

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
M. SAXON, ) OTA NO. 20036049  
 )  
 ) APPELLANT.  
 )  
 )  
 )

## TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, September 12, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Cerritos, California, 91401,  
commencing at 2:53 p.m. and concluding  
at 3:31 p.m. on Tuesday, September 12, 2023,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ RICHARD TAY  
ALJ EDDY LAM

For the Appellant: THOMAS NITTI

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
CAROLYN KUDUK  
NATHAN HALL

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received at page 7.)  
(Department's Exhibits A-M were received at page 6.)

OPENING STATEMENT

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CLOSING STATEMENT

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1 Cerritos, California; Tuesday, September 12, 2023

2 2:53 p.m.

3  
4 JUDGE KLETTER: So let's go on the record.

5 This is the Appeal of Saxon, OTA Case Number  
6 20036049. Today is Tuesday, September 12th, 2023, and the  
7 time is approximately -- is 2:53 p.m.

8 And my name is Judge Kletter. With me are  
9 Administrative Law Judges Richard Tay and Eddy Lam.

10 One item I would like to address before we begin  
11 is just that Judge Lam will be substituting on this panel.  
12 I would like to confirm with the parties that they have no  
13 objection to Judge Lam serving on the panel for this  
14 appeal, beginning with Appellant.

15 MR. NITTI: Tom Nitti. No objection.

16 MS. KUDUK: Carolyn Kuduk. No objection.

17 JUDGE KLETTER: Thank you so much.

18 While I am lead ALJ in conducting this hearing,  
19 all three judges are coequal decision makers. Also  
20 present is our stenographer, Mr. Alonzo, who is reporting  
21 this hearing verbatim.

22 As mentioned previously, please speak one at a  
23 time. Do not speak over each other. Please speak clearly  
24 and loudly. And when needed, there may be an interjection  
25 to stop to ask for clarification. And after the hearing,

1       there will be the final -- the official hearing  
2       transcript, which will be available on the Office of Tax  
3       Appeals website. And the hearing transcript and video  
4       recording are part of the public record.

5               Now, can the parties please each identify  
6       yourself by stating your name for the record, beginning  
7       with Appellant.

8               MR. NITTI: Tom Nitti for Appellant.

9               MS. KUDUK: Carolyn Kuduk for Respondent.

10              MR. HALL: Nathan Hall on behalf of Respondent.

11              JUDGE KLETTER: Thank you.

12              And my understanding is that the issue is whether  
13       for the 2013 tax year Appellant completed any valid like  
14       kind exchanges pursuant to Internal Revenue Code Section  
15       1031.

16              Now, with respect to the evidentiary record, FTB  
17       has provided Exhibits A through M. Appellant did not  
18       object to the admissibility of these exhibits. Therefore,  
19       these exhibits are entered into the record.

20              (Department's Exhibits A-M were received in  
21       evidence by the Administrative Law Judge.)

22              JUDGE KLETTER: Appellant provided Exhibits 1  
23       through 5. FTB did not object to the admissibility of  
24       these exhibits. Therefore, these exhibits are entered  
25       into the record.

1 (Department's Exhibits 1-5 were received in  
2 evidence by the Administrative Law Judge.)

3 JUDGE KLETTER: As a reminder for today, we have  
4 35 minutes for Appellant's presentation, 60 minutes for  
5 FTB's presentation, and 25 minutes for Appellant's closing  
6 statements and rebuttal. Hopefully -- and there will be  
7 no time for -- there's no need for testimony. So I'm  
8 going to turn it over Appellant.

9 Mr. Nitti, are you ready to begin your  
10 presentation?

11 MR. NITTI: Yes.

12 JUDGE KLETTER: Please go ahead.

13

14 PRESENTATION

15 MR. NITTI: Yes. This is Tom Nitti. And good  
16 afternoon to all. Behind me is my assistant Tony and the  
17 daughter-in-law of the taxpayer, Tatianna.

18 My client Merrily Saxon, the taxpayer involved in  
19 this matter, is 80 years old at this time, and was ten  
20 years younger in 2013 when this problem came up. Now,  
21 this is a very unique case and certainly can be determined  
22 for the taxpayer without creating a broad precedent. I  
23 think the only thing California taxpayers would want to  
24 know about this case is that if they become mentally  
25 disabled, they need not fear the Franchise Tax Board.

1 They can know that they will be treated fairly and with  
2 consideration for their circumstances.

3 We're working with what the tax community,  
4 lawyers, accountants, and so on recognizes as an archaic  
5 rule with no useful purpose except to trip taxpayers up.  
6 This rule, the 45-day identification rule, that's a  
7 requirement to identify possible up leg properties is a  
8 hangover from the Starker case when deferred exchanges  
9 were first recognized by the courts. Regardless, it is  
10 the law, and we must deal with it.

11 My client has, I believe, has satisfied the  
12 Franchise Tax Board that there should be no penalty in  
13 this case, and the Franchise Tax Board has, in fact,  
14 removed it. My client went to the settlement offices and  
15 tried to settle the case. But I think the overall  
16 understanding of the State is that, although penalties can  
17 be settled or waived, taxes must be paid. So no relief  
18 can be afforded regarding taxes.

19 The Franchise Tax Board can recognize my client's  
20 mental disability and say we're not going to hold you  
21 liable for any penalties. But nobody can point to  
22 anything that says we can relieve you of taxes. You know,  
23 I'm sorry. We just can't do it. And I imagine that would  
24 be the case in a lot of circumstances. Either you owe the  
25 taxes, or you don't. It's pretty cut and dry. Here, if

1     you don't meet the exchange requirements, you owe the tax.  
2     Otherwise, they're not owed, they're just deferred. So  
3     they're either deferred, or they're owed.

4             Nevertheless, my client pleads for relief, and I  
5     believe it is possible. Now, I make the argument that  
6     this is actually three exchanges and not one exchange.  
7     And this gives my client a non-precedential avenue to  
8     relief. If it is determined to be three exchanges,  
9     factual determination, my client did not exceed the three  
10    property identification rule. My client can only identify  
11    nine properties. Now, there is certainly evidence to  
12    support my client, if you follow a substance over form  
13    rule.

14            For example -- and I'll keep this brief because  
15    it's in my papers. There are three separate independent  
16    exchange agreements. There is -- there were three  
17    different parties at the other end of the exchange, three  
18    different opening dates, three closing dates, three  
19    different properties. What suddenly made it one exchange?  
20    Well, my client thought it was one exchange. I certainly  
21    understand that, but her understanding is subject to  
22    basically an objective review. And just because my client  
23    used one exchange company doesn't necessarily turn three  
24    exchanges into one.

25            Now, if you're inclined to look for an answer

1     that could give my client relief in these very unique  
2     circumstances, that's certainly one way you could go. You  
3     have -- you have -- it depends on how you look at the  
4     facts, but you definitely have a way to go there. Let me  
5     give you an analogy to what my client did here. Let's say  
6     a single woman with a child files a California 540.  
7     Instead of checking the box head of household, she  
8     mistakenly checks single. However, she fills out the  
9     return using head of household rates. Okay. My client  
10    filled out a form incorrectly, and she filled out the rest  
11    of the tax return as if she had filled it out correctly,  
12    just like the mother who checks single and she is head of  
13    household.

14               Now, of course my client's situation is a step  
15    removed from that because she is mentally incapacitated at  
16    the time. In the analogy the mother then gets a notice  
17    from the Franchise Tax Board saying she owes additional  
18    tax as a single rate and a penalty, quite similar to the  
19    present case. My client owes additional tax and a  
20    penalty. How does that play out? Well, the women in that  
21    case, the mother in that case goes into audit. And I do  
22    not doubt that the penalty would be immediately removed.  
23    It's pretty clear. She checked the wrong box. She is a  
24    mother with a child, and she is entitled to head of  
25    household.

1           Now, is the auditor now precluded from adjusting  
2     the tax downward to head of household rate? So when the  
3     mother says thank you for removing the penalty, but do I  
4     have to pay the single rate because I checked that box? I  
5     think not either. I think just the normal course of  
6     things, both the penalty and the tax would be adjusted.  
7     That, I believe, is inherent authority of the Franchise  
8     Tax Board, and it's the inherent authority of the OTA to  
9     deal with that. Now, my client has evidence of her  
10    intent, just like the woman in the analogy did. She said  
11    look, I filled out the tax return that had the head of  
12    household rates.

13           My client's evidence is that she completed the  
14    exchange. Nobody has any question with how the exchange  
15    was completed and reported it as complete. And there's  
16    been no problem acquired of the up leg properties. They  
17    qualified, other than for this problem. You could argue  
18    my client and I will is substantial compliance, but I  
19    think more seriously her -- her mental difficulty meant  
20    that was the best she could do.

21           Lastly, let me talk about, just briefly, the  
22    maximus of jurisprudence. Civil Code 3529 says, acts  
23    regarding is about a -- acts being regarded as having been  
24    done, and says, "That which ought to have been done is to  
25    be regarded as done in favor of him to whom and against

1 him for whom performance is due." I say we ought to  
2 regard what should have been done, that form correctly  
3 filled out, under these circumstances, as done, and that  
4 my client qualified for the exchange.

5 Just let me mention one other thing in  
6 anticipation of the Franchise Tax Board's presentation.  
7 The Franchise Tax Board did a lot of work on the other way  
8 of qualifying an exchange, basically, by the percentage of  
9 how much the property cost to replace it with and so on.  
10 I just want the OTA to know for my purposes and our  
11 position, that's a none-issue for us. Our issue is we  
12 did -- you agree that we did three or nine, depending on  
13 how you see it, and qualified, or you don't. There's no  
14 need to go any numerical calculations about this exchange  
15 because we're not relying on those alternative methods  
16 because we did not qualify for any of them. We did not  
17 qualify for them anyhow.

18 Thank you very much.

19 JUDGE KLETTER: This is Judge Kletter. Thank you  
20 Mr. Nitti for your presentation.

21 Before I turn it over to the Franchise Tax Board,  
22 I'd like to turn it over to my panel, beginning with  
23 Judge Tay.

24 Judge Tay, did you have any questions for the  
25 parties?

1 JUDGE TAY: I have no questions for Appellant at  
2 this time.

3 JUDGE KLETTER: And then I'd just like to turn it  
4 over to Judge Lam.

5 Judge Lam, did you have any questions?

6 JUDGE LAM: This is Judge Lam speaking. I don't  
7 have any questions for now. Thank you.

8 JUDGE KLETTER: And this is Judge Kletter. I do  
9 not have any questions either.

10 Ms. Kuduk, are you ready to begin your  
11 presentation?

12 MS. KUDUK: Sure. Can I ask a clarifying  
13 question to opposing Counsel?

14 JUDGE KLETTER: Yeah.

15 MS. KUDUK: Okay. I just wanted to make sure.  
16 So you're saying that you didn't meet the 200 percent rule  
17 and the 95 percent rule? That's not at issue in this case  
18 then?

19 MR. NITTI: Yes.

20 MS. KUDUK: Okay. Thank you. Give me a second  
21 then. Thank you. Okay. Thank you.

22

23 PRESENTATION

24 MS. KUDUK: Good afternoon. My name is Carolyn  
25 Kuduk, and this is Nathan Hall.

1           The issue in this appeal is has Appellant met her  
2     burden of proof to show that the sales of the Gardner  
3     Property, the Cohasset Properties, and the Sepulveda  
4     Property in taxable year 2013 are eligible for the tax  
5     deferral treatment provided by Internal Revenue  
6     Section 1031.

7           Respondent properly disallowed Appellant's one  
8     attempt in Section 1031 exchange because as opposing  
9     Counsel just said, he did not meet the 25 -- the  
10    200 percent rule or the 95 percent rule. Further, the  
11    evidence shows that Appellant's attempted one Section 1031  
12    exchange, not three Section 1031 exchanges. And finally,  
13    there's no law that allows Respondent to excuse Appellant  
14    from the statutory requirement that replacement property  
15    must be properly identified. Therefore, Appellant does  
16    not qualify for the nonrecognition of gain per Section  
17    1031, and Respondent's determination must be upheld.

18           Okay. So the facts of this appeal show that  
19    Appellant did not properly identify replacement property  
20    in the manner required by Section 1031. Appellant sold  
21    the Gardner Properties and the Cohasset Properties in  
22    July 2013, and the Sepulveda Property in August 2013 as  
23    relinquished property in an attempted Section 1031  
24    exchange. The fair market value of the property was  
25    \$10.3 million. But as Respondent -- or as Appellants have

1       stated, there is no issue about the value of the  
2       properties.

3               However, Appellants have submitted one  
4       identification letter, the September 2nd identification  
5       letter, which states that Appellant would acquire only two  
6       replacement properties for one exchange ending in No. 743.  
7       The September 2nd identification letter identified five  
8       separate properties as replacement property for property  
9       relinquished in one exchange, again, with exchange number  
10      ending in 7.43 or 7-43. Appellant then acquired two  
11      properties in October and November of 2013 as replacement  
12      property, again, in one exchange he ending in the number  
13      7-43. Appellant submitted no other identification letter  
14      but the September 2nd identification letter.

15              So California conforms to Internal Revenue Code  
16      Section 1001 and 1031 relating to the taxation of gain  
17      from the sale of property. The nonrecognition provisions  
18      of Section 1031 is an exception to the general rule  
19      requiring that gain from the sale of property must be  
20      recognized. Because Section 1031 is an exception to the  
21      recognition requirement of Section 1001, a taxpayer must  
22      follow the statutory requirements of Section 1031 to gain  
23      the tax deferral treatment of Section 1031.

24              In this appeal, Respondent has no ability to  
25      deviate from those requirements because we conform to

1 Internal Revenue Code Section 1031. Specifically, 1031(a)  
2 states, "Gain from the sale of property is not eligible  
3 for nonrecognition if the replacement property is not  
4 identified by the end of the identification period or not  
5 received by 180 days."

6 A taxpayer can identify up to three properties  
7 without regard to the fair market value of the properties  
8 or any number of properties as long as the fair market  
9 value of the identified properties does not exceed  
10 200 percent of the fair market value of the relinquished  
11 property. And as stated again, this is not at issue in  
12 this case. Really, the issue in this case is, is there  
13 three separate exchanges, and does Franchise Tax Board  
14 have the ability to waive the identification requirement?

15 Appellant did not satisfy her burden to show that  
16 she identified replacement property for three separate  
17 exchanges as she claims. The exchange documents and only  
18 the identification letter presented, the September 2nd  
19 identification letter, indicate that Appellant attempted  
20 only one Section 1031 exchange as evidenced by the fact  
21 that only one exchange number ending in 7-43 was used.  
22 The documents never referenced any other exchange.

23 Appellant's September 2nd identification letter  
24 identifies replacement property for one exchange and  
25 indicates she would relinquish three properties and buy

1 two other properties to qualify for a Section 1031.  
2 Appellant's actions indicate that she did one exchange.  
3 The facts of this appeal show that she executed what she  
4 indicated she would do in the September 2nd identification  
5 letter. She relinquished three properties and then bought  
6 two properties for an alleged one exchange.

7 In no identification letter did Appellant  
8 indicate that she was buying a percentage of those two  
9 properties, which would be necessary if she was completing  
10 three separate exchanges. Further, Appellant did not  
11 substantiate that she identified replacement property for  
12 three exchanges in the manner required by Section 1031.  
13 Appellant did not show that she unambiguously identified  
14 replacement property for three separate 1031 exchanges.  
15 Rather, Appellant only provided the September 2nd  
16 identification letter, which identified replacement  
17 property for one exchange, again, with that No. 7-43.

18 Appellant provided no proof the September 2nd  
19 identification letter was revoked or any new  
20 identification letter to show she unambiguously identified  
21 replacement property for three separate Section 1031  
22 exchanges. Appellant has not substantiated that she  
23 satisfied the strict identification requirements to  
24 identify replacement property of three separate exchanges.

25 Further, there's no law that allows

1 Respondent to excuse Appellant from the statutory  
2 requirement that replacement property must be properly  
3 identified. FTB does not have the authority or discretion  
4 to provide relief here. Because Revenue & Taxation Code  
5 Section 18031 conforms to Section 1031, which is an  
6 exception to Section 1001, California conforms to the  
7 Treasury Regs of Section 1031. These regulations provide  
8 identification requirements.

9 These identification requirements were no met.  
10 So therefore, this transaction does not qualify for a  
11 Section 1031 exchange. Because it does not qualify for a  
12 Section 1031 exchange, Section 1001 must -- it -- it  
13 governs, and the gain on the sale of the three properties  
14 cannot be deferred, and taxes must be paid on that gain.

15 Since Appellant has not met the statutory  
16 requirements of Section 1031, Appellant cannot defer the  
17 gain from the three properties, and Respondent properly  
18 proposed a tax adjustment to include the gain from the  
19 sale of these three properties in Appellant's taxable  
20 income in taxable year 2013. Therefore, Respondent's  
21 determination should be upheld.

22 Thank you. I'm available for any questions.

23 JUDGE KLETTER: This is Judge Kletter. Thank you  
24 for your presentation.

25 Before we turn it over to Appellant's closing

1 statement and rebuttal, I just want to ask my panel again.

2 Judge Tay, do you have any questions for either  
3 of the parties?

4 JUDGE TAY: I have no questions at this time.

5 JUDGE KLETTER: And Judge Lam, do you have any  
6 questions at this time?

7 JUDGE LAM: I don't have any questions at this  
8 time. Thank you.

9 JUDGE KLETTER: And I will hold my questions  
10 until the end.

11 So, Mr. Nitti, would you like to make a final  
12 statement or rebuttal to anything that Ms. Kuduk said, or  
13 is there anything else that you prepared or would like to  
14 say before the case is submitted?

15

16 CLOSING STATEMENT

17 MR. NITTI: Tom Nitti. Yes. Thank you.

18 Just because the accommodator gave these, what I  
19 call three exchanges, one number, that doesn't mean it all  
20 of a sudden becomes one exchange. There's certainly no  
21 court authority or regulatory authority or statutory  
22 authority in that regard. How they choose to number a  
23 client's exchanges internally for filing purposes, that's  
24 up to them. The facts on the ground are that we have  
25 three separate transactions that were consolidated at the

1       end. That doesn't mean that does now become one exchange.

2               And also, FTB's argument that the taxpayer hasn't  
3 followed the rules, that's a very straightforward  
4 argument. I understand that. But the FTB's talking like  
5 this is a normal taxpayer. Okay. And this is an impaired  
6 taxpayer, and no consideration is being given for that  
7 except for relief of the penalty. That consideration was  
8 given, but no consideration is given to the fact that this  
9 technical error on what we agree is -- or what I see, and  
10 many others, as an archaic, but binding form, puts a  
11 person at -- on such a great deal of unexpected taxes.  
12 Which if this were allowed to go through, the taxes would  
13 still be there. They'd be deferred and due one day.

14               So thank you very much.

15               JUDGE KLETTER: This is Judge Kletter. Thank  
16 you.

17               And would just like to turn it one last time to  
18 my panel.

19               Judge Tay, do you have any questions for the  
20 parties at this time?

21               JUDGE TAY: Can you come back to me?

22               JUDGE KLETTER: Yeah. I will come back to you.

23               Judge Lam, do you have any questions at this  
24 time?

25               JUDGE LAM: Lam. This is Judge Lam speaking. I

1 don't have any questions. Thank you.

2 JUDGE KLETTER: This is Judge Kletter. I do  
3 actually have a few questions for the parties. Mostly for  
4 Appellants, so I'll ask Appellant first.

5 And, Respondent, if you have any comments you can  
6 answer following.

7 My first question is my understanding correct  
8 that even though the identification letter references --  
9 let me see if I can -- the identification letter, the  
10 August 15th, 2013, one says that there's a reminder letter  
11 about a first relinquished property. But I just want to  
12 confirm with Appellant and the parties that even though  
13 that Appellant agrees that only one identification letter  
14 was submitted with five properties, there was only one  
15 identification letter. You're not aware of any other  
16 identification letter or reminder letter sent by the  
17 exchange accommodator to Ms. Saxon?

18 MR. NITTI: Tom Nitti. I don't know what a  
19 reminder letter is, but there was only one identification  
20 letter.

21 JUDGE KLETTER: And my second question, just if  
22 you're aware of the exchange agreement is in the record  
23 and the Exhibit A list what properties are there, and the  
24 only property on Exhibit A is the Sepulveda Property. And  
25 my understanding from the briefing is that the two other

1 properties were added at a later time to Exhibit A. Do  
2 you have any other information on how that was done?

3 MR. NITTI: The only information as to how that  
4 was done were the other properties were brought to the  
5 same accommodator, but they different contracts, different  
6 buyers, different due dates, different closing dates.

7 JUDGE KLETTER: And when those were brought to  
8 the exchange accommodator and, you know, added into that  
9 exchange agreement, was there any documentation that they  
10 were separate and independent exchange agreements? Or is  
11 there anything not in the record that when those were  
12 brought to the exchange accommodator and those properties  
13 were added to Exhibit A, the agreement, is there any other  
14 documentation not in the record or anything you're aware  
15 of that shows like that -- as to whether it was one or  
16 three agreements?

17 MR. NITTI: Tom Nitti. Not that I'm aware of.

18 JUDGE KLETTER: Okay. Thank you. And I had one  
19 more question just about the identification letter. So  
20 the identification letter identifies five properties.  
21 And, Mr. Nitti, in your view, you know, there is an  
22 exception or a way to meet the identification requirement  
23 where you can identify up to three replacement properties  
24 per property that you're exchanging. So I'm wondering for  
25 the five properties that were identified, how would you be

1       able to match whether that rule is met or not?

2               MR. NITTI: Well, if -- if it's one exchange,  
3       well, she identified too many properties. Okay. We're  
4       contending this can be interpreted objectively as three,  
5       giving her right to identify nine. Are you asking me is  
6       there some relationship between the three properties sold  
7       and as to which properties acquired relate to which  
8       property sold? Is that what you're asking me?

9               JUDGE KLETTER: That's correct. For each  
10       relinquished property --

11              MR. NITTI: Right.

12              JUDGE KLETTER: -- you're allowed. From my  
13       understanding is that you're allowed to identify up to  
14       three replacement properties.

15              MR. NITTI: Right.

16              JUDGE KLETTER: So in an instance where, let's  
17       say you're relinquishing two properties and you identify  
18       five properties, how do you determine to what  
19       properties -- to what relinquished properties the  
20       identified properties relate? Let's say for the first  
21       property you identify five or, you know, but in aftermath  
22       looking at it objectively how do you know?

23              MR. NITTI: Okay. Sure. I don't think that's  
24       required. Okay. I haven't seen it in code or regulations  
25       at all that there has to be -- you know, we can draw

1 lines. Okay. Excuse me. Yeah, we can draw line. We  
2 went from this property to this one, and we went from this  
3 property to half of this one and a quarter of this one.  
4 It's just not there. I don't think it was anticipated  
5 when they wrote the statute. So I think it's okay to have  
6 what my client has here, if it's objectively understood as  
7 three exchanges.

8 JUDGE KLETTER: This is Judge Kletter. Thank  
9 you. I don't have any more questions at this time, but I  
10 wanted to, if needed, FTB if you had any response to what  
11 Mr. Nitti said or answered to my questions.

12 MS. KUDUK: I would just state that the  
13 September 2nd identification letter said that Appellant  
14 would be selling three properties and buying two  
15 properties, and that's what happened in this transaction.  
16 There was no indication that she would be selling three  
17 properties and then buying a percentage of the two  
18 properties, which would be needed to have three separate  
19 exchanges.

20 JUDGE KLETTER: Okay. This is Judge Kletter.  
21 Thank you.

22 And I just want to ask Judge Tay, do you have any  
23 questions?

24 JUDGE TAY: No. All my questions were answered.  
25 Thank you.

1 JUDGE KLETTER: And I just want to ask one more  
2 time. Judge Lam, do you have any questions?

3 JUDGE LAM: No questions. Thank you.

4 JUDGE KLETTER: Okay. So I want to thank the  
5 parties for their presentations.

6 MR. NITTI: I'm sorry. Do I get the last word?  
7 I was looking on the scheduling.

8 JUDGE KLETTER: Oh, I'm sorry. I thought that  
9 you had --

10 MR. NITTI: Just in response to the Franchise Tax  
11 Board.

12 JUDGE KLETTER: Sure. Go ahead.

13

14 RE CLOSING STATEMENT

15 MR. NITTI: My client is allowed, you know, when  
16 you're going from three properties to two properties,  
17 obviously, you can't go one on one. You'd have one left  
18 over. So you could take one of the properties my client  
19 sold and apply it to a portion of an up leg property. So  
20 that way you can roll three into two. You can also  
21 roll -- excuse.

22 You could roll two into three. You can also roll  
23 two into one. You sell two properties and you take the  
24 money, and you buy the new one proportionately, maybe half  
25 and half, maybe 60-40, whatever it is. But it's easily

1       done, and it doesn't have to be specified on the notice.  
2       Not that I'm aware of, I've never seen a requirement for  
3       that. Just to identify the parties.

4               Thank you.

5               JUDGE KLETTER: Thank you so much. This -- oh,  
6       I'm sorry.

7               Judge Tay, did you have any questions?

8               JUDGE TAY: Yes. I'm sorry. I have one question  
9       for Franchise Tax Board.

10              Is there any significance to the fact that the  
11       reminder letter references one exchange number but all  
12       properties -- or three properties, which is consistent  
13       with the identification letter that has one exchange  
14       number. Yeah, just that one exchange number but  
15       references -- I guess in the prior reminder letter, it  
16       referenced three properties.

17              MS. KUDUK: Yes, that would indicate that this is  
18       one exchange, and that's how the documents have been  
19       presented throughout the exchange that it was one exchange  
20       done, not three.

21              JUDGE TAY: Okay. Thank you. Sorry. I have no  
22       more questions.

23              JUDGE KLETTER: I just wanted to provide  
24       Mr. Nitty, do you have a response to what FTB said or to  
25       Mr. Tay's question?

1           MR. NITTI: Only that the accommodator, whatever  
2       filing system is that -- whatever her filing system is  
3       that -- whatever the filing system is doesn't determine  
4       the reality or qualification of the exchange. It's the  
5       taxpayer's actions that do that.

6           Thank you.

7           JUDGE KLETTER: Thank you so much to the parties  
8       for their presentation today.

9           This concludes our hearing, and we will meet and  
10      decide the case based on the documents and testimony -- or  
11      based on the documents presented today. We will issue our  
12      written decision no later than 100 days from today.

13          The case is submitted, and the record is now  
14      closed.

15          This concludes this hearing session. Thank you  
16      so much.

17          (Proceedings adjourned at 3:31 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne 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 2nd day  
of October, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER