BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
SCOTT L. SHAFER) OTA NO. 18010886
)
APPELLANT.)
)
___________________________________)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, April 25, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1 BEFORE THE OFFICE OF TAX APPEALS

2 STATE OF CALIFORNIA

3

4

5

IN THE MATTER OF THE OF,)
6)
SCOTT L. SHAFER,) OTA NO. 18010886
7)
APPELLANT.)
8)
______________________________)
9

10

11

12

13

14 Transcript of Proceedings, taken at

15 355 South Grand Avenue, South Tower, 23rd Floor,

16 Los Angeles, California, 91401,

17 commencing at 10:05 a.m. and concluding

18 at 11:04 a.m. on Thursday, April 25, 2019,

19 reported by Ernalyn M. Alonzo, Hearing Reporter,

20 in and for the State of California.

21

22

23

24

25

1 APPEARANCES:

2

3 Panel Lead: Hon. DOUGLAS BRAMHALL

4

Panel Members: Hon. KENNY GAST

5 Hon. LINDA CHENG

6

For the Appellant: ROBERT H. SARGENT, JR.

7

8 For the Respondent: State of California

Franchise Tax Board

9 By: VERONICA LONG

CIRO IMMORDINO

10

TAX COUNSEL

11 Legal Division

P.O. Box 1720

12 Rancho Cordova, CA 95741

916-845-2498

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I N D E X

2

3 OPENING STATEMENT

4 PAGE

5 By Mr. Sargent 7

6 By Ms. Long 29

7

8 E X H I B I T S

9

10 (Appellant's Exhibits 1, 2, 5, and 6 were received at page 6.)

11 (FTB's Exhibits A through N were received at page 6.)

12

13

14 CLOSING STATEMENT

15 PAGE

16 By Mr. Sargent 37

17 By Ms. Long 39

18

19

20

21

22

23

24

25

1 Los Angeles, California; Thursday, April 25, 2019
2 10:05 a.m.
3
4 ADMINISTRATIVE LAW JUDGE BRAMHALL: We're ready
5 to go on the record.
6 This is the appeal of Scott L. Shafer, OTA
7 Case No. 18010886. It's Thursday April 25th at 10:05.
8 I'm Doug Bramhall. I'm the lead judge on the panel today.
9 With me are Judges Kenny Gast and Linda Cheng. We are
10 coequal decision makers on this appeal.
11 Will the parties now introduce yourself for the
12 record.
13 MR. SARGENT: For the record, my name is
14 Robert H. Sargent, Junior. I'm an enrolled agent.
15 ADMINISTRATIVE LAW JUDGE BRAMHALL: For?
16 MR. SARGENT: I'm here to represent Scott L.
17 Shafer.
18 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.
19 MS. LONG: My name is Veronica Long. Together
20 with Ciro Immordino, we represent the Franchise Tax Board.
21 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.
22 The parties have agreed that the issues in this appeal are
23 as follows:
24 In Internal Revenue Code Section 1033 transaction
25 by a partnership, must the appellant partner recognize

1 gain resulting from a distribution in excess of his basis
2 in his partnership interest under Sections 731 and 752.
3 If so is the partner tax liability an offset to
4 the amount of partnership mortgage liability relieved.
5 Again, if gain is recognized, has appellant
6 established error in the Franchise Tax Board's computation
7 of appellant's partnership basis; and those are all issues
8 for the 2007 tax year.
9 In 2008 tax year, were the distributions by the
10 partnership made as a partner loan, or as a partnership
11 distribution subject to Section 731.
12 Parties have also agreed that the exhibit index,
13 which I've handed out, showing Appellant's Exhibits 1, 2,
14 5 and 6, and FTB's Exhibits A through N are acceptable for
15 the record without objection.
16 (Appellant's Exhibits 1, 2, 5, 6 were
17 received in evidence by the Administrative
18 Law Judge.)
19 (FTB's Exhibits A-N were received in
20 evidence by the Administrative Law
21 Judge.)
22 Supplementing Exhibit 5 for the appellant was a
23 handout today that is a clear or copy -- purported copy,
24 of the original exhibit.
25 The panel will take that additional information

1 into the record and consider its weight when compared to
2 the original document in our deliberations. I'm also
3 admitting into the record only as argument, Appellant's
4 Exhibits 3 and 4 and Franchise Tax Board's Exhibit O.
5 Parties agree to that?
6 MS. LONG: Yes.
7 MR. SARGENT: Yes.
8 ADMINISTRATIVE LAW JUDGE BRAMHALL: Great. So
9 without objection, Mr. Sargent are you prepared to begin?
10 MR. SARGENT: I am not used to this venue. I've
11 written it down, so I'm just going to read.
12 ADMINISTRATIVE LAW JUDGE BRAMHALL: The only
13 thing I'll ask you is that as you read, remember that
14 we're recording, and so pace yourself.
15 MR. SARGENT: Perfect.
16 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.
17
18 OPENING STATEMENT
19 MR. SARGENT: The taxpayer, an individual, was a
20 member of several LLCs, which filed as partnerships for
21 tax purposes. In 2007 the City of Santa Monica purchased
22 several properties from these various entities under
23 threat of eminent domain. It should be noted here that
24 there was also another taxpayer, and individual who is a
25 TIC, a tenant in common, member -- not member -- but owner

1 on a couple of the properties sold to the city.
2 That's important to remember as I weave my way
3 through the myriad of roadblocks designed by the FTB in
4 trying to deny my client the correct finding under the
5 law. Initially, the FTB claimed it wasn't a 1033
6 transaction at all. They later acquiesced and rightfully
7 so, considering they were in essence arguing the taxpayers
8 were in collusion with the City of Santa Monica to defraud
9 the US Government and the State.
10 Using a shotgun approach, they also postulated
11 the partnership entities had relief of liability under
12 Section 752, and further claimed the distribution among
13 each of my client created negative basis leading to
14 taxable gain under Section 1031.
15 First I'd like to review the purposes of 1033.
16 It was put into the code in 1921 to provide relief to
17 taxpayers whose property had been taken involuntarily in
18 World War I. There's no question that many types of gains
19 are realized by other sections of the Internal Revenue
20 Code. But a Section 1033 transaction holds all other code
21 sections at bay.
22 If there's an invalid election, then there should
23 certainly be in position of tax. But not only is gain not
24 recognized, the strict reading of Section 1033(a)(1)
25 states that non-recognition of gain is mandatory. If

1 property is compulsory or involuntarily converted into the
2 property similar or related in service or use to the
3 property so converted, no gain shall be recognized.
4 And if that's not plain enough, in Treasury Reg
5 1.1033(a)-2(b), it explicitly says such non-recognition is
6 mandatory. Along the way in 1961, traceability was
7 excluded. That means any cash received in a Section 1033
8 sale is not required to be reinvested into the replacement
9 property as in a Section 1031 exchange. In short, the IRS
10 never intended the untended consequences being sought here
11 by the Franchise Tax Board.
12 Now, remember the individual that I referenced
13 earlier. He had the same sale, the same relief of
14 liability, the same utilization of cash prior to
15 repurchase, and finally, replaced his property under
16 Section 1033 utilizing new mortgage debt not requiring a
17 utilization of a bulk of his funds obtained through the
18 sale.
19 The FTB would argue that he is free from his tax
20 because he's an individual, and that my client chose to
21 invest through an entity and has to live with the
22 consequences. Well, first of all, the entity my taxpayer
23 chose was an LLC. Tax is a pass through. Pass through
24 meaning the transactions of the entity are taxed the same
25 as if they happened to him as an individual. Choosing an

1 entity should properly include income where called for but
2 never distorted. The FTB's position is doing exactly
3 that.
4 To quote from Ms. Long's own delegation paper,
5 "The legislative intent of Section 1033 is to defer gain
6 recognition. Section 1033 is a gain deferral statute
7 whose purpose is to allow taxpayers to put themselves in
8 the same position as they were prior to the involuntary
9 conversion.
10 By requiring the taxpayers to recognize gain,
11 Rule 81-242 conflicts with that purpose and may leave
12 taxpayers unable to purchase replacement property.
13 Further, unlike most gain deferral statues, Section 1033
14 should be liberally applied to defer gain recognition
15 because it was intended to protect taxpayers from the
16 unanticipated tax liability of involuntary conversion."
17 That's all very well written. She further
18 states, "Partners are the only individuals or entities
19 required to recognize gain under Section 1033 when they
20 fully reinvest their conversion proceeds. The effect of
21 Reg Rule 81-242 is to single out partnerships for
22 disparately negative treatment because partners are
23 required to recognize gain where they completely reinvest
24 their conversion proceeds, unlike other taxpayers.
25 Permitting liability netting for individuals and other

1 entities while disallowing it for partners is unsupported
2 by legislative intent."
3 She tells you that as an advocate of the FTB, she
4 can't rely on her paper because it was summarily rejected
5 by the IRS. So now she banks her reliance on 81-252 and
6 further on Rev. Ruling 2003-56, two things that she railed
7 against in her paper. Initially, I thought there was a
8 valid argument. She articulates every point that needs to
9 be made, including the statement that, "The proposal does
10 not create an administrative -- additional administrative
11 burden because taxpayers who recognize gain under Section
12 1033 must already file an amended tax return in the year
13 of gain recognition."
14 Ironically, she now suggest we disbelieve her
15 paper, since she argues the complete opposite of what she
16 initially published. But then I have to give pause to the
17 fact that her paper was summarily dismissed by the IRS.
18 Certainly it couldn't have been dismissed because she was
19 wrong on her premise that Rev. Ruling 81-242 needed to be
20 reversed by the IRS, a new guidance issued under 1033
21 allowing taxpayers to be treated similarly under Sections
22 1033 and 1031.
23 Yes, upon reflection, I was almost led down the
24 same primrose same path. But then I stepped back and took
25 a look at the entirety of her paper, and then the history

1 that caused her publication of that document. So that's
2 where I would like to go now, a little history lesson, if
3 you allow me.
4 First, there was the preexisting liability offset
5 rule for money boot determination in IRC Section 1031
6 transactions. Treasury Reg Section 1.1031(b)-1(c)
7 provides that consideration in the form of an assumption
8 of liabilities or a transfer subject to a liability is to
9 be treated as other property or money for the purposes of
10 1031(b). Wherein an exchange described in Section
11 1031(b), each party either assumes a liability of other
12 party, or acquires property subject to a liability.
13 Then in determining the amount of the property or
14 money, consideration given in the form of an assumption of
15 liabilities or the receipt of property subject to a
16 liability, is offset against consideration received in the
17 form of an assumption of liability or transfer subject to
18 a liability. Thus, when there are mortgages on both sides
19 of the transaction, the mortgages are netted, and the
20 difference becomes recognized gain to the party
21 transferring the larger -- the property with a larger
22 mortgage.
23 In 1979 there was a Private Letter Ruling,
24 7948087. The fact pattern on which Rev. Ruling 8242 is
25 based, which allowed IRC Section 752(b) liability netting

1 in IRC Section 1033 transactions.

2 ADMINISTRATIVE LAW JUDGE BRAMHALL: Will you cite

3 that again?

4 MR. SARGENT: Private Letter Ruling 7948087,

5 1979. In 1980 the IRS National Office staff draft Rev.

6 Ruling 81-242, which followed the PLR 7948087 and allowed

7 IRC Section 752(b) liability netting in IRC Section 1033

8 transactions.

9 But in 1980 there was a General Counsel

10 Memorandum 38389, in which Chief Counsel Gerald Cohen

11 reversed the conclusion in the IRS staff's draft Revenue

12 Ruling and disallowed IRC Section 1030 transaction based

13 on the fact that the problem was in 752(b), and that it

14 operated wholly independent of Section 1033.

15 Now, at this point the IRS doesn't have

16 legislative authority to interpret IRC Section 752 to

17 include liability netting under 752(b), and cannot do so

18 without such written authority under IRC Section 752(b).

19 Notwithstanding, there being no liability offset

20 regulation for IRC Section 1033 like there was at the time

21 for IRC Section 1031. That general counsel memo and Rev.

22 Ruling 81-242, nonetheless, effectively adopt liability

23 offset in finding there was no money boot for purposes of

24 IRC Section 1033(a).

25 The transaction is wholly tax free under Section

1 1033. The independent and sole problem is the partnership
2 provision IRC Section 752(b) and the resulting deemed
3 distribution under IRC Section 731. In 1981 the IRS
4 issued Rev. Ruling 81-242, not allowing the netting under
5 1033, and not allowing the netting under 752(b) because of
6 the reasons that the general counsel stated; that they
7 didn't have authority to change 752(b).
8 So what comes next? 1984 the IRS gives Internal
9 Revenue Code Section 752(b) the authority. That was the
10 lack of which caused the result in Rev. Ruling 81-242.
11 The Tax Reform Act of 1984 allow that. Wherein, Congress
12 gave Treasury and the IRS broad ground of authority to
13 promulgate legislative regulations as opposed to normal
14 interpretive regulations to IRC Section 752 regulations to
15 interpret the statute in Section 752 however they see fit.
16 This effectively overcomes the section 752(b)
17 problem raised by Chief Counsel Cohen in his GCM 38389
18 regarding that Rev Rule. Then we fast forward to 1988.
19 In 1988 temporary IRC Section 752(b) liability netting
20 regulation was drafted. Section 1.752-1TJ3 and examples 1
21 and 2 of Treasury Reg Section 1.752-2T(9)b) issued in
22 December 3rd of 1988, the temporary reg.
23 That proposed that IRC Section 752(b) liability
24 netting rule was finally -- excuse me. That proposed that
25 the 752(b) liability netting rule be allowed. In 1991

1 there were final IRC Section 752(b) regulations. That
2 included Treasury Reg Section 1.752-1(f), which provides
3 in part as follows:
4 Treatment of partnership liabilities. F, netting
5 of increases and decreases in liabilities resulting from
6 same transaction. If as result of a single transaction a
7 partner incurs both an increase in the partner share of
8 the partnership liabilities or the partner's individual
9 liabilities, and the decrease in the partner's share of
10 the partnership liabilities, or the partner's individual
11 liabilities, only the net decrease is treated as a
12 distribution from the partnership. And only the net
13 increase is treated as a contribution of money to the
14 partnership.
15 Now, we fast forward to 2003, Rev. Ruling
16 2003-56. The IRS issues guidance under 752 treatment of
17 certain liabilities. In issuing guidance under Treasury
18 Reg 1.752-1, the IRC -- the IRS allows IRC Section 752(b)
19 liability netting in an IRC Section 1031 transaction. In
20 the listing of relative authorities in the law section of
21 Rev. Ruling 2003-56, Pietro Canestrelli the principle
22 author of the ruling, references IRC Section 752(b), but
23 does not include 752 -- 1.752-1(f) in the list of relevant
24 authorities.
25 Well, that makes absolutely no sense for Rev.

1 Ruling that provides guidance under Treasury Reg Section
2 1.752-1, because the liability netting rule of 1.752-1(f)
3 is obviously relevant authority, even if the Rev. Ruling
4 author was not relying on it for his conclusion. So in
5 stark contrast to the lack of inclusion of any IRC Section
6 752 regulatory authority in the law section of Rev. Ruling
7 2003-56, the principle author does include the money boot
8 liability offset in Treasury Reg 1.1031(b)-1(c) of the
9 income tax regulations, which provides that consideration
10 in the form of an assumption of liabilities or a transfer
11 subject to a liability is to be treated as other property
12 or money for the purposes of 1031(b).
13 There is no GCM to explain the reasoning of his
14 ruling as was provided for in 81-242. Now, in the
15 analysis section of Rev. Ruling 2003-56, after concluding
16 that the liabilities are netted for purposes of
17 determining IRC Section 1031(b) money boot from any
18 assumption of liabilities, it states the liability
19 offsetting rule of 1.1031(b)-1(c) also is taken into
20 account purposes of determining the amount of any decrease
21 in a partner share or partnership liability under 752(b),
22 which is treated as a deemed distribution of money to the
23 partner.
24 Accordingly, if a partnership enters into a 1031
25 exchange that straddles two taxable years of the

1 partnership, each partner's share of relinquished
2 liability is offset with each partner's share of the
3 replacement liability for purposes of determining any
4 increase in a partner share of liability under Section
5 752(b). A net decrease is taken into account in the first
6 taxable year of the partnership since it is attributable
7 to the transfer of the relinquished property subject to
8 the relinquished year liability in that year.
9 So given the fact that number one, Rev. Ruling
10 2003-56 is guidance issued under Section 752(b) and
11 Section 1.752-1. Two, there's no mention of the direct
12 liability netting rule of Treasury Regulation 1.752-1(f)
13 in the list of relevant authorities in the law section.
14 And three, the principle author borrowed the offset rule
15 from 1031 regulations for an IRC Section 752(b)
16 conclusion.
17 That's an approach that's completely contrary to
18 the directive that we talked about, 38389, which again
19 states Section 752(b) operates wholly independent of the
20 deferred exchange provisions of the code. Which is the
21 underlying basis for IRC Section 752(b) problem that was
22 raised in 81-242. So to me it appears the principle
23 author was either unaware of the existence of the direct
24 liability netting rule 1.752-1(f) and likely GCM 38389.
25 Or perhaps a less likely explanation is principle author

1 of the Rev. Ruling wanted to make the point that the
2 liability netting would be permitted in Section 1031
3 transactions even in the absence of a direct liability
4 netting rule in IRC Section 752 because the indirect
5 liability offset rule for money boot in Section
6 1.1031(b)1(c) preexisted the 1991 promulgation of the
7 direct liability netting rule for IRC Section 752(b) in
8 Treasury Reg 1.752-1(f).
9 So despite the GCM's letter which says 752(b)
10 operates completely independent of the deferred exchange
11 provisions and that there is no reason for an IRC section
12 752(b) Rev. Ruling addressing and IRC Section 1031
13 transaction to address or impact a 30-year-old Rev. Ruling
14 addressing IRC Section 1033 transactions, I believe the
15 FTB is interpolating something into 2003-56 that simply is
16 not there.
17 By interpreting the fact that 81-242 adopted a
18 liability netting conclusion, the fact that he in 2003-56
19 adopted the money boot liability offset rule in Treasury
20 Reg 10311 to mean that the IRC must now first adopt a
21 similar money boot liability offset rule in IRC Section
22 1033 in order to apply the direct rule of law and
23 liability netting of Reg Section 752-1(f) to IRC 1033
24 transactions.
25 Well, to me, first of all, rather tortured logic.

1 So here's the thing. To get to Ms. Long's published
2 article and my initial reliance thereon, she in her
3 reading of Rev. Ruling 2003-56, published an article
4 calling for the IRS to promulgate a liability offset rule
5 under IRC Section 1033 to fix the IRC Section 752(b)
6 problem created in Rev. Ruling 81-242.
7 In retrospect it's not surprising that proposal
8 was summarily rejected by the Treasury Department. The
9 shame here is that it didn't shed light on the actual law
10 that had already corrected the problem. Instead it
11 brought up an irrelevant solution which has caused many,
12 me included, to initially miss the mark.
13 You see, the simple truth is that IRC Section
14 752(b) problem that was created in Rev. Ruling 81-242 was
15 already been fixed. It was fixed in the 1991 promulgation
16 of the direct liability netting regulation under IRC
17 Section 752(b) in Reg Section 1.752-1-1(f). And during
18 the nearly 40 years since Rev. Ruling 81-242 was issued,
19 the IRS has not litigated a single case proposing an
20 assessment of liability under IRC Section 752(b) and 731
21 based on Rev. Ruling 81-242.
22 In fact, my understanding is that they don't even
23 raise this issue in examination or audit. Still, the FTB
24 at its insistence, perhaps with Ms. Long and a few other
25 colleagues, is trying to purpose their erroneous theory of

1 the impact of Rev. Ruling 2003-56 on Rev. Ruling 81-242
2 into federal law. And despite the fixed Rev. Ruling
3 81-242 implemented by the IRS through the inclusion of
4 1.752-1(f), the FTB is now trying to base my client's
5 proposed tax increase in part on the refusal to
6 acknowledge the fix.
7 Ms. Long admits in her briefs that IRC Section
8 752(b) operates wholly independently from IRC Section
9 1033. Which by the way is what it says in 38389 in the
10 general council memorandum. And that Treasury Department
11 and IRS and others summarily rejected her proposal to
12 promulgate an IRC Section 1033 regulation to fix IRC
13 Section 752(b) created in Rev Rule 81-242.
14 She doesn't provide any explanation as to why the
15 Treasury Department's 1991 promulgation of the liability
16 netting rule in Treasury Reg 1.752-1(f) isn't the fix.
17 It's the fix in IRC Section 752(b) problem that was raised
18 in 81-242. Or why, based solely on her reading of Rev.
19 Ruling 2003-56, she would have you believe that the
20 Treasury Department's fix to the IRC Section 752(b)
21 liability netting problem that was caused in 81-242 is now
22 wholly deep in the change that must come in the form of an
23 IRC Section 1033 liability offset rule.
24 Such an approach based solely on reading
25 something into 2003-56 that clearly isn't there, can't be

1 squared with the direct reasoning of Rev. Ruling 81-242
2 that was provided in the general counsel's memo. And if
3 that weren't enough, the FTB would have you believe
4 Section 1033 was excluded under Rev. Ruling 2003-56. The
5 truth is that a Rev. Ruling is applied to a specific set
6 of facts and circumstances.
7 Simply put, 1033 was never excluded. It was
8 merely not included. Because there was nothing in the
9 request for ruling that would have called for its
10 conclusion. The FTB's argument of that point is
11 disingenuous to the facts. I've actually had opportunity
12 to speak to the author of that Rev. Ruling, Pietro
13 Canestrelli, who as an aside, I find it quite ironic that
14 his office is now in Temecula, which is the next city to
15 where my office has been in for the last 40 years.
16 At any rate, he practices in Temecula, and he
17 told me that he considers his Rev. Ruling analogous to
18 Section 1033. So in my opinion, the law compels the FTB
19 to acquiesce that my client is entitled to liability
20 netting under Section 1.752-1(f), which states if as a
21 result of the single transaction, a partner incurs both an
22 increase in the partner's share -- the partnership
23 liabilities or the partner's individual liabilities, and a
24 decrease in the partner's share of the partnership
25 liabilities, or the partner's individual liabilities, only

1 the net decrease is treated as a distribution from the
2 partnership and only the net increase is treated as a
3 contribution of money to the partnership.
4 Well, if netting is allowed as a result of a
5 single transaction under 1.752-1(f), was the taxpayer
6 involved in a step transaction, and therefore, allow the
7 netting provision provided for in that code section. The
8 answer is an emphatic yes. The entities and, therefore,
9 my client, the taxpayer, as a pass through was entitled --
10 was involved in a step transaction.
11 I'd read to you from the Office Chief Counsel
12 Internal Revenue Service Memorandum No. 200826004, which
13 was drafted in February of 2008 and released in June of
14 2008, June 27th. In it she quotes, "Perhaps the most
15 pervasive principle employed in the application of the law
16 of taxation is the maximum, that the substance rather than
17 the form in which a transaction is cast will govern its
18 tax consequences."
19 She further states -- and I would argue this
20 aptly applies here just as readily. A particular
21 manifestation of the principle that has found widespread
22 doctrine in the subchapter C arena is the step transaction
23 doctrine. This doctrine provides for an intervention of a
24 series of purportedly separate steps into a unified
25 transaction.

1 Although, this rule is deceptively easy to state
2 and is imminently sensible application of the substantive
3 approach to the evaluation of tax consequences, the
4 circumstances in which amalgamation is appropriate have
5 varied depending on the particular set of facts presented.
6 In this regard, it is generally conceded that the doctrine
7 can apply if any of the three alternative tests are met.
8 The end result test, the mutual interdependence test, or
9 the more restrictive binding commitment test.
10 Under the end result approach to amalgamation, a
11 series of steps will be telescoped if they were taken for
12 the purpose of achieving a result sought by the
13 participants at the outset. The mutual interdependence
14 test will result in integration only on the finding that
15 the steps were so interdependent, that the legal relations
16 created by the initial step would have been fruitless
17 without a completion of the series.
18 Finally, the binding commitment test mandates
19 amalgamation only if a legally enforceable obligation to
20 complete the series was in place at the inception of the
21 transaction. In view of the fact that the end result test
22 is the least restrictive step transaction standard, a bias
23 in favor of integration is readily descendible.
24 Nevertheless, the end result test is often
25 modified to require written manifestations of a taxpayer's

1 intentions yielding results that may vary from those that
2 would obtain through a pure application of the end result
3 approach. The additional requirement that the taxpayer's
4 intentions be documented has served to --
5 ADMINISTRATIVE LAW JUDGE BRAMHALL: Mr. Sargent.
6 MR. SARGENT: Yes.
7 ADMINISTRATIVE LAW JUDGE BRAMHALL: Let me
8 interrupt for a minute. You've reached a half hour of
9 your time. So I'd like you to focus. Make your points a
10 little more succinctly so you can wrap up your
11 presentation.
12 MR. SARGENT: All right.
13 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.
14 MR. SARGENT: First of all, my clients had a firm
15 and fixed plan under the end result test. That firm and
16 fixed plan was drafted in the form of an agreement by the
17 members prior to the completion of the sale to the City of
18 Santa Monica. They met the mutual interdependence test
19 because they made an election to report under Section
20 1033.
21 If they hadn't made the election, they would have
22 been subject to capital gain in 2007. If they had been
23 subject to that gain in 2007, we wouldn't even be here
24 because they would have been received capital gain in that
25 year, which therefore, would have stepped up my clients'

1 basis.

2 They met the binding commitment test because once

3 they knew that the City of Santa Monica was going to

4 purchase the properties through the three entries, they

5 entered into a legally binding agreement between the

6 members that outlined the terms. So since the taxpayer

7 met not just one of the single step transactions but all

8 three, there's no reason that's not considered a step

9 transaction.

10 In fact the FTB argues single step transaction

11 doctrine in their assessment of swap and drop transactions

12 in Section 1031. So if this was a single step

13 transaction, there's no obligation to be considered as a

14 single step -- as part one under 752. The fact is unlike

15 a 1031 transaction, 1033 allows the taxpayer to receive

16 the funding. And in doing so, the entity has to account

17 for its increase on the balance sheet.

18 So I've looked at Section 1-752141(a) and it

19 defines an obligation. It says an obligation for purposes

20 of 752 in the regs they are under, A, creates their

21 increases the basis of any of the obligor's assets,

22 including cash. So my clients received -- their entities

23 received substantial amounts of cash from the sale of the

24 properties that then had to be placed in their accounts,

25 which were then integral to completing the exchange

1 transaction.

2 So the fact that that cash is obligated to be

3 used at the end of the transaction creates the step that's

4 required. The nexus is that when the transaction was

5 consummated -- actually before it was consummated, my

6 taxpayer borrowed money from the various entities from the

7 remaining sale proceeds. He borrowed it under that

8 agreement that was drafted prior to the sale, which gave

9 the obligation of what was to be done with those funds.

10 It became a debt instrument. The minute he

11 signed it and the minute he took funds, the obligation was

12 that he would be obligated to put those funds back or to

13 help create -- to help complete the 1033 transaction. So

14 she also argues that there was -- it was not a debt

15 because there was no interest rate. The IRC imputes

16 interest rate if there's none actually drafted.

17 She argues that there was no date certain. Well,

18 there was a date on there. It said that under the second

19 leg of the 1033 election that they would have to put the

20 money in within 90 days of a designated replacement

21 property. So there's an end date that's certainly, at the

22 very latest, the end of the 1033 election where they would

23 have to repurchase their properties.

24 So in summation the facts are as follows: My

25 client was forced into selling his investment properties.

1 He wound up with transitory not permit relief of
2 liabilities. The FTB wants to tell you that he received
3 permanent relief. He did not. They argue that even
4 though 81-242 acknowledge there would be no gain under
5 1033, but that Section 742 won't allow it because it
6 stands independent.
7 Well, they've disregarded the rules under
8 1.752-1(f). They want to argue that 2003-56 requires 752
9 be fixed to become dependent on a rule change in 1033.
10 Well, 752 already has the rule in it. It's still
11 independent as it was in 1981. It can't somehow change
12 through the course of history.
13 So the last thing is not only the fact that my
14 client had a note, and I was able to receive an
15 affidavit -- although albeit too late. If you allow me to
16 put it into later submission, I can do that -- from the
17 other partner who states exactly that this issue was a
18 loan.
19 But they want you to believe that there was -- he
20 got off scot-free with the money. He didn't get off
21 scot-free. At the end of the day they also want to say
22 that a note that was drafted in 2007 and perpetuated in
23 2008 somehow morphs into something completely different
24 because of a transaction that happened in 2013.
25 Well, 2011 and 2013 they replaced their

1 properties. And as luck would have it, the banking rules
2 have changed that allowed them to use more leverage. And
3 so my client had to sign on to those loans in order to
4 replace the property. So in exchange for the money back,
5 he applied the new liability to the partnership. It's the
6 same basis that went in and out. He didn't get off
7 scot-free. He owes the money.
8 The other thing is under USC v. Crane, as soon as
9 that money was taken out -- even if it weren't a debt --
10 when that money was taken out, it puts him on the hook to
11 give it back to the partnership. He has basis because
12 he's on the hook. So, you know, I just -- I think if they
13 applied 1.752-1(f), we wouldn't be sitting here.
14 I think if they -- granted the document that I
15 found, the agreement that indicates the loan came late.
16 It came late because it was in a series of confidential
17 documents, and I had to argue to get it unsealed so that I
18 can bring it. I have it. And in that document that I
19 printed out for you, the pertinent sections -- and you can
20 follow them right through the document section C, section
21 2, section 6. All of them highlight -- not highlight.
22 They are verbatim from that agreement. And it
23 even references that when the replacements under 1033 take
24 place, those are requirements of members one-third and
25 two-third obligation, respectively. So, A, there's no

1 liability relief under 752, which means there's no
2 distribution under 731. There's a valid note. There was
3 a repurchase of the properties in a step transaction. We
4 shouldn't be here.
5 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. Thank
6 you.
7 Ms. Long, are you ready to present FTB's case?
8 MS. LONG: Yes.
9 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.
10
11 OPENING STATEMENT
12 MS. LONG: This case is about a partner who
13 received distributions in excess of his basis in a
14 partnership. In 2007 appellant was a member of three LLC:
15 Taking the Fifth, Fifth in Arizona Investors, and Bayside
16 Domination. All three LLCs sold real property under
17 threat of condemnation in 2007.
18 The LLCs used the funds to repay loans on their
19 properties and the remainder stayed with the LLCs. The
20 LLCs then distributed a portion of the funds to the
21 members. The LLCs in this case are taxed as partnerships,
22 so partnership taxes will apply.
23 I'm going to begin with a brief overview of
24 partnership basis principles. Partnerships are flow
25 through entities. The character of tax is determined by

1 the partnership entity level, and tax liability is
2 determined and paid at the individual level by partners.
3 All partners have a basis in their partnership interest.
4 Originally basis will be equal to the partner's
5 contribution to a partnership.
6 Additional contributions increase a partner's
7 basis in a partnership, and distributions decrease a
8 partner's basis in a partnership. When a partnership
9 takes out a loan, the liability for the loan is shared
10 among the partners. Each partnerships -- each partner's
11 share of debt is a deed contribution to the partnership,
12 which increases their basis in the partnership.
13 And any decrease in the partner's share in the
14 partnership debt is a distribution from the partnership,
15 which decreases basis of the partnership. A
16 partnership's -- a partner's basis in a partnership cannot
17 be reduced below zero. Once basis is depleted, the
18 partner must recognize gain. Using these principles we
19 will work our way through the four issues in this case.
20 Issue number one, in an IRC 1033 transaction by a
21 partnership, must the appellant partner recognize gain
22 resulting from a distribution in excess of his basis in
23 his partnership interest under IRC Sections 731 and 752.
24 When these partnerships do that alone to purchase
25 properties, appellant's basis in the partnership

1 increased. When the property was sold and the loan
2 repaid, appellant whose basis in partnership decreased.
3 The law does not allow basis to be less than zero. Once
4 basis is depleted, the law requires any further
5 distributions to be recognized as gain.
6 Generally, the loan increase and decrease would
7 be a wash, unless during the intervening time the partners
8 have reduced there basis. That means that when the loan
9 is repaid the basis gets reduced below zero. To that
10 extent, appellant must recognize gain.
11 In this case appellant received distributions in
12 two forms; in cash and in reliability relief. These
13 distributions exceeded appellant's basis in the
14 partnerships and to the extent that these distributions
15 exceeded his basis, appellant must recognize gain.
16 Now, I'd like to address liability netting. When
17 the partnership repaid their loans, the appellant wants to
18 offset the old loans on the relinquished properties
19 against new loans taken out on replacement properties.
20 The law does not allow these to be netted. 1033 gain
21 deferral is completely separate from the partnership tax
22 framework.
23 Nothing in 1033 gain deferral isolates partners
24 from the separate partnership tax rules. The fact that a
25 partner must -- a partner who receives a distribution in

1 excess of basis must recognize gain is not effected by
2 1033. Netting is only permitted for 1031 like kind
3 exchanges because of 1031 regulations that explicitly
4 provide for offset.
5 The 752 regulation discussed by appellant only
6 applies to single transactions, where that regulation
7 specifically provides if as the result of a single
8 transaction. The relinquishment of property and, you
9 know, a handful of years later the replacement property,
10 those are not simultaneous transactions. So that
11 regulation does not apply.
12 The IRS has confirmed this result explicitly in a
13 Revenue Ruling. And as stated in our brief, the Ninth
14 Circuit Court of Appeal has held that Revenue Rulings are
15 entitled to substantial judicial deference.
16 Issue number two, if gain is recognized, has
17 appellant established error in FTB's computation of
18 appellant's partnership basis. Appellant's basis
19 computations are clearly flawed and inconsistent as
20 discussed in our briefing. For example, appellant
21 attempts to re-characterize cash distributions as loans,
22 including distributions that were reported on appellant's
23 K-1 as cash distributions. Simultaneously, appellant
24 erroneously asserts his deferred gain is a liability.
25 FTB's computation of appellant's partnership basis is in

1 our exhibit of our opening brief.

2 This brings us to issue number three, is partner
3 tax liability an offset to the amount of partnership
4 mortgage liability relieved. Deferred gain is not a
5 liability because 1033 is a gain deferral mechanism that
6 does not create tax liability. 1033 allows a taxpayer to
7 defer recognizing gain when property is involuntarily
8 converted and proceeds are used to purchase replacement
9 property.

10 It just allows taxpayers to carryover their basis
11 into a converted property. It does not create gain.
12 Appellant is asserting that his basis should increase by
13 the proceeds received with the converted property into a
14 replacement property purchased; however, this is not
15 correct. If the partnership fails to complete a 1033
16 exchange, then it must amend returns for prior years when
17 the proceeds were received or report the sale of the
18 property. And that would result in tax liability to the
19 partners as individuals, but that is not the operation of
20 a 1033. That is merely the partnership selling the
21 property.

22 The potential for future tax liability for the
23 partners as individuals does not increase appellant's
24 basis in a partnership for multiple reasons. First,
25 partnerships are flow through entities. They don't have

1 tax liability at the entity level. It flows through to
2 partners. Thus, the tax liability, if any, would belong
3 to a partner as individuals, not the partnership. Second,
4 unrecognized gain is not a liability within a 752
5 regulation because it does not create basis, or give rise
6 to an immediate deduction, or give rise to an expense.
7 Issue number four, were the distributions by the
8 partnership in 2008 made as a partner loan or as a
9 partnership distribution subject to IRC Section 731. As
10 discussed in issue two, appellant asserts cash
11 distributions were loans. Appellant support for this
12 appears to be appellant's Exhibit 5, the agreement.
13 The Regulations and Revenue Rulings provide that
14 a transfer of funds from a partnership to a partner will
15 only be considered a loan if at the time the funds were
16 advanced, the partner is under an unconditional and
17 enforceable obligation to repay the funds at a fixed
18 state. As stated in the Ninth Circuit Court of Appeals in
19 Welch, the Court considered various factors to determine
20 whether a bona fide loan exist.
21 Chief among these factors are whether the promise
22 to repay as evidence by a note or other debt instrument,
23 whether interest was charged, whether there's a fixed
24 schedule of repayments, and whether repayments were made.
25 Appellant asserts his Exhibit 5, the agreement, is a loan

1 agreement. However, at paragraph number 6 of the newly
2 supplemental information here, seems to provide that the
3 loan repayment itself is discretionary.
4 Further, the agreement seems to overall provide
5 that he's -- that the appellant was only required to repay
6 funds when a replacement property was purchased. And from
7 paragraph number 6, it appears that it's purely
8 discretionary and whether the appellant chooses to
9 reinvest those funds. This is not a loan agreement.
10 Effectively, if anything, it would be a contribution to
11 capital.
12 No interest was charged. No payment date was
13 provided, and even appellant did not treat the funds as a
14 loan. Appellant did not repay when new property was
15 purchased. Instead the partnership took out new loans to
16 obtain replacement property. Appellant was never required
17 to repay. And at this point, when the partnership took
18 out new loans to purchase replacement property, appellant
19 should have reported cancellation of debt income. But
20 appellant wanted benefits of a loan disbursement without
21 being banned on negative tax consequences when they did
22 not repay and never reported cancellation of an income.
23 All of these factors demonstrate that this was
24 not a loan. Not only has appellant failed to establish
25 that funds or the loans, the contemporaneous acts in

1 appellant's own tax returns reported that they were
2 distributions. Therefore, they decrease this basis.
3 In short, appellant cannot escape tax liability
4 by attempting to re-characterize his distributions as a
5 loan, his deferred gain, as a liability. He has received
6 distributions and to the extent these distributions exceed
7 his basis, he must recognize gain.
8 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. Any
9 questions of either party?
10 ADMINISTRATIVE LAW JUDGE GAST: No.
11 ADMINISTRATIVE LAW JUDGE CHENG: Just one. Was
12 there a federal audit in this case?
13 MR. SARGENT: There was not.
14 MS. LONG: I'm not aware of a federal audited in
15 this case.
16 MR. SARGENT: Again, the federal government has
17 never brought up an audit in the all the history I've seen
18 that I researched under 81-242. It's a moot point to them
19 because it was fixed.
20 ADMINISTRATIVE LAW JUDGE CHENG: Thank you.
21 ADMINISTRATIVE LAW JUDGE BRAMHALL: Was the loan
22 ever repaid?
23 MR. SARGENT: Parts of it went back in. Parts
24 were refinanced. By him signing a recourse loan, a
25 guarantee, it was tantamount to repayment. Their options

1 were when we went out to find financing, under 1033 you
2 can utilize funds or -- you're required to either utilize
3 funds or replace the property.
4 When they went out to replace the property, they
5 obtained new debt, which they signed for personally under
6 the new debt. That took place in 2011 to 2013. The FTB
7 would have you believe that somehow a note that was a note
8 in 2007, 2008, changed in 2013 and was no longer a note.
9 I got a '70 Chevelle. When I bought it, it was
10 red. I repainted it back to the original color. It was
11 still red when I got it. It hasn't changed.
12 ADMINISTRATIVE LAW JUDGE BRAMHALL: So was the
13 loan repaid?
14 MR. SARGENT: The loan replaced -- the loan was
15 replaced with another loan that the taxpayer signed for.
16 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. If
17 there's no other questions, you may have 5 or 10 minutes
18 to make your closing statement.
19
20 CLOSING STATEMENT
21 MR. SARGENT: The FTB wants you to believe that
22 my client is somehow the bad guy here because his property
23 got replaced. They read something in the 2003-56 that was
24 not there. They used -- they're hanging on that for bad
25 policy. Worse, they are trying to create law in that

1 somehow Section 1033 needs to now help out Section 752
2 when the Rev. Ruling in '91 fixed all that.
3 This was a step transaction, and the FTB uses
4 step transactions all the time when they're enforcing swap
5 and drop transactions under 1031. Suddenly they don't
6 believe that you -- they can pick and choose what is and
7 what isn't a step transaction. My clients entered into an
8 agreement. That agreement was very clear.
9 It stated that they were going to get funds from
10 a 1033 transaction; that they were going to replace those
11 properties that were sold; that in interim they were going
12 to be able to borrow money, but they had to pay it back in
13 order to get the properties, repurchase, which had been
14 done.
15 My client utilizing a new loan to pay for the
16 loan he had taken out. So it was all a single step. He's
17 never got off the hook. And the bottom line is this, that
18 the you shouldn't have anything that comes out that would
19 obscure the income of a pass through to make it any
20 different or worse than what an individual would have
21 been. And that's what happened here.
22 My client went in, took the transaction from A to
23 B to C all under the terms of their agreement and their
24 plan. They completed their plan. And now the FTB wants
25 to say, "Oh, no. Let's just count this one over here, and

1 then we'll count this one over here. Then we'll count
2 this one over here."
3 Well, if you have the alphabet, you have to use
4 the alphabet. You can't say no, we're just going to look
5 at A, and we're just going to look at F or Q. If somebody
6 has put the alphabet together, which they did under their
7 agreement prior to the 1033 transaction even being
8 completed, that agreement has to stand in place. And that
9 includes the lending. That includes the replacement
10 property. A to Z, soup to nuts.
11 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. Thank
12 you.
13 Closing?
14 MS. LONG: Yes, thank you.
15
16 CLOSING STATEMENT
17 MS. LONG: I want to respond to a few points made
18 by appellant's representative. First, the 752 regulation
19 he's discussing, I want to repeat that it requires to have
20 liability netting under that regulation. It must be part
21 of a single transaction. Now, to get to a single
22 transaction, the appellant is asking you to recast his
23 relinquishment replacement property spread among a handful
24 of years as a single transaction.
25 However, you know, step transaction doctrine is

1 not going to apply in this case. You can't merely recast
2 the transaction that you took in the form you would like
3 it to have been in. As the Supreme Court has held in
4 Moline, a taxpayer may choose the form in which they do
5 business, and they can choose how their transactions are
6 shaped. But they are bound by that choice to accept the
7 advantages and disadvantages.
8 Appellant has also stated that partnerships are
9 treated unfairly in this. And I will grant that the
10 partnership consequences are unique to partnerships, but
11 the normal -- but the benefits of a partnership were
12 chosen by the taxpayer -- by the Appellants in this case
13 for the benefits in the form of a partnership, I'll offer
14 you.
15 But the two primary forms of business entities
16 formed by small businesses are either LLC taxable as
17 partnerships as in this case, or S corporations. And I
18 want to contrast the treatment here. What would happen if
19 this were an S corporation.
20 How does an S corporation be -- liability would
21 not be shared among the members in the first place? So
22 you're not going to have the increase in basis and a
23 decrease in basis that occur on partnerships. Partners,
24 unlike S corporations and other entities, get that basis
25 increase for their share of partnership liability. And

1 then they get the decrease when the liability is paid off.
2 It's only if that during that intervening time
3 the basis is depreciated that it will be below zero.
4 Otherwise, it would just be a wash. So it's -- it is a
5 unique treatment of partnerships, but it has its benefits.
6 It also has its disadvantages. And when you choose your
7 form of conducting business, you are bound by both.
8 MR. IMMORDINO: I just want to add a couple of
9 points regarding the 752 regulations and 1031 regulations.
10 It's important to note that these are two completely
11 separate set of regulations. The regulations under
12 1.752-1(f), this is the codification of a single
13 transaction, which is discussed in General Counsel
14 Memorandum 38389 and Rev. Ruling 81-242.
15 And, you know, in the General Counsel Memorandum
16 and Rev Rule, the IRS makes it very clear that the single
17 transaction rule only applies to these instantaneous
18 events. And when they codify the single transaction rule
19 in the 91 regulation in 1.752-1(f), the examples in the
20 regulation also make that point; how there's an example of
21 contribution to a partnership. And it talks about the
22 various increases and decreases of liability and how those
23 get netted.
24 It also talks about a partnership merge as the
25 other example. And again, these are instantaneous events.

1 If you also look at the treasury decision, which is behind
2 the 91 regulations, these also talk about the application
3 of a single transaction rule in the context of
4 instantaneous event. And they are consistent with the 81
5 Rev Rule and the GCM.
6 And then to go back to the other regulations
7 which are at issue here, which is the 1031 regulations.
8 These are liability netting rules which apply only for
9 1031. There's been no law which would allow them to be
10 applied for 1033. And I also note that if one were to go
11 down the path and apply those liability netting rules for
12 1033, in this case it would result in a massive amount of
13 gain recognition.
14 One of the issues between 1031 and 1033, the way
15 that replacement works is it works completely differently
16 mechanically. In 1031 you have cash. You have liability
17 that get relieved. And the cash has to get reinvested in
18 new properties and the liability has to be assumed under
19 the new property. But 1033 works under an entirely
20 different mechanism as appellant has noted a number of
21 times.
22 When they had their property condemned in the
23 1033 transaction, the appellant received a lot of cash,
24 and they didn't use that cash to purchase replacement
25 property. Instead in 1033 you just have to purchase a

1 value of replacement property which is equal to the value
2 of the property that was condemned.
3 And so in this case, the taxpayer kept most of
4 the cash, and they used liability to purchase the
5 replacement property. Well, if the taxpayer wanted to
6 apply the liability netting rules in this case, they would
7 also have to apply the liability netting rule, which
8 include that you cannot offset cash boot with liability
9 boot. And that's what would have happened in this
10 instance.
11 And so if one were to follow that analysis, it
12 would result in a massive amount of gain. But
13 nonetheless, there's no legal authority and there's -- and
14 no way for the 1031 liability netting rule to apply to
15 1033, especially as the law for the two. There's no
16 comparison. There's no similar application.
17 When 1031 and 1033 laws are applied back and
18 forth, it's where they have the same legal standard. The
19 most notable is the like kind standard. Under 1033(g) the
20 like kind standard can apply to certain replacement
21 property in the conversion. So 1031 and 1033 have the
22 same like kind standard.
23 In this instance, the Courts will cite like kind
24 law for the two cases -- or for the two statutes, you
25 know, regardless of which one -- which statute that law

1 was from. But there are not instances of other areas of
2 1031 or 1033 law being applied to each other where there's
3 not that same legal standard, which is the case in
4 liability netting.
5 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. Thank
6 you.
7 MR. SARGENT: I'd like to make a point here.
8 ADMINISTRATIVE LAW JUDGE BRAMHALL: Final
9 rebuttal.
10 MR. SARGENT: Perhaps maybe it was just me
11 listening to what he said and taking it verbatim, but it
12 sounds to me like he's just trying to say that there was
13 liability boot for cash -- for tracing of the cash in a
14 1033 transaction, which there's not. There never has
15 been. That traceability went away in 1961.
16 He's trying to say if I replace a property, I
17 have to put the cash and the liability back in. But the
18 1033 allows me to put -- I can -- I can keep all the cash
19 and replace it with 100 percent liability. I still owe
20 that money because I owe it in the form of a loan.
21 ADMINISTRATIVE LAW JUDGE BRAMHALL: I didn't hear
22 him say that.
23 MR. SARGENT: He said that the way it acted was
24 you had to put the money and the cash in.
25 ADMINISTRATIVE LAW JUDGE BRAMHALL: In a 1031.

1 MR. SARGENT: I don't know how they account for
2 752-1(f) under a single plan when they are saying
3 instantaneous, and yet instantaneous you have an overlap
4 of rules. Now under 2003-56, the fact that it didn't
5 include 1033, that's not an instantaneous transaction.
6 It's the same analogous transaction.
7 I've got a sale here and a replacement here.
8 It's not instantaneous. Nowhere in it does it say it's
9 instantaneous. That's why they had to put the overlapping
10 rules in there. But the fact that it's not included does
11 not mean it's excluded, as what they would lead you to
12 believe.
13 This was an entirely step transaction. They went
14 in. They had an agreement before the property was sold.
15 Look, we're going to get this money, and we're going to
16 replace that. That's what they did, a single step. It
17 was never broken apart.
18 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. Thank
19 you.
20 Any questions.
21 ADMINISTRATIVE LAW JUDGE CHENG: No questions.
22 ADMINISTRATIVE LAW JUDGE GAST: No. I think I'm
23 good. Thank you.
24 ADMINISTRATIVE LAW JUDGE BRAMHALL: All right.
25 So that concludes the hearing then. I'm going to close

1 the record. The case is submitted for decision on
2 April 25th, 2019.
3 Thank you for your presentations they were both
4 clearly presented, your cases, and we appreciate that.
5 And we'll take this under consideration and have a written
6 opinion. Our goal is within a 100 days. Thank you.
7 (Proceedings adjourned at 11:04 A.M.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

I, Ernalyn M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 17th day of May, 2019.

____
ERNALYN M. ALONZO
HEARING REPORTER