

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

) OTA Case No. 21047623

**D. LINDSEY AND
L. LINDSEY**)
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)**OPINION ON REHEARING**

Representing the Parties:

For Appellants:

Hector C. Perez, Attorney

For Respondent:

Sonia D. Woodruff, Tax Counsel IV

R. TAY, Administrative Law Judge: On February 5, 2020, the Office of Tax Appeals (OTA) issued an Opinion in which OTA largely sustained respondent Franchise Tax Board's proposed assessment for the 2003 tax year, other than modifying it by lowering appellants' taxable gain from the sale of their principal residence in California (the property) to \$1,459,225. Appellants then timely filed a petition for rehearing (petition), contending: (1) their adjusted basis in the property should be increased by an additional \$61,371 of capital improvements made in 2003; and (2) they were not required to recognize the property's entire sale proceeds. On April 9, 2021, the panel issued an Opinion on Petition for Rehearing that granted appellants' petition on the first issue but denied it on the second.

On rehearing, the parties filed their briefs asserting their agreement with respect to the sole issue¹ before us on rehearing. The parties agreed that in determining appellants' basis in the property at the time of the sale, pre-sale capital improvement expenses incurred in 2003 should have been taken into account. Accordingly, we find that appellants' adjusted basis in the property should be increased by \$61,371 for capital improvements made in 2003.

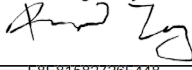
¹ The parties argue over the calculation of appellants' final balance due in their briefs on rehearing. However, this issue is outside the scope of this rehearing, and we will not discuss this issue further.

HOLDING


Appellants’ adjusted basis in the property should be increased by \$61,371 for capital improvements made in 2003, as agreed to by the parties on rehearing.


DISPOSITION

Our original Opinion issued on February 5, 2020, is modified to be consistent with this Opinion on Rehearing. Appellants’ gain on the sale of the property in 2003 is revised to \$1,397,854. The resulting tax and penalties assessed shall also be revised to reflect this recomputed gain. In all other respects, our original Opinion remains unmodified.

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Richard Tay
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge

Date Issued: 10/7/2021