retaliation.

17 We're trying to address the issue of business
18 climate. And if this is already part of your policy, I
19 would say that to add it, for the Board itself to propose
20 it, to add it to the bill of rights, to the Taxpayer Bill of
21 Rights would be helpful.

22 And I don't think it would change -- it doesn't
23 change the law in any way with respect to taxpayer protests
24 or anything else.

25 This question about whether it's an audit,

1 presumably every time we go out to audit somebody, the state
2 goes out to audit, there's a good reason for it. It's come
3 up because of your screening, it's come up because of a
4 question, it comes up because of an RAR, it comes up for
5 something. There's always a reason for it.

6 I think there is no fear that the addition of this
7 is going to complicate anything, and certainly not endanger
8 any employee or any member of the Board or any security
9 issue.

10 With all due respect, I think the taxpayer
11 protestor comment and that Mr. Goldberg has put in here is a
12 total red herring.

13 CHAIRWOMAN CONNELL: Do you wish to respond to
14 that or should we just drop this issue?

15 MR. GOLDBERG: I think I'd prefer the latter.

16 BOARD MEMBER KLEHS: I think we can make a motion
17 to table this right now.

18 CHAIRWOMAN CONNELL: We will move to table. We
19 have unanimous vote.

20 Moving on, TP 99-03, conforming with federal law.

21 Gina Rodriguez wishes to speak to this, I believe.
22 Is that correct? No, you waived your right to speak. Okay.

23 MS. ROSAS: Gina raised this in December again,
24 discussing the complexity of the code, not of the law
25 itself, but how the code is written.

1 We looked at it and I think it's one of those
2 codes that's very often recognizes it's a mess right now.

3 We would like to gather together practitioners,
4 interested parties later in the year and sit down and let's
5 look at --

6 CHAIRWOMAN CONNELL: Are you referring to a task
7 force here?

8 MS. ROSAS: Sort of can we rewrite it, is it
9 feasible to rewrite it, can we simplify it in some fashion
10 without a major change in how we go about --

11 CHAIRWOMAN CONNELL: Mr. Klehs, how do you feel
12 about a task force?

13 BOARD MEMBER KLEHS: Task forces are great. They
14 take up a lot of time.

15 CHAIRWOMAN CONNELL: Consider it done.

16 Move on. Bills for position. Let's try to figure
17 out -- you were not going to take a position on legislative
18 bills?

19 ACTING BOARD MEMBER PORINI: No.

20 CHAIRWOMAN CONNELL: Good.

21 Then, Mr. Klehs, you and I can move through this
22 very quickly.

23 Why don't you read the ones that you want a
24 neutral position.

25 BOARD MEMBER KLEHS: I think we agreed upon

1 consent, neutral bills, okay. So you want me to read them
2 off?

3 CHAIRWOMAN CONNELL: Yes.

4 BOARD MEMBER KLEHS: So this is the proposed
5 consent calendar, and this is in a neutral position right
6 now. AB 10, AB 51, AB 81, AB 97, interrupt whenever you
7 want. AB 114, AB 160, AB 203.

8 CHAIRWOMAN CONNELL: Wait a second. 203, okay.
9 This is like bingo.

10 BOARD MEMBER KLEHS: It is like bingo.

11 AB 229, AB 356, AB 408, AB 465.

12 CHAIRWOMAN CONNELL: Got it.

13 BOARD MEMBER KLEHS: AB 482, AB 489, AB 490, AB
14 569, AB 572, AB 763, 765, and ABX 13, SB 30, and then SB 84,
15 SB 85. It's the third page.

16 We have consent support on SB 86.

17 And then again the remainder of these are consent
18 neutrals, which is SB 304 all the way through to SB 549.

19 CHAIRWOMAN CONNELL: Okay.

20 BOARD MEMBER KLEHS: The rest, how do you want to
21 do that?

22 CHAIRWOMAN CONNELL: Let's see. The other ones
23 that I was concerned about, I would like to take a no
24 position on AB 49 and no position on AB 156.

25 BOARD MEMBER KLEHS: Okay.

1 CHAIRWOMAN CONNELL: I think you're in agreement
2 with me.

3 BOARD MEMBER KLEHS: Right.

4 CHAIRWOMAN CONNELL: So those two are no
5 positions.

6 On AB 2, which of course is Board sponsoring, I
7 want to take a support position, a yes, on AB 2, which is
8 the Alquist bill.

9 BOARD MEMBER KLEHS: That's fine.

10 CHAIRWOMAN CONNELL: Fine on that.

11 And that's the only ones I have concern about.

12 You want to take a no on the rest? Is that -- is
13 that your choice?

14 BOARD MEMBER KLEHS: Yeah, I guess. Let me just
15 look.

16 CHAIRWOMAN CONNELL: Are you in support?

17 BOARD MEMBER KLEHS: There's some I have support
18 on.

19 CHAIRWOMAN CONNELL: Why don't you go ahead.

20 BOARD MEMBER KLEHS: I'll do the supports.

21 Support would be AB 68.

22 CHAIRWOMAN CONNELL: 68, I don't have a problem
23 with that.

24 BOARD MEMBER KLEHS: Then support on AB 401.

25 CHAIRWOMAN CONNELL: 401, yes, support that.

1 BOARD MEMBER KLEHS: Support on AB 473,
2 manufacturers' investment tax credit continuation.

3 CHAIRWOMAN CONNELL: Yep.

4 BOARD MEMBER KLEHS: Then SB 17, support.

5 CHAIRWOMAN CONNELL: SB 17, yep.

6 BOARD MEMBER KLEHS: And then SB 48, support.

7 CHAIRWOMAN CONNELL: Okay.

8 BOARD MEMBER KLEHS: SB 164, support.

9 CHAIRWOMAN CONNELL: What does that do? Let's
10 see.

11 BOARD MEMBER KLEHS: I just read Pat Johnston.

12 CHAIRWOMAN CONNELL: I want to know what that bill
13 does first. Pull SB 164.

14 MS. ROSAS: It's on page 24 of your summary and
15 it's one that --

16 BOARD MEMBER KLEHS: Payments on the
17 reparations --

18 MS. ROSAS: To Japanese interned in Canada.

19 CHAIRWOMAN CONNELL: I can support that.

20 BOARD MEMBER KLEHS: And so that's that.

21 And then the rest are like oppose or nothing.

22 CHAIRWOMAN CONNELL: Why don't we just keep it
23 neutral. Is there a reason to oppose them?

24 BOARD MEMBER KLEHS: Excuse me. We have on the
25 last page here, we have these supports AB 189, which is the

1 staff recommendation support.

2 Obviously on the MTC, my position is the same as
3 the Governor's. I'm not sure the Governor has a position
4 yet.

5 MS. ROSAS: You're no position?

6 BOARD MEMBER KLEHS: I'm no position on the MTC
7 thing. That's AB 753.

8 And then support on the last page of all of the
9 rest, AB 189 through SB 1230.

10 CHAIRWOMAN CONNELL: Are these on, technically?

11 MS. ROSAS: They were just included because they
12 were all the bills you haven't seen.

13 BOARD MEMBER KLEHS: We don't want to change our
14 position on that?

15 CHAIRWOMAN CONNELL: They're not technically on.

16 MS. ROSAS: You can do whatever you want to do.

17 CHAIRWOMAN CONNELL: Are you sure what positions
18 we took on everything else?

19 MS. ROSAS: I'm going with the -- I believe this
20 is on the Kaloogian bill, 753, you are giving a position of
21 support again on that one.

22 The other --

23 CHAIRWOMAN CONNELL: On which one?

24 MS. ROSAS: On the bill, Board sponsored bills.

25 CHAIRWOMAN CONNELL: Yes.

1 MS. ROSAS: Not changing those.

2 MR. GOLDBERG: Is what -- I'm just trying to get
3 clear.

4 BOARD MEMBER KLEHS: Let me just -- the director
5 of Finance here, I'm not sure they have a position on MTC,
6 and I have publicly stated my position is the same as the
7 Governor's. I'm a little reluctant to flip around on
8 positions on previous Board members, even though I disagree
9 with this one, and everyone knows my position on it, so
10 it's -- it isn't a big deal to me today. In the end it's
11 the Governor's choice anyway.

12 MS. ROSAS: For clarification, the ones that we
13 didn't discuss by number, we're leaving those as neutral?

14 CHAIRWOMAN CONNELL: Right. That's what we
15 decided.

16 MS. ROSAS: I've got the rest, I think, and
17 everyone else is taking notes with me.

18 CHAIRWOMAN CONNELL: Now, we are on Item 4,
19 finally, which is on regulation matters. And let me pull my
20 item 4.

21 We are on item 4 A, and I have no one speaking to
22 this issue, is that correct, in the audience? Okay.

23 We will begin with item 4 A, the status report on
24 pending regulations 25106.5, 2, 3, 4, 5, 9 and 10, and
25 25128, 25128-1, and 25128-2, double-weighted sales factor.

1 And, Mike, and, Don, are you going to present
2 this? Go forward.

3 MR. BROWNELL: Mike Brownell, Franchise Tax
4 legal.

5 This is a status report regarding combined report
6 mechanics regulations 25106.5. These are the 15-day changes
7 that came from the last Board meeting in December.

8 As you know, these regulations deal with mechanics
9 of reporting and were controversial in part. On December
10 16th the Board deferred action on the main regulations to
11 direct the staff to proceed with the dash series of
12 regulations, the 25106.5 dash 2, et seq, except to reserve
13 on the treatment of capital loss carryforwards.

14 CHAIRWOMAN CONNELL: Do we have any
15 dissatisfaction with the action that you're recommending
16 today?

17 MR. BROWNELL: We have in fact conferred with
18 industry on these and we understand they are in agreement.

19 CHAIRWOMAN CONNELL: Is that true as well with
20 Arco?

21 MR. GOLDBERG: That's a separate item.

22 CHAIRWOMAN CONNELL: Okay. All right. Fine.

23 Can I have a motion on this item?

24 BOARD MEMBER KLEHS: So moved.

25 ACTING BOARD MEMBER PORINI: Second.

1 CHAIRWOMAN CONNELL: It's been approved. Thank
2 you.

3 Let's move on, proposed regulations 19041, 19044,
4 protest hearing procedures and the rules.

5 Do we have a motion on these?

6 BOARD MEMBER KLEHS: So moved.

7 ACTING BOARD MEMBER PORINI: Second.

8 CHAIRWOMAN CONNELL: Okay. And we are now on --
9 just a second.

10 MR. MILLER: Do you want to do 25128? It's the
11 Arco.

12 CHAIRWOMAN CONNELL: Yes. I was assuming we took
13 action on both of them.

14 MR. GOLDBERG: I'm not sure if a representative
15 from Arco wanted to speak to that.

16 CHAIRWOMAN CONNELL: Sara, did you want to speak
17 to this?

18 I thought you said you didn't want to speak to
19 this.

20 FROM THE AUDIENCE: I don't, but if you want me
21 to.

22 CHAIRWOMAN CONNELL: I thought we took action on
23 both of them.

24 Thank you, Sara.

25 I thought I had read you right, but these

1 meetings, you know, get a little --

2 Okay. Where was I now? Yes, who is on first.

3 We were on protest hearing procedures and rules
4 and we had just asked for a motion. We approved that.

5 BOARD MEMBER KLEHS: Moved.

6 CHAIRWOMAN CONNELL: We are now on intercompany
7 transactions, and we actually have somebody who wishes to
8 this. This is item 4 C.

9 If we can all be on the same page again.

10 David, I believe you wanted to speak to this.

11 This is proposed regulation section 25106.5-1.

12 Mike, do you want to present this item briefly?

13 MR. BROWNELL: Yes, I do.

14 This regulation is part of a series involving
15 combined report mechanics, was in fact a separate item from
16 that which the Board had considered before.

17 This draft regulation was distributed by FTB
18 notice in September of 1997 and is currently on the
19 department's Web site.

20 In general, these rules provide that income from
21 intercompany transactions are deferred between the key
22 members of the intercompany group, until such time the asset
23 is sold outside the group or until the group itself breaks
24 up or makes its election.

25 Generally speaking, the regulations follow federal

1 consolidated recurring regulations with modifications for
2 apportionment, and in some cases the federal rules are not
3 adopted.

4 The areas are complex. There are several
5 controversial matters. This is a frequent topic of
6 discussion at a number of seminars. And we expect
7 considerable amount of interest and public input.

8 In addition, staff is preparing some additional
9 amendments to these versions that are currently on the Web
10 site, so our proposal to this Board would be to ask for
11 authorization to host a symposium to bring forth the
12 regulations on our Web site and any amendments we would add,
13 so we have an opportunity for public discourse on these
14 regulations.

15 CHAIRWOMAN CONNELL: Do you feel that we're
16 over-symposiomed in this Board?

17 MR. BROWNELL: It may well be in other contexts,
18 but this one is probably -- this one probably certainly
19 calls for it because of its complexity.

20 CHAIRWOMAN CONNELL: I worry about all those legal
21 bills mounting up for clients in California when they attend
22 these symposiums. You know, seas of lawyers and accountants
23 out there billing and I worry.

24 BOARD MEMBER KLEHS: Eric Miethke's bread and
25 butter.

1 CHAIRWOMAN CONNELL: Okay. Well, Mr. Doerr.

2 MR. DOERR: Dave Doerr representing Cal Tax.

3 I think it was discussed here. We kind of thought
4 this was a regulation that already had been discarded. It's
5 been around so long that people thought it was dead.

6 And with a lot of these, we have these symposiums
7 and proposed regulations, and then we come in, we have to
8 terminate the process. So you can terminate it to start
9 with on this particular one, because it's been around for so
10 long, and there's been no action.

11 We didn't think that the Board was going to go
12 forward with it. I mean, it is kind of unusual to have it
13 out there since 19 --

14 MR. BROWNELL: To clarify the record, this
15 regulation is approximately 40 pages in length and extremely
16 complex.

17 MR. DOERR: And controversial.

18 MR. BROWNELL: And somewhat controversial.

19 CHAIRWOMAN CONNELL: So we obviously need a task
20 force. Is that the recommendation of staff here?

21 MR. BROWNELL: Yes. A task force/symposium.

22 CHAIRWOMAN CONNELL: How many task forces do we
23 have? I feel like the Pentagon with all these forces out
24 there. How many are there, Mr. Goldberg?

25 MR. GOLDBERG: I would say less than ten.

1 CHAIRWOMAN CONNELL: This is reassuring. Can you
2 give us an update as that number grows above ten?

3 You think it's a pollution -- I hope we're using
4 recyclable paper here, as chair of the Lands Commission, we
5 hate to see the timber supply of California being used up
6 for task forces.

7 MR. GOLDBERG: We thought we were pleasing
8 industry with these symposia.

9 MR. DOERR: Generally, we are pleased. I mean,
10 that's the right way to go.

11 But on something that's been kind of around for a
12 long time, not going anywhere, it's questionable.

13 The other point I would like to make, I didn't
14 sign up for all these regulations, because I didn't want to
15 keep popping up, but where you have authorization for
16 symposium and notice of hearing, we think it's premature to
17 notice a hearing before you even had the symposium.

18 CHAIRWOMAN CONNELL: Absolutely.

19 MR. DOERR: On E and F where you symposium, you
20 ought to not also notice the hearing.

21 MR. BROWNELL: We would expect that the symposium
22 would well predate the normal regulatory process, and the
23 symposium may or may not result in a recommendation to the
24 Board. The symposium is essentially a preliminary stage and
25 it could well result from the symposium that nothing

1 happens.

2 But we expect this specific item, the duration of
3 this particular project has been 18 months since it has been
4 on our Web site, which is not all that extraordinary,
5 although the issue has been around for a while.

6 It's an extraordinary complexity and we left it
7 out on the public domain because it's complex, so that the
8 opportunity would be there for the public to hear.

9 CHAIRWOMAN CONNELL: Okay. Well, do we have a
10 motion, Mr. Klehs?

11 BOARD MEMBER KLEHS: So moved.

12 CHAIRWOMAN CONNELL: Moved what? What are you
13 moving?

14 BOARD MEMBER KLEHS: To proceed.

15 CHAIRWOMAN CONNELL: To proceed with the task
16 force?

17 BOARD MEMBER KLEHS: To proceed with the
18 regulation.

19 MR. BROWNELL: Symposium published?

20 BOARD MEMBER KLEHS: Yeah.

21 CHAIRWOMAN CONNELL: All right. I'll second that.

22 BOARD MEMBER KLEHS: Spring '99.

23 CHAIRWOMAN CONNELL: Let's move to 4 D, status
24 report on proposed regulation 25106.5, C-E and 25106.5 G,
25 combined report mechanics.

1 And the first one is apportionment and you want to
2 deal with that? This is the Joyce Finnigan case.

3 MR. BROWNELL: Yes, it is.

4 CHAIRWOMAN CONNELL: I know only too well. You
5 delay --

6 BOARD MEMBER KLEHS: I'm going to make a motion on
7 Joyce.

8 MR. GOLDBERG: That's not a motion.

9 CHAIRWOMAN CONNELL: What is your motion?

10 BOARD MEMBER KLEHS: To proceed with the Joyce
11 regulation.

12 CHAIRWOMAN CONNELL: I'm going to vote against
13 that. I think we should delay until we have a BOE decision.

14 ACTING BOARD MEMBER PORINI: I'll second it, and
15 be voting with Mr. Klehs.

16 CHAIRWOMAN CONNELL: I thought you weren't voting
17 on regulatory items.

18 ACTING BOARD MEMBER PORINI: I have been seconding
19 and have been voting.

20 CHAIRWOMAN CONNELL: What was your recommendation
21 on this, staff?

22 MR. BROWNELL: On the Joyce controversy,
23 essentially the Board left this in deferred status on this.
24 We can certainly proceed with a regulation, but it would
25 probably be appropriate to do this via a brand new

1 regulation, a whole new 45-day start period if the Board is
2 inclined to do this, rather than as part of the existing
3 15-day regulatory process. It give a little bit more
4 opportunity for people that have concerns about that to be
5 heard.

6 BOARD MEMBER KLEHS: This has been dilly dallying
7 around here for a long time, why wait any longer?

8 CHAIRWOMAN CONNELL: You find it prospectively
9 then?

10 BOARD MEMBER KLEHS: My motion is to proceed with
11 the regulation which adopts Joyce prospectively.

12 ACTING BOARD MEMBER PORINI: So then a question of
13 staff. We have to start the whole regulatory process again?

14 MR. BROWNELL: At the Board's pleasure here, too,
15 we can amend the existing 15-day regulations that are
16 currently sitting to pick up the Joyce rule, because that
17 was the original noticed version, or in the alternative we
18 could leave the existing 15-day regulations alone and start
19 fresh with a new regulatory project, either which is
20 optional.

21 BOARD MEMBER KLEHS: I think whatever is the
22 shorter process at this point.

23 CHAIRWOMAN CONNELL: So what are you recommending?
24 Clarify for me.

25 MR. BROWNELL: That we don't have a specific

1 recommendation on this. It's largely a political question
2 whether or not the Board wishes to proceed with Joyce
3 Finnigan by amending the 15-day notice or whether it was
4 just to proceed on a new regulation or which is to defer
5 pending Joyce Finnigan before the Board. We have no
6 specific recommendation.

7 MR. GOLDBERG: Obviously, going with the 15-day
8 recommendation is the most expedited.

9 BOARD MEMBER KLEHS: That would be my motion then.

10 ACTING BOARD MEMBER PORINI: I'll second that.

11 MR. BROWNELL: The next item in this subcategory
12 deals with capital loss carryforward.

13 You will recall this was a controversial item for
14 industry who wanted capital loss to be computed at the group
15 level rather than entity level.

16 The legislative proposal which has been offered
17 with respect to capital gains and losses and approved by
18 this Board should take care of most of the problems.

19 There are some residual problems that have to be
20 dealt with with respect to this problem, but for the most
21 part the legislative proposal will take care of these.

22 CHAIRWOMAN CONNELL: This is tax credits and
23 combined report?

24 MR. BROWNELL: The third element, tax credits in a
25 combined report, this is a status report. Industry is

1 expected to present their alternative proposal to the staff.
2 We expect the proposal coming to us within the next two
3 weeks, which we would present at the next Board meeting.

4 CHAIRWOMAN CONNELL: So we are actually deferring
5 this?

6 MR. BROWNELL: Personal --

7 CHAIRWOMAN CONNELL: Capital loss carryforward,
8 and it's my understanding that we are deferring that as
9 well?

10 MR. BROWNELL: Correct. The industry has asked
11 that item be deferred until the end of the legislative
12 session to allow legislative amendment to take care of the
13 problem.

14 CHAIRWOMAN CONNELL: Okay. Then we are on E,
15 amendment of regulation 25137 C, occasional sale of
16 intangible assets sales factor.

17 Do we have a motion to support that?

18 BOARD MEMBER KLEHS: So moved.

19 CHAIRWOMAN CONNELL: I second it.

20 And we are now on item F, amendment of regulation
21 25137(b), treatment of non-jurisdictional property in the
22 property factor.

23 And staff recommendation here is what?

24 MR. BROWNELL: Is to proceed with the regulation.
25 This is essentially codified in the codification of existing

1 practice, except for technical detail.

2 CHAIRWOMAN CONNELL: Eric Miethke, I believe
3 wishes to speak to this item.

4 MR. MIETHKE: Madam Chair and members, Eric
5 Miethke.

6 Just one question before I comment on this,
7 because I think there was some concern about it. Did I
8 understand then that the change from Joyce to Finnigan or
9 from Finnigan to Joyce actually is deemed to be a
10 nonsubstantive change, put in the 15-day file?

11 MR. BROWNELL: For purposes of clarification, the
12 original regulation, as it was proposed, contained a Joyce
13 version in it. So as far the public is concerned, the Joyce
14 version is in the public domain. So all this Board has
15 essentially done is removed the strike-out from the original
16 draft, which came from the December 16th, so essentially
17 restores it to status quo.

18 MR. MIETHKE: And that's deemed a nonsubstantive
19 change?

20 MR. BROWNELL: It's removing a strike-out which
21 did not occur, because the Board did not officially go
22 forward with the strike-out version. There is no public
23 strike-out of the existing language, so essentially it's
24 currently in that domain.

25 BOARD MEMBER KLEHS: We're adopting the staff

1 recommendation.

2 MR. MIETHKE: Well, okay. If that's deemed to be
3 a nonsubstantive change that seems to be a hyperextension of
4 the Government Code, but I'm sure that will come out in the
5 regulatory process.

6 On this, I guess a question which is, I requested
7 the Board materials on this and got them only yesterday, so
8 I apologize for the lack of time, or prior notice to the
9 staff, but it's unclear to me, though, that I didn't think
10 this was current practice, because to the -- I thought the
11 Com Sat -- I thought this was different from the Com Sat
12 case and to the degree that the Com Sat case controls, why
13 do we need this regulation?

14 MR. BROWNELL: It probably needs a little bit of
15 background.

16 There are two cases that deal with
17 nonjurisdictional property, one of which is the Board of
18 Equalization called appeal of AT&T. Basically what it did
19 was it took nonjurisdictional property, such as undersea
20 cables, and split it 50/50 between California and Hawaii.

21 The Com Sat case basically took satellites, the
22 value of satellites, and spread it amongst the property of
23 the taxpayer's other property, took the satellite value and
24 proportionally divided it amongst the property.

25 Mathematically that's the same effect as throwing

1 it out of both numerator and denominator. And we can
2 demonstrate that to Mr. Miethke's satisfaction if he likes
3 during the symposium process.

4 But the Com Sat case and the result of this
5 regulation are mathematically the same thing. It's just a
6 little more simple to simply strike it from the numerator
7 and denominator than it is to have the mechanics of
8 requiring the spread rule of Com Sat.

9 CHAIRWOMAN CONNELL: Mr. Miethke, you have a lot
10 of symposiums. Do you think you'll have time for yet
11 another symposium?

12 MR. MIETHKE: This one, actually the only thing I
13 raise about this, is that this issue of outer jurisdictional
14 property and the property factor has raised its ugly head in
15 several different instances affecting the telecommunications
16 industry, affecting the motion picture and broadcasting
17 industries.

18 This is not -- I think what I want to sensitize
19 you to is I don't think this is as minor a matter as the
20 staff would like to project.

21 CHAIRWOMAN CONNELL: I don't think so. I
22 would like to receive some communication on this --

23 MR. BROWNELL: We're not suggesting this is a
24 minor matter. What we're suggesting is that this is
25 substantially the same in effect as our existing practice

1 reflected by the cases. And I think we can demonstrate that
2 to you.

3 MR. MIETHKE: Again, all I want to caution the
4 Board is that this issue affects a lot of different
5 industries.

6 It is, I do agree with the staff, that this has
7 very broad impact, and of any of these that did require a
8 symposium, I would think that you would want to pay special
9 attention to this one, because it does affect so many
10 industries --

11 CHAIRWOMAN CONNELL: We're going to move forward
12 with a recommendation for a symposium. I'll move that.

13 Do you want to second it, Mr. Klehs?

14 BOARD MEMBER KLEHS: Sure.

15 CHAIRWOMAN CONNELL: Okay. You voting on this?

16 ACTING BOARD MEMBER PORINI: Yes.

17 CHAIRWOMAN CONNELL: We have a three vote on that.

18 Yes. Number G, proposed regulation 18567,
19 extensions. And he have no one to vote on this.

20 Do we have a motion concerning this item?

21 BOARD MEMBER KLEHS: So moved to proceed.

22 ACTING BOARD MEMBER PORINI: Second.

23 CHAIRWOMAN CONNELL: That is unanimous.

24 Proposed regulations H, 17252.2-1, 17265-1,

25 17266-1 --

1 BOARD MEMBER KLEHS: I'll make a motion to
2 proceed.

3 CHAIRWOMAN CONNELL: Thank you.

4 I would like to delay for language on that,
5 because I don't think we have adequate language yet on those
6 regulations.

7 Is there any reason to move these today?

8 MR. TOMAN: Not today, Madam Chair.

9 CHAIRWOMAN CONNELL: I'd like to delay for
10 language on that. Okay.

11 Any discussion from members of audience?

12 Mr. Klehs, where are you on this issue?

13 BOARD MEMBER KLEHS: What do you want today?

14 CHAIRWOMAN CONNELL: I want to delay on H and I
15 for language.

16 BOARD MEMBER KLEHS: Where is the Governor on this
17 thing?

18 I don't like delays, but what's the reason? The
19 world is not going to come apart if we delay on it.

20 ACTING BOARD MEMBER PORINI: No, I'm fine with
21 that.

22 CHAIRWOMAN CONNELL: Fine. Delay H and I. And
23 that's a unanimous vote.

24 And we are going to take a ten-minute break and
25 then we're going to move to item 5, administrative items.

1 (Thereupon a short recess was taken.)

2 CHAIRWOMAN CONNELL: I'd like to call the meeting
3 back to order. If people could take their seats, please.

4 Mr. Klehs is in the room. Can you join us? There
5 you are.

6 Let us begin. We are now on administrative items,
7 that would be Item 5 on everyone's agenda.

8 And let's see. Why don't we start this item by
9 understanding the evolution of what has occurred here.

10 Last year we had Board action by a Board that was
11 different in composition than this Board, which reflected
12 recommendations coming out of the Deloitte Touche audit.

13 As you recall, those of you in the audience who
14 have tracked our activity over the last period of years, you
15 know the Board did that action to do a performance audit of
16 the Franchise Tax Board, and based on that recommendation,
17 series of recommendations by Deloitte and Touche, the 1998
18 Franchise Tax Board submitted a number of changes to reduce
19 staff and to gain economies and efficiencies, put more
20 resources into certain areas of the Franchise Tax Board.

21 And those actions were taken in our meetings at
22 the end of last year, and are reflected in the budget, which
23 the Franchise Tax Board submitted to the Governor's office.

24 Subsequently, the Governor submitted a budget to
25 the Legislature in the year 1999, which showed some budget

1 adjustments which were not consistent with the previous
2 Board's direction, and those items are being brought to the
3 Board's attention today, so that we can discuss those items
4 and represent a position by this Board.

5 The first item that we want to talk about in
6 budget adjustments for proposed 1999-2000 is the LLCs. And
7 last year the Board approved \$2.6 million in the use of
8 contract programmers for this project. The Governor's
9 budget proposes 1.8 million, but adds 23 new staff
10 positions. And that was the original staff proposal, which
11 had been vetoed by the Board last year with the
12 understanding that we did not want to see permanent
13 positions.

14 And Deloitte and Touche also felt permanent
15 positions were not necessary, that, indeed, it was better to
16 go with contract programmers for this assignment.

17 So the question now is whether you support the
18 proposal that was enacted by the Board last year, or whether
19 you support the proposal that is referenced in this year's
20 budget.

21 It's a question of whether you believe in
22 temporary staff, albeit at a higher cost, or permanent staff
23 which, once on, are hard to remove.

24 Is that a fair depiction of the issue,
25 Mr. Goldberg?

1 MR. GOLDBERG: I would say you said it rather
2 well.

3 CHAIRWOMAN CONNELL: Okay.

4 ACTING BOARD MEMBER PORINI: Let me begin by
5 representing the Department of Finance in terms of the
6 budget. These are the Department of Finance's
7 recommendations, so I would move that we adopt item No. 1.

8 BOARD MEMBER KLEHS: Second.

9 CHAIRWOMAN CONNELL: What was the logic of going
10 with permanent staff? Can you explain that?

11 ACTING BOARD MEMBER PORINI: I cannot. I just
12 don't have that information in front of me, but I'm happy to
13 bring the information back to you, if you would like.

14 CHAIRWOMAN CONNELL: Is there a reason to take
15 action today if we don't have the information in front of
16 us?

17 MR. GOLDBERG: Our budget hearings, are first
18 budget hearing is tomorrow morning at 9:30, so we would need
19 some direction from the Board, or we would be representing
20 the position that the Board took in December.

21 CHAIRWOMAN CONNELL: You have no idea --

22 ACTING BOARD MEMBER PORINI: I'm sorry. I was
23 looking for my note, and I can't find that, and I can't
24 recall at this moment.

25 If you would like to skip the item and --

1 MR. TOYAMA: I might be able to speak on this.
2 This is Titus Toyama, the chief financial officer of the
3 Franchise Tax Board.

4 You stated it rather well, Madam Chair, as to the
5 reasons for a decision being brought forward to you. And it
6 is correct that the staff position last fall was for \$1.8
7 million and 22, 23 positions.

8 We went forward with that recommendation because
9 it's our been experience in technology projects, although
10 contract programmers can provide a certain level of
11 expertise, it's also important that our own employees have
12 been actively involved in development in these systems,
13 because once the systems are up and running, they have to be
14 maintained, and therefore to have staff from -- state staff
15 from the get-go be involved in the development of the
16 systems adds tremendously towards our ability to maintain
17 them once they're completed.

18 CHAIRWOMAN CONNELL: And, of course, the Deloitte
19 and Touche disagreed with that position last year.

20 And our previous Board disagreed.

21 In fact the LAO disagrees with that and the LAO's
22 review of the budget was that there was no justification for
23 going with permanent staff, and that they felt that there
24 should be a report back by the Franchise Tax Board as to why
25 they were not moving forward on the recommendations that

1 Deloitte and Touche gave in reference to this.

2 So we have a report from the LAO, which supports
3 the previous -- the LAO is an independent review, they
4 obviously have no political position. And when they
5 reviewed this budget, they saw no reason to go with
6 augmentation of staff on a permanent basis, and recommended
7 that they will go back to the original budget submission,
8 which is what they will argue, I understand, at your tax
9 hearing or budget hearing tomorrow, that they feel that
10 there's no need for augmentation.

11 MR. TOYAMA: If I may respond to that. If I
12 understand the LAO's position, it was at the time when they
13 did their analysis of our budget back in January, they had
14 not yet received description of the proposed, nor its
15 justification. It was simply a timing matter.

16 And we have since then provided the LAO with the
17 business case for this proposal through the Department of
18 Finance.

19 And so my understanding is they now have
20 information that they need to make the recommendation on
21 this particular BCP.

22 MR. GOLDBERG: We do not know what their final
23 recommendation will be.

24 But your points are well made, but we do not know,
25 in the final analysis, where they're going to be tomorrow

1 morning.

2 CHAIRWOMAN CONNELL: Well, that's what they have
3 communicated in writing, that they originally had very
4 severe concerns with putting more permanent staff in, and
5 felt that contract staff for this purpose was appropriate.

6 MR. GOLDBERG: We do --

7 CHAIRWOMAN CONNELL: And you have no further
8 information?

9 Did you do any analysis in Finance on this?

10 ACTING BOARD MEMBER PORINI: Yes. Finance has
11 done an analysis, and they will be happy to provide
12 information on an ongoing basis to you.

13 CHAIRWOMAN CONNELL: How can we discuss the item
14 this morning if we don't have that analysis?

15 BOARD MEMBER KLEHS: I'm happy to move forward
16 with this. One of the things is the budget process is a
17 fluid process the next couple of months as we get a firm
18 number on how many revenues are coming in and can always
19 make adjustments along the way. The Governor's office does
20 it all the time, the Legislature does too. I'm not too
21 concerned about the Legislative Analyst. They have been
22 wrong before.

23 And so I'm happy to second this motion, just so we
24 can get this thing going.

25 CHAIRWOMAN CONNELL: My concern on the record is

1 that this is not a revenue issue. This is an issue of
2 staffing. And it's a departure from the action that was
3 taken last year by this Board to streamline the FTB and to
4 make it more efficient.

5 So adding permanent staff is a significant policy
6 departure.

7 And I would request that the Department of Finance
8 come with information that justifies it in writing.

9 Since that has not been submitted, at least to the
10 Board at this point, certainly has not been submitted to the
11 LAO, I don't think the LAO has received anything in writing
12 from Finance that justifies these numbers yet.

13 Have you submitted anything to LAO?

14 ACTING BOARD MEMBER PORINI: I don't know.

15 CHAIRWOMAN CONNELL: Okay. Well, I'm certainly
16 going to vote the same way that I voted last year, which is
17 to go with contract programmers, and not to go with
18 permanent staff. I'm against an augmentation of permanent
19 staff of the FTB.

20 So it's a 2 to 1 vote.

21 And I think that we need written material from the
22 Finance Department. We will assume that that is transmitted
23 to the Board prior to its next discussion.

24 Revenue augmentation policy adjustment. The
25 Governor's budget proposed 3.4 million and 58 new positions

1 to increase revenue activities. The augmentation is for the
2 collection program.

3 And the Department of Finance made this adjustment
4 on its own initiative, and, in fact, the Legislature
5 requested the State Auditor, the Bureau of State Audits, the
6 BSA, to do a review of the FTB and to report back to the
7 Legislature, which they did on Thursday, in a report on
8 whether or not we were getting the additional revenues that
9 were connected with positions.

10 And the LAO -- excuse me, the BSA concluded that
11 they disagreed with that, and their language was rather
12 specific, recommending that the FTB budget be decreased,
13 since the recent increase in the FTB budget, 362 audit
14 positions over the period, fiscal year 1992 to '93, to
15 fiscal year '95-96, had not led to an increase in revenue in
16 the scale projected at the time of the staffing increase.

17 And quoting them, the increase was expected to
18 lead to a revenue increase of \$993 million at cost to the
19 state of 73 million, but the FTB did not realize an increase
20 of 558 million. The position of BSA is that the revenue
21 increase would have occurred regardless of added positions.

22 So you have both the BSA and the LAO taking a
23 position that the additional revenue augmentation and
24 positions are not needed.

25 Two independent outside agencies, again analyzing

1 the budget of the FTB, and inconformity, I might add, with
2 the performance audit that went through by Deloitte and
3 Touche.

4 MR. GOLDBERG: This particular augmentation has to
5 do with an augmentation for collectors as opposed to
6 auditors, which the Bureau of State Audits was dealing with.
7 Obviously, staff had some disagreement with BSA's analysis.

8 But I certainly grant that they are independent of
9 us and certainly are well qualified to evaluate our
10 performance.

11 This particular augmentation is, as was noted by
12 yourself, is a recommendation from the Department of Finance
13 in order to increase revenues.

14 And it is not, I underscore, in the audit area but
15 in the collections area.

16 BOARD MEMBER KLEHS: Do you know how much revenue
17 you plan to get from this group?

18 MR. TOYAMA: The ongoing revenues in this is 33
19 million.

20 BOARD MEMBER KLEHS: How much?

21 MR. TOYAMA: 33 million.

22 BOARD MEMBER KLEHS: If you don't do this, there
23 won't be \$33 million?

24 CHAIRWOMAN CONNELL: That is not, according to the
25 LAO, they lack the information to conclude that that indeed

1 could be sustained, and BSA denies that that has occurred in
2 the past.

3 MR. TOYAMA: Well, with respect to the Leg.
4 Analyst, this is similar to the LLC issue wherein when they
5 did their analysis in January they had not yet seen the
6 detail to support the augmentation.

7 We have met with the LAO and we have provided them
8 with the detail to show how we got to the positions and how
9 the \$33 million was calculated.

10 And as Mr. Goldberg indicated, yes, we do have a
11 hearing with them tomorrow, and presumably by then will have
12 their stated position.

13 CHAIRWOMAN CONNELL: How did Finance reach its
14 conclusion to augment?

15 ACTING BOARD MEMBER PORINI: Department of Finance
16 is concerned about the revenue collections. They did an
17 analysis and came up with similar findings and, obviously,
18 they support their own numbers.

19 I would move that we adopt this item.

20 CHAIRWOMAN CONNELL: How will you be responding in
21 committee tomorrow on that to the BSA audit?

22 ACTING BOARD MEMBER PORINI: Department of Finance
23 will be presenting their numbers.

24 CHAIRWOMAN CONNELL: But you don't have any
25 specific information with regard to that?

1 ACTING BOARD MEMBER PORINI: No. I apologize. I
2 can't find this item, just as before.

3 CHAIRWOMAN CONNELL: Okay. I'm going to vote no
4 on it, because it's a reversal of the earlier policy of the
5 Board relating to the performance audit. I will vote in
6 conformance with the State Auditor and in conformance with
7 the LAO on this item.

8 Merit salary adjustment.

9 MR. TOYAMA: This was another item that we brought
10 forward to you last fall on merit salary adjustments as a
11 planning estimate cost increase, to the extent that
12 employees move up the range of their classification. We had
13 asked the Board for approval to go to Finance for funding
14 for this. The Board said no to that.

15 The January budget, however, funds a portion of
16 the MSA cost increase.

17 CHAIRWOMAN CONNELL: I have a question.

18 Why does merit salary increase get funded for the
19 FTB when it's not funded in general for any other
20 department?

21 ACTING BOARD MEMBER PORINI: That has been the
22 tradition that MSAs have been funded for revenue-producing
23 agencies.

24 CHAIRWOMAN CONNELL: Why is that? Why wouldn't it
25 come out of their own revenue flow?

1 MR. GOLDBERG: Again, historically the argument
2 has been that if we take the monies out of our current
3 budget, this will be monies that won't be available to
4 provide for resources for revenue reduction, so in effect by
5 not providing the salary increases, the impact on revenues
6 is significantly above and beyond the cost to the state in
7 terms of providing the MSA money.

8 CHAIRWOMAN CONNELL: Okay. The LAO says the
9 Governor's budget includes \$3.1 million to fund merit salary
10 increases provided by the department to employees. It is
11 our understanding that no other department received an
12 augmentation for employee merit salaries adjustments. In
13 the past the department submitted budget change proposals
14 for merit salary adjustments provided to employees. This
15 year, however, the budget year augmentation was simply added
16 as a baseline adjustment without justification for
17 identifying an increase. Under these circumstances, we
18 recommend that the Legislature delete \$3.1 million added to
19 the budget for merit salary increases, reducing items by
20 \$3.1 million.

21 MR. TOYAMA: Well, here again, we have provided --
22 we are in the process of providing the Leg. Analyst office
23 with the detail for how the \$3.1 million is calculated.

24 CHAIRWOMAN CONNELL: Are you going to be providing
25 that same data to this Board?

1 MR. TOYAMA: We can certainly do that.

2 CHAIRWOMAN CONNELL: When can we receive that
3 information?

4 MR. TOYAMA: In a matter of days. As soon as we
5 get that information from the Department of Finance and have
6 a task force --

7 CHAIRWOMAN CONNELL: Are you generating it, or are
8 they generating it?

9 MR. TOYAMA: The \$3.1 million, it's my
10 understanding, is that was generated by the Department of
11 Finance.

12 ACTING BOARD MEMBER PORINI: That was generated by
13 the Department of Finance.

14 MR. TOYAMA: And I believe yesterday my staff
15 received the details of that calculation and it did not
16 exactly agree with our own calculations, and I'm having
17 staff trying to reconcile the two.

18 But we will be happy to provide --

19 CHAIRWOMAN CONNELL: How is it possible for this
20 Board to take action on items when we don't have the same
21 information that you are going to present at some point in
22 the future to a committee? It's rather difficult to take
23 action.

24 And I'm reading you from a published report from
25 the LAO, who is a respected outside authority, that

1 evaluated your budget, and one would have assumed that you
2 have submitted information sustaining your budget at the
3 time the LAO reviewed it.

4 And now you're saying you're in the process of
5 submitting information for a hearing tomorrow morning, that
6 we have not yet reviewed as a Board, or our staff has had a
7 chance to review, and yet you want us to take a position
8 that has not yet been defended publicly through submission
9 of information.

10 I don't understand, Mr. Goldberg, how can we be in
11 this situation?

12 MR. GOLDBERG: Again, we are -- I'm losing my
13 voice. I'm sorry.

14 With regard to these particular items, these are
15 Department of Finance items that are being added as
16 adjustments to our budget.

17 The particular one, the merit salary adjustment,
18 has a long history in terms of why we have been funded for
19 it. The detail, obviously, rests with the Department of
20 Finance at this point, not with us.

21 It, as Mr. Klehs pointed out, during the budget
22 process there is constant give and take as we attempt to
23 refine the numbers.

24 So the -- in and of itself the fact that we don't
25 have all of the detail at this particular point is not --

1 CHAIRWOMAN CONNELL: Actually, the give and take
2 is on legislative proposals once we do a May revise, and we
3 determine what the revenue projections are. There is not
4 give and take on budgets, let's clarify that. Having gone
5 through a departmental budget process now for four years,
6 this being my fifth, once the budget is reviewed by your
7 budget committees and recommendations go forward, unless
8 you're in conference committee, that is a done deal. We
9 don't reopen budget discussions at departmental levels once
10 budget hearings have concluded. And we all know that that's
11 a fact.

12 The only discussions that go on beyond that are
13 discussions among the elected leaders as how to spend the
14 additional dollars which we all hope occur in large numbers
15 between now and the May revision of the budget.

16 But departmental budgets are fairly much set by
17 the time you complete a budget hearing process, unless, of
18 course, you were referred to the Joint Budget Committee, at
19 which point your budget request may be deleted or augmented
20 depending on available revenues.

21 MR. GOLDBERG: Well --

22 BOARD MEMBER KLEHS: Let me interrupt.

23 I think the presentation that Mr. Goldberg has
24 made is fairly accurate here.

25 When I was in the Legislature, even during the

1 time where we had a \$14 billion deficit because of the
2 recession, the two agencies that have their budgets
3 augmented was the Board of Equalization and the Franchise
4 Tax Board, because their job was to go out and find
5 additional revenue that was out there in the underground
6 economy and other places, to help fund public schools and
7 police and fireman services in California, higher education.

8 So this MSA is not unusual in any way, shape or
9 form, and that's certainly one reason why I'm supporting it.

10 And we can also vote, propose this all we want,
11 they would still give us in the Legislature through the
12 recommendations of the Department of Finance if Finance
13 wasn't even on the FTB here for this type MSA and there's
14 not much we can do about it.

15 ACTING BOARD MEMBER PORINI: And I am happy to
16 include the justification, the written justifications that
17 you've asked for other items so --

18 CHAIRWOMAN CONNELL: The problem we're --

19 BOARD MEMBER KLEHS: Ultimately the fight for this
20 is in Appropriations Committee and Budget Committees, and
21 the budget is dead when the governor signs it.

22 CHAIRWOMAN CONNELL: I guess the question is why
23 are we taking action as a Board?

24 BOARD MEMBER KLEHS: That's a good question.

25 CHAIRWOMAN CONNELL: If we don't have information,

1 why are we taking action?

2 BOARD MEMBER KLEHS: I mean I can vote for this.

3 ACTING BOARD MEMBER PORINI: Well, then I make the
4 motion to include it, obviously, since the Department of
5 Finance did include it in the Governor's budget.

6 BOARD MEMBER KLEHS: I'll second.

7 CHAIRWOMAN CONNELL: That doesn't help us today.

8 We have 2 to 1 vote. Again, lack of information.

9 I'm just reading published reports. I'm sitting
10 here with a Bureau of State Audit report dated March 1999,
11 when this came out last week, and there is no increase in
12 audit revenues resulting from additional time and money
13 spent for performing audits.

14 I don't know. I mean, this is a published audit
15 report and I can only go on the basis of written material,
16 and based on written material I don't see any justification
17 for augment, augmenting budgets and proposals here.

18 Let's go to item 4, which is proposed budget
19 control language.

20 The budget bill contains new language providing
21 for additional administrative controls under the FTB budget.
22 The language requires a DOF approval before the FTB can take
23 actions to reduce expenditures or redirect funding or
24 personnel from tax processing, auditing and collection
25 functions. These are transfer positions between

1 organizational units.

2 Finance, why do we have this language in this year
3 when it hasn't been in before?

4 ACTING BOARD MEMBER PORINI: Again, I apologize
5 that I don't have my note. I can't tell you the specific
6 reason, but that Finance did feel that this was necessary.

7 CHAIRWOMAN CONNELL: Well, do we have any reason
8 why it was necessary?

9 ACTING BOARD MEMBER PORINI: I apologize. It is
10 in the Governor's budget.

11 And I would move that we adopt the language.

12 BOARD MEMBER KLEHS: I'll second.

13 CHAIRWOMAN CONNELL: I'll oppose that budget
14 language without further clarification as to why it was
15 included in the budget.

16 We now move to finance letter. There are eight
17 finance letters including items previously approved by the
18 Board.

19 Performance audit is the first one. This is a BCP
20 No. 10, previously approved by the Board, to reduce the FTB
21 budget at the final performance audit report findings. Cost
22 estimate is a savings of 7.42 million and 145 PYs, current
23 year impact is a savings of 3 million, and 43 PYs.

24 Do we approve of the finance letter?

25 ACTING BOARD MEMBER PORINI: I have some concerns

1 about this particular finance letter.

2 We found that there are three elements of it that
3 are supportable, the electronic filing for 513,000, the tax
4 booklet reduction in mailing costs for 567,000, and the
5 verification of employment for 298,000.

6 We do not find the other items included in this to
7 be supportable at this time.

8 So I would like to make a motion that we amend
9 this particular item to only include the three items I've
10 mentioned.

11 BOARD MEMBER KLEHS: I'll second that.

12 CHAIRWOMAN CONNELL: Why is it you have detailed
13 information regarding this and not the others?

14 ACTING BOARD MEMBER PORINI: Madam Chair, I did
15 apologize before. I could not find the note that detailed
16 that. You know, I simply apologize for that.

17 CHAIRWOMAN CONNELL: Okay. Well, I'm going to
18 vote against this, because this is reversal of the earlier
19 action, earlier Board action on the performance audit, so
20 it's a 2 to 1 vote.

21 Item 2, INC project, funding for incremental
22 increase of the 1999-2000 project costs.

23 BOARD MEMBER KLEHS: I'll make a motion on 2
24 through 8 that we approve them.

25 ACTING BOARD MEMBER PORINI: I second.

1 CHAIRWOMAN CONNELL: We need to pull HRA Title IV
2 workload, because it deals with an item later. Right?

3 MR. GOLDBERG: It certainly could.

4 CHAIRWOMAN CONNELL: Depending on what we do.

5 MR. GOLDBERG: It could be handled separately.

6 CHAIRWOMAN CONNELL: We need to pull HRA Title IV
7 workload.

8 And we have a motion to approve INC projects, the
9 operational recovery, hot site, student aid, debt collection,
10 court-ordered debt collection, and Emergency Food Assistance
11 Program Fund, and the California Mexican American Veterans'
12 Memorial Beautification and Enhancement Account.

13 That is a unanimous vote on that motion.

14 We now then move, and we've held and reserved the
15 discussion of HRA program because it now refers to the next
16 item, which is the HRA program, policy direction on Title IV
17 implementation.

18 Mr. Goldberg, do you want to discuss this? This
19 is a highly controversial item.

20 MR. GOLDBERG: I'm going to ask Mr. Bramhall,
21 legal counsel, to speak to this item.

22 MR. BRAMHALL: Doug Bramhall, tax counsel, FTB.

23 This memo is in your binder to provide background.

24 Actually what we're here to ask for today is
25 direction to pursue validation efforts only on a

1 cost-effective basis.

2 And we have taken prior Board direction to pursue
3 validation to the end, if you will.

4 What we're finding is that the anticipated methods
5 of validation that we had hoped to be able to use, because
6 very few other agencies are fully implementing this
7 particular condition or federal requirement in as effective
8 way as was anticipated, we can't use electronic data or
9 electronic exchanges to verify.

10 So verification efforts will be, one, very costly
11 if they're pursued to the nth degree, if you will, and new
12 methods need to be explored for how we're going to validate
13 absolute intrusion on a large number of individual
14 taxpayers.

15 BOARD MEMBER KLEHS: I have a question.

16 I have a concern that we have to determine that an
17 individual receives a renter's assistance that they're
18 actually a citizen of this country.

19 MR. BRAMHALL: That is a requirement of the
20 federal act and if we only verify alienage issues and not
21 citizenship issues, I think we can be accused of
22 discriminatory application of the law.

23 BOARD MEMBER KLEHS: I understand.

24 Is there any other tax credit program or exclusion
25 program or anything else that would require you to determine

1 the citizenship of the beneficiaries?

2 MR. BRAMHALL: No.

3 BOARD MEMBER KLEHS: So none of the home mortgage
4 deductions, not on an R and D credit, not on a child
5 dependent care credit, just this renter's credit?

6 MR. BRAMHALL: The HRA, right. Because it's a
7 grant payment.

8 BOARD MEMBER KLEHS: Okay.

9 MR. BRAMHALL: As opposed to an allowance of
10 general fund off-set.

11 BOARD MEMBER KLEHS: If the Legislature changed
12 the definition of it, this requirement would not apply; is
13 that correct?

14 MR. BRAMHALL: The Legislature has the power to
15 exempt this program from the Title IV requirements.

16 MR. GOLDBERG: Now, with regard to the budget
17 item, all we're requesting is sufficient monies to do what
18 amounts to a minimal checking, as opposed to what we would
19 think that the law might call for.

20 BOARD MEMBER KLEHS: On an aside, could you maybe
21 just provide a formal report to the Board which shows that
22 there are literally no other citizenship checks that we have
23 to deal with in any other tax program.

24 If you're a person who is a legal resident here,
25 paying taxes, just seems to me you shouldn't have to

1 differentiate between being a citizen and a non-citizen.

2 CHAIRWOMAN CONNELL: I'm not sure what you're
3 asking us to do today as staff. It's rather vague.

4 Are you asking for discretion to implement this
5 program?

6 MR. GOLDBERG: Yes.

7 MR. BRAMHALL: The extent to which it's
8 implemented. I think we're satisfied that the
9 self-verification efforts that we have undertaken satisfies
10 legal requirements. But then when someone falls out in that
11 self-verification process, what we do beyond that is where
12 we think we have discretionary workload issues.

13 MR. GOLDBERG: What we are not asking for are
14 funds for what Doug has termed the discretionary workload.
15 We are only --

16 CHAIRWOMAN CONNELL: I understand the funding
17 issue. I'm trying to figure out what action you're asking
18 us to take on item 3, Jerry.

19 MR. GOLDBERG: Essentially we're asking, as you
20 stated, for discretionary implementation. In other words,
21 to simply do that which we think in our judgment is
22 reasonable, given our ability to do checks.

23 ACTING BOARD MEMBER PORINI: Mr. Goldberg, were we
24 waiting for some federal regulations to come out that tell
25 us specifically how to implement this?

1 MR. BRAMHALL: There are -- there is a provision
2 in the federal regulations that allow exemptions, and those
3 are under the direction, I believe the Attorney General's
4 Office, US Attorney General's office, and those regulations
5 have never come forward. So the guidelines for being exempt
6 from application of Title IV requirements, that if those do
7 come out and we're able to pursue that, we would come back
8 to you with that issue as well.

9 CHAIRWOMAN CONNELL: Well, I don't care if we have
10 discretion on this item. I mean, it really, I think this
11 whole thing is very troubling, to tell you the truth, so I
12 don't have a problem. I don't know how other Board members
13 feel.

14 Does the Governor have a policy on this matter?

15 Governor Wilson, when this came up last year, now
16 help me, but I believe this came up last year, is that not
17 correct, and the Wilson administration denied a program
18 exemption on policy grounds. Was that not correct?

19 MR. GOLDBERG: I believe that's correct.

20 CHAIRWOMAN CONNELL: Yes. Now, does the Governor
21 have a policy on this matter?

22 ACTING BOARD MEMBER PORINI: I have not talked
23 directly to the Governor.

24 CHAIRWOMAN CONNELL: Does your office?

25 ACTING BOARD MEMBER PORINI: I would make -- I

1 would like to make a motion that we hold this item over
2 until we can get some clarification about the --

3 BOARD MEMBER KLEHS: Good idea. Second.

4 ACTING BOARD MEMBER PORINI: -- federal regs.

5 MR. GOLDBERG: Does your motion include the budget
6 item, the finance letter as well, that he hold that over?

7 ACTING BOARD MEMBER PORINI: Yes.

8 CHAIRWOMAN CONNELL: You can't move one forward if
9 you're holding something else.

10 MR. GOLDBERG: I just wanted --

11 CHAIRWOMAN CONNELL: So we are going to defer this
12 to the next meeting and, hopefully, we will get some
13 clarification on this.

14 Okay. Now, capital facilities. Are we on with
15 this? Consideration of space action request, there are four
16 items for Board action. These are essentially work
17 requests. Can we just ask for a motion to approve this?

18 BOARD MEMBER KLEHS: So moved.

19 ACTING BOARD MEMBER PORINI: Second.

20 CHAIRWOMAN CONNELL: Okay. We got that.

21 Okay. Contracts requiring for Board approval. Is
22 there any problem with any of these contracts?

23 If not, I ask for a motion.

24 BOARD MEMBER KLEHS: So moved.

25 ACTING BOARD MEMBER PORINI: I have a concern

1 about the first contract item on activity based costing.

2 We simply don't have enough information to analyze
3 this at this point in time, so I would like to ask that we
4 hold this item over and have it submitted during the fall
5 budget process, when we have been able to gather enough
6 information.

7 BOARD MEMBER KLEHS: An inconsistent position with
8 your earlier position.

9 ACTING BOARD MEMBER PORINI: This is not a
10 Department of Finance proposal, I will add.

11 CHAIRWOMAN CONNELL: I think Mr. Klehs is saying
12 why hold over this one, if we don't have enough information,
13 when we voted everything else through when we didn't have
14 any information.

15 I would just like to move on this today. I would
16 approve the request to begin the procurement process. As we
17 get information, we can modify it if necessary. Seeing as
18 how we seem to be operating in that mode.

19 BOARD MEMBER KLEHS: Well, I think I'll support
20 the Controller on this one, since we're kind of --

21 ACTING BOARD MEMBER PORINI: Great. Then I would
22 just ask that staff provide additional information to
23 Department of Finance.

24 MR. TOYAMA: Absolutely.

25 CHAIRWOMAN CONNELL: What about 2 and 3? Do we

1 have a motion to approve those? Those are IBM corporation
2 and --

3 BOARD MEMBER KLEHS: So moved.

4 ACTING BOARD MEMBER PORINI: Second.

5 CHAIRWOMAN CONNELL: Okay.

6 BOARD MEMBER KLEHS: Could we go back to an
7 earlier item for revote?

8 CHAIRWOMAN CONNELL: Sure.

9 BOARD MEMBER KLEHS: The question on this Joyce
10 decision was whether or not we want to go ahead with a
11 15-day regulation. And I know there's quite bit a stir in
12 the audience on this, and I guess there's a desire of
13 companies and individuals on both sides of this to have some
14 public comments. So I would simply amend my motion earlier,
15 too, that we have the slightly longer period for public
16 comment. I don't want to cut people off from that process.

17 ACTING BOARD MEMBER PORINI: And since I seconded
18 that motion earlier, I'll do the same.

19 BOARD MEMBER KLEHS: Okay.

20 CHAIRWOMAN CONNELL: I already voted against it
21 for that reason, so we now have agreement on that.

22 So we have reviewed -- we have reconsidered --
23 actually that was a former motion to reconsider, and we
24 reconsidered item, what was that? Staff, does anyone know?
25 Reconsidered item.

1 MR. TOMAN: 4 D.

2 BOARD MEMBER KLEHS: Exactly.

3 CHAIRWOMAN CONNELL: And we have extended it. I
4 have serious concerns about the way it was going, so I think
5 I can agree to that one.

6 MR. GOLDBERG: 45 days.

7 BOARD MEMBER KLEHS: Yeah, 45 days.

8 CHAIRWOMAN CONNELL: And we are confirmed on what
9 we're doing on the other item in relationship to that, we
10 deleted that finance letter.

11 Okay. We are now moving on to Item 6, which is
12 the staff presentation regarding the Bureau of State Audit
13 report.

14 MR. GOLDBERG: Madam Chair, you obviously have
15 already gone through a portion of it.

16 I would want to point out that very briefly that
17 the Bureau of State Audits found that our cost-benefit ratio
18 on average is roughly \$11 net assessments for every \$1 of
19 cost over the last six years.

20 At the margin, are our cost-benefit ratio is also
21 above five to one.

22 While clearly we disagree with the methodology
23 used by the Bureau of State Audits to determine how much
24 audit revenues were brought in, their particular methodology
25 started with the utilization of a base year, and then from

1 that base year they determined the growth in audit revenue,
2 whereas our approach is essentially a year-to-year approach
3 where we do it based on our budget work plan.

4 Our budget work plan does take into account the
5 various law and other changes that have occurred, whereas
6 the approach that the Bureau of State Audits utilized did
7 not.

8 Clearly, we feel that we agree with the State
9 Auditor in that we feel there is a major communication
10 problem between us and the Legislature with regard to what
11 we are doing when we submit our BCPs, or at least I should
12 say with certainly with the Bureau of State Audits, a
13 communication problem.

14 We're going to have to work to rectify that.
15 We're certainly in accord that more information can be
16 provided and ought to be provided.

17 But we respectfully indicate that we feel that we
18 have in fact produced the revenues that we promised we would
19 provide.

20 CHAIRWOMAN CONNELL: Okay. The summary that was
21 drafted by the Bureau of State Auditors, did it encompass
22 your response?

23 MR. GOLDBERG: At the very back end of it, yes.

24 CHAIRWOMAN CONNELL: I thought it did. And I
25 thought that it did reference that it had read and absorbed

1 your response and still had disagreements.

2 MR. GOLDBERG: There are definitely still
3 disagreements.

4 And I would point out that with regard to the
5 revenues, they did indicate the methodology that we used was
6 defensible, which was their very term.

7 Clearly, we disagreed with their approach. We
8 shared with them why we disagreed with their approach.

9 Their approach obviously represents a showing that
10 we did not produce the revenues that we said we would,
11 whereas our approach does.

12 You have a choice of which one you choose to
13 subscribe to.

14 I would fundamentally point out that the original
15 basis of the -- for the audit was in fact the CVRs and I
16 think with regard to the CVRs it clearly indicates that even
17 at the margin our cost benefit ratio is five to one. The
18 fundamental issue is were the resources being given to the
19 FTB cost effective, and I think the answer to that is yes.

20 One could also argue with the fact that as the
21 auditor has that in fact not all of our auditors were being
22 utilized directly on audits, and in fact some of the
23 resources that were provided were utilized elsewhere. For
24 example, in technology projects, but in fact resulted in the
25 revenues that we had indicated we would provide.

1 Our whole approach is in fact to use resources
2 where they are most cost effective. We felt this was a very
3 cost effective utilization of the resources.

4 CHAIRWOMAN CONNELL: I'd like to go through there,
5 four recommendations, Jerry.

6 On page three of their report, it says the
7 Franchise Tax Board should do the following.

8 The Board's budget documents should clearly
9 indicate whether the Board will use additional personnel
10 hours for mandatory activities, such as filing enforcement,
11 tax return processing or for audit activities at their
12 discretion.

13 If additional hours are going to be used for
14 audits, the budget document should explicitly show by
15 category of revenues, hours that being charged to
16 discretionary audits as well as the audit revenues that are
17 projected to result from each type of audit, with or without
18 the staffing increase.

19 Now, are you going to be able to do that when you
20 put together your budget document for the next fiscal year?

21 MR. GOLDBERG: We're certainly going to try,
22 absolutely.

23 CHAIRWOMAN CONNELL: And then it says in
24 subsequent years' budget documents, the Board should compare
25 these projections to actual hours and revenues by type of

1 audit achieved.

2 Will we be getting that information as well?

3 MR. GOLDBERG: Yes. Yes, you will.

4 CHAIRWOMAN CONNELL: If the Board intends to
5 request money for auditors to generate additional revenue it
6 should use such resources to supplement rather than to
7 supplant the auditors it has in the field. However, if the
8 Board later determines resources can produce a greater
9 benefit in support functions, it should report this to the
10 Legislature before reassigning.

11 Are we doing any of that now? Are we reassigning
12 internally now and therefore it needs to send forth such a
13 report to the Legislature?

14 MR. GOLDBERG: Again, any time we redirect
15 budgeted resources, it has to be reflected in our work plan,
16 which goes to the Department of Finance. But obviously, we
17 clearly, as I was pointing out in my remarks, we clearly
18 need better communications with the Board, with the
19 Legislature with regard to this.

20 CHAIRWOMAN CONNELL: Why wouldn't that
21 automatically go to both the Board and Legislature? Is
22 there any reason why we wouldn't submit it to all parties?

23 MR. GOLDBERG: No.

24 CHAIRWOMAN CONNELL: Why don't we plan to do that.
25 I don't think any members of the Board would have a problem.

1 I mean, it's a public document, it should go forward.

2 The Board should continue to monitor changes in
3 audit revenues resulting in fewer IRS leads and either shift
4 existing staff or request additional staff according --
5 accordingly to maintain tax revenues. Are you --

6 MR. GOLDBERG: Again, we agree this is a sensitive
7 subject in that the Internal Revenue Service is not
8 providing us with the same number of leads that they have in
9 the past. We're concerned that in fact that number may in
10 fact further shrink over the next several years, which would
11 have a significant impact on revenues, and also a
12 significant impact on our cost-benefit ratio, because
13 obviously these are very productive from that standpoint.

14 CHAIRWOMAN CONNELL: So you are in agreement
15 basically with the procedural recommendations here?

16 MR. GOLDBERG: Yes, we do.

17 CHAIRWOMAN CONNELL: You are still in
18 disagreement, as they are still in disagreement with you,
19 about the cost effectiveness of adding additional auditing
20 staff, and whether that indeed resulted in the revenues that
21 were projected, but you don't have any problem with their
22 recommendation for changes?

23 MR. GOLDBERG: No, no.

24 CHAIRWOMAN CONNELL: Are there any other questions
25 regarding that report?

1 Okay. Item 7 is consideration of the state office
2 building adjacent to FTB headquarters, and this is the Phase
3 III, and I think that there is a motion to defer this.

4 Is there Board discussion?

5 ACTING BOARD MEMBER PORINI: I just like to ask
6 the chair, when will our next hearing be?

7 CHAIRWOMAN CONNELL: In April or May.

8 ACTING BOARD MEMBER PORINI: All right. Well,
9 then I would like to move that we put this item over until
10 that hearing. We'd like to work with the Department of
11 General Services to get some additional information to be
12 presented at that time with regard to who possible other
13 tenants might be in the building, if that's acceptable.

14 CHAIRWOMAN CONNELL: I'd like to have a report
15 written to this Board from the Department of General
16 Services, at least a week prior to our meeting, which
17 discusses what the assumption is regarding tenancy of the
18 FTB in that building, what amount of square footage of space
19 is anticipated, how the deal is going to be structured
20 financially, who is going to be carrying the front of the
21 obligation.

22 It was unclear to me from the very brief comments
23 that DGS sent to us by fax this morning whether or not they
24 are able to resolve those issues now or whether they do,
25 could they put it in writing to us. I was -- there seems to

1 be conflicting information about how they're going to
2 finance this building, and whether they're adding the cost
3 into the land, or they're not adding the cost of the land.

4 So I think all of that would be helpful.

5 MR. GOLDBERG: We will communicate that to DGS.

6 BOARD MEMBER KLEHS: Is this going to be named the
7 Jerry Goldberg or something?

8 MR. GOLDBERG: I'm always fearful that it's
9 usually a memorial, and I just as soon --

10 BOARD MEMBER KLEHS: For retirement.

11 CHAIRWOMAN CONNELL: It may be an issue, as you
12 recall before, named after the previous Governor in honor of
13 him, but that was when the building was going to be moving
14 forward under his administration, so that would not be
15 appropriate now.

16 But, Mr. Goldberg, if you can make sure that the
17 Department of General Services gets that information to us
18 and all other reports in adequate time so we can review this
19 before action by the Board.

20 Item 8 is -- so we have a motion.

21 BOARD MEMBER KLEHS: We don't need a motion.

22 CHAIRWOMAN CONNELL: Seconded. It's unanimous.

23 Tax gap. Tax gap is something that I keep putting
24 on, because I am very interested in the subject of
25 installment payment arrangements here.

1 If you can give us your report and John Vranna
2 you're going to be joined by Cathy today.

3 MR. VRANNA: No.

4 CHAIRWOMAN CONNELL: Fine. Thank you.

5 MR. GOLDBERG: John is going to be speaking about
6 particularly our payment arrangement changes that we have
7 made over the last year, I think very very positive.

8 CHAIRWOMAN CONNELL: The record should show
9 Mr. Klehs is leaving, Mr. Tucker will be joining us in the
10 Board.

11 MR. VRANNA: Good morning, Madam Chair, members of
12 the Board, John Vranna, chief of our accounts receivable
13 management division.

14 At a previous Board meeting you asked for
15 follow-up information to continue the efforts to expand the
16 use of installment agreements and some other changes in our
17 collection program, and that's what I'm here this morning to
18 do.

19 In January of 1998 we made significant significant
20 changes in the process of doing installment agreements. You
21 have in front of you the installment agreement form.

22 CHAIRWOMAN CONNELL: Could you take us through
23 this, because we have two new Board members today, and they
24 need to be updated on how this installment agreement process
25 works.

1 MR. VRANNA: Exactly what I intend to do.

2 Prior to January of 1998, individuals had to fill
3 out a rather, I think, intrusive, complex financial
4 agreement in order to get an installment agreement if the
5 taxpayer wanted more than 12 months to pay off their
6 liability or if the amount owed was in excess \$1500.

7 We made subsequent changes in working with the
8 California Society of Enrolled Agents, the California CPA
9 Society and also leveraging technology and electronic funds
10 transfer to allow us to significantly liberalize and really
11 come up with more common sense approach installment
12 agreements.

13 The actual installment agreement form you have in
14 front of you here, it's simply one page. It simply asks the
15 taxpayer to provide their name, address and we request that
16 they make payments through electronic funds transfers.

17 Essentially this applies to all low-risk
18 taxpayers, and we're defining that as all taxpayers that owe
19 less than \$10,000, are willing to pay off their liability
20 within three years. This accounts for about 93 percent of
21 all individuals who request an electronic funds transfer.

22 In addition, we feel it's very important in terms
23 of getting access to us to address these issues and others
24 and believe made significant changes in that regard, so
25 people can apply and make it easier.

1 In the context of marketing there are a number of
2 things. It's highlighted in the 540 booklet. This form is
3 available on our Web site, our toll free FAST line, we have
4 included in newsletters and brochures, more importantly
5 we've conducted workshops throughout California, a number of
6 speaking engagements, virtually every chapter of the
7 California Society of Enrolled Agents and I think all but
8 maybe one of the local chapters of the California CPA
9 Society.

10 We put out press releases to this effect and as a
11 matter of fact the California Society of Enrolled Agents
12 also have put out publicity supporting this activity as well
13 to a large extent.

14 The next page you'll see, to kind of give you a
15 snapshot of before and after of where we are in installment
16 agreements, in July 1, 1997, we had 18,000 taxpayers taking
17 advantage of the installment agreement. The monthly revenue
18 was about three and a half million dollars. No EFT payments
19 were received. And we were experiencing a default rate of
20 approximately 40 percent, which meant the taxpayers would
21 come out, they contact us again, and the process was rather
22 intrusive.

23 Fast forward we project in July 1, 1999, over
24 100,000 taxpayers will be participating in the program. To
25 date the number is approximately 75, 76 thousand. Monthly

1 revenues are averaging right now between 12 and 13 million
2 dollars. This \$15 million figure we projected may be a
3 little low. In terms of electronic funds transfer payments,
4 between 70 and hundred thousand payments per month.

5 The default rate has gone down since the
6 initiation of this in January of 1998, the overall default
7 rate is roughly five percent. With electronic funds
8 transfer the figure in front of you is two and a half
9 percent. It's actually lower. It's more in the
10 neighborhood of 2.3 percent.

11 So essentially the participation has quadrupled.
12 We have been approving between three and five thousand
13 applications. That number is rising.

14 More importantly, I'd like to talk about efforts
15 we're doing to convert wage garnishments and bank levies
16 into installment agreements.

17 We established a new toll free line into the
18 collection staff for our collection staff on all of our
19 orders to withhold. We think it's extraordinarily important
20 when we do this, we picked it up not within two minutes,
21 virtually within 20 seconds.

22 Probably one of the most jugular kinds of issues
23 people have to face, and what we're doing is proactively
24 asking taxpayers if they prefer to move this into an
25 installment agreement, using EFT. And it's working quite

1 well. And we get a lot of positive support from this. It
2 takes the burden off employers to have to send us checks
3 weekly or biweekly, from the taxpayer's perspective it
4 certainly takes the stigma away from it, and gives them a
5 rational time frame to make their payments and from FTB's
6 perspective it cuts cost. It assures the payment is quite
7 timely, accurately and it results in fewer unnecessary
8 contacts.

9 The public access to the collection program is a
10 critical issue. Yes, we think it's a good idea when you
11 send somebody a bill if they want to talk about it, we want
12 to be able to pick up the phone and talk to them.

13 I moved over hundred staff into handling these
14 inbound phone calls and it's proving to be a very productive
15 actually revenue --

16 CHAIRWOMAN CONNELL: Hundred staff are handling
17 incoming phone calls in this program alone?

18 MR. VRANNA: This and dealing with the levies we
19 send out where we're converting 75 percent of those calls,
20 yes.

21 And it's a very productive revenue-producing
22 activity.

23 It's our philosophy if you can spend five or ten
24 minutes up front to resolve the accounts, it's a heck of a
25 lot less intrusive and less costly at the back end to the

1 context of making outbound phone calls.

2 As a matter of fact, in our work plans we
3 discussed earlier, we made a reduction in the neighborhood
4 of 50 to 53 percent of the number of expected outbound phone
5 calls we'd otherwise have to make. In other words, being
6 more appropriate and fair is also good for the bottom line.

7 In terms of level of service, we're averaging
8 roughly 90 percent of the calls answered within 20 seconds
9 and it's extraordinary the magic that occurs when you do
10 that in terms of the tension level of the taxpayer, they get
11 through right away and from the staff's perspective it's a
12 practical common sense approach to resolve the account.

13 The remaining ten percent we're answering most of
14 those calls --

15 CHAIRWOMAN CONNELL: Are you finding those calls
16 are redirected from your main switchboard or are people able
17 to access you directly? 20 seconds seems like a very brief
18 time if they're coming in through the main switchboard.

19 MR. VRANNA: It's a unique toll free number. It's
20 part of our new enterprise-wide call system. It directs the
21 traffic to the kind of resource that can take the additional
22 time to address that.

23 CHAIRWOMAN CONNELL: That's assuming they go
24 through that system, and not come through your switchboard?

25 MR. VRANNA: It hasn't been an issue. It's the

1 number on the --

2 CHAIRWOMAN CONNELL: Do those people come through
3 the toll free line?

4 MR. VRANNA: Yes. Yes, indeed, they do.

5 MR. GOLDBERG: This is a direct result of action
6 the Board took last year.

7 CHAIRWOMAN CONNELL: Yes.

8 MR. VRANNA: Now, dealing with installment
9 agreements isn't the whole story. We have a lot of
10 taxpayers who may take 10, 15, 20, 25 years, from a
11 practical perspective, to pay off their liability. For
12 those, offers and compromises is the more rational solution
13 to their problem, where you actually compromise a liability
14 based on their unique situations.

15 We have centralized that staff. We've taken a
16 very proactive approach in terms of negotiating with
17 taxpayers. We've held workshops throughout the state, going
18 through case studies of kind of offers we approve, the kinds
19 of offers we deny. The feedback has been excellent. We
20 have redrafted our OIC forms. We have had the practitioner
21 community involved in the establishment of helping us with
22 our policies as well as our forms.

23 The approval rate actually, this number says 36
24 percent, it's over 40 percent now, up from essentially a
25 program that was virtually nonexistent. We used to say we

1 had a very efficient OIC program. You would submit an
2 offer, we'd submit a denial. Essentially we turned this
3 into a real program that makes good common sense now.

4 MR. GOLDBERG: I might just interject here. The
5 offer and compromises is distinguished from the settlement.
6 It's offer and compromise, the liability has in fact been
7 established. All we're really compromising is that
8 liability, because the taxpayer does not have the capability
9 of paying it. This is very often where you see these
10 egregious cases where a farmer has suffered floods, plague,
11 what have you, is now 86 years old and we still have -- he
12 still owes the state \$100,000. Through an OIC we're
13 actually able to work to compromise that liability.

14 CHAIRWOMAN CONNELL: Are there any other questions
15 from the Board on this matter?

16 ACTING BOARD MEMBER TUCKER: I would like you to
17 call Ray Greenhouse at the Board of Equalization and tell
18 him that I asked you to call him to talk about the EFT in
19 lieu of levies. I think that's -- I had really --

20 MR. VRANNA: I've actually made a presentation to
21 Board staff. The executive secretary was in attendance and
22 I think they're very familiar with the process relating to
23 electronic funds transfer.

24 It's my understanding that they're looking very
25 closely at it. They've also essentially emulated the

1 process for offers and compromises and have established in
2 their special procedures area a group very very similar to
3 this. I think they're taking steps in this direction.

4 MR. GOLDBERG: Actually this is a wonderful
5 marriage of technology with an otherwise old process that we
6 could not have improved without technology.

7 ACTING BOARD MEMBER TUCKER: The BOE is slow, has
8 been slow on EFT, and so I'm trying to drum up all the
9 reasons why we should be doing it, and doing it as quickly
10 as possible, and I think that's one more reason.

11 MR. GOLDBERG: We had thought initially that
12 taxpayers would be resistant to the EFT. In fact we found
13 it quite the contrary, they've actually been quite
14 supportive.

15 CHAIRWOMAN CONNELL: Thank you.

16 Let's move on. We're running late.

17 Taxation and medical organizations.

18 I approve the staff recommendation on this.

19 Does anyone have a problem with it?

20 ACTING BOARD MEMBER TUCKER: No.

21 ACTING BOARD MEMBER PORINI: No.

22 CHAIRWOMAN CONNELL: Okay. We've moved through
23 that. Unanimous vote.

24 Item 10, legal ruling regarding taxation of
25 lottery winnings, and I think this is just a matter of legal

1 ruling. Essentially the FTB is waiting for the results of
2 the Oregon case here, and I think that this was scheduled on
3 today's meeting because it was raised during the Taxpayers
4 Bill of Rights hearings, so I don't think we need to discuss
5 that at this point.

6 Executive officer's time. Mr. Goldberg.

7 MR. GOLDBERG: Nothing, Madam Chair.

8 CHAIRWOMAN CONNELL: Board member's time? Any
9 comment by members of the Board?

10 ACTING BOARD MEMBER TUCKER: No.

11 ACTING BOARD MEMBER PORINI: No.

12 CHAIRWOMAN CONNELL: Fine. We are going to then
13 announce a closed session and let me read the closed session
14 agenda.

15 Item A, settlement of administrative tax disputes
16 authorized by Government Code 11126 K and Q, and/or required
17 to be in closed session by RTC 19442.

18 Settlements required to be disclosed in closed
19 session.

20 We're going to be dealing with pending litigation
21 and personnel items.

22 And I regretfully skipped over the Board
23 resolutions. We must have Board resolutions.

24 Mr. Goldberg.

25 MR. GOLDBERG: The following employees have

1 retired since our last Board meeting.

2 Karen Beeding, Brenda Christian, Joann
3 Cornelius --

4 CHAIRWOMAN CONNELL: Why don't we do video
5 presentations like they do at the Academy Awards?

6 MR. GOLDBERG: I think that's a nice idea.

7 CHAIRWOMAN CONNELL: We have a screen. Why
8 couldn't we do this? We could have photographs of the
9 people that we're talking about, some of their major
10 accomplishments.

11 MR. GOLDBERG: I think I should submit a BCP or a
12 finance letter.

13 CHAIRWOMAN CONNELL: No. I think you would just
14 want to amend internally.

15 MR. GOLDBERG: The other recent recognitions
16 are Charles Cushing, Kent Evans, Olga Freire, Donna Godard,
17 Janet Gonzales, Irene Hauser, Yu-Lan Kinkel, Roger Holbrook,
18 Patrician Huberty, Ken Kinyon, James Magers, Carrie Pruitt,
19 Jeanne Robinson, Merle Ross, Leon Sims, Rose Smith, Kathleen
20 Townsend, Angie Trevizo, and Roberta Yee.

21 CHAIRWOMAN CONNELL: I certainly move recognition
22 resolutions for all of them.

23 ACTING BOARD MEMBER PORINI: Second.

24 CHAIRWOMAN CONNELL: It's been moved and seconded.

25 We will now move to closed session. This meeting

1 is adjourned.

2 (Thereupon the meeting was adjourned at

3 12:10 p.m.)

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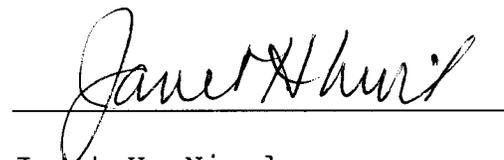
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CERTIFICATE OF SHORTHAND REPORTER

I, JANET H. NICOL, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing meeting in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of March 1999.



Janet H. Nicol
Certified Shorthand Reporter
License Number 9764