

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEALS OF,)
)
R. ZIMAN,) OTA NO. 18093700
D. ZIMAN,) 18093776
)
APPELLANTS.)
)
_____)

TRANSCRIPT OF CONSOLIDATED PROCEEDINGS

Cerritos, California

Wednesday, March 13, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, 90703, commencing at 2:04 p.m.
and concluding at 4:42 p.m. on Wednesday,
March 13, 2024, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ AMANDA VASSIGH
ALJ RICHARD TAY

For the Appellant: R. ZIMAN
STEVEN MATHER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

BRANDON KNOLL
ROMAN JOHNSTON

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-7 were received into evidence at page 8)

(Appellants' Exhibits 12-4.8 were received into evidence at page 9)

(Department's Exhibits A-DDD were received into evidence at page 9.)

(Department's Exhibits EEE were received into evidence at page 9.)

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Cerritos, California; Wednesday, March 13, 2024

2:04 p.m.

JUDGE STANLEY: Let's go on the record.

Again, this is Appeals of Ziman, Case Numbers 18093700 and 18093776. The date is March 13, 2024. The time is 2:04 p.m., and we're in Cerritos, California.

Once again, I'm Judge Teresa Stanley. To my left Judge Amanda Vassigh, and to my right is Judge Richard Tay.

I'm going to ask the parties to identify themselves, starting with the Appellant.

MR. ZIMAN: Richard Ziman.

MR. MATHER: Steve Mather, attorney for Richard Ziman.

JUDGE STANLEY: Okay.

And Franchise Tax Board.

MR. KNOLL: Brandon Knoll.

MR. JOHNSTON: Roman Johnston.

JUDGE STANLEY: Okay. I'm going to welcome you, again, to the Office of Tax Appeals. Or if I slip and call it OTA, I'm talking about the Office of Tax Appeals. The Office of Tax Appeals is independent of the Franchise Tax Board and any other tax agency. We are not a court but we are an independent appeals body that is staffed

1 with its own tax experts. The only evidence that we have
2 in our record is what was submitted in the appeal. And,
3 hopefully, everybody got the link to a hearing binder.

4 Is that correct? Yes. Okay. I see nodded
5 acknowledgements.

6 The issues today -- we have several -- whether
7 Mr. Ziman and Ms. Edwards have substantiated -- I'll just
8 refer to them as Appellants collectively. Have Appellants
9 substantiated the basis of Arden Realty, Inc., stock sold
10 in 2003. The Franchise Tax Board conceded basis of \$20
11 per share for 133,333 shares of Arden stock while
12 Appellants assert a basis of \$30.57 per share for 150,333
13 shares of Arden stock.

14 MR. MATHER: Excuse me. \$30.75.

15 JUDGE STANLEY: Did I say something different?

16 MR. MATHER: You said 57.

17 JUDGE STANLEY: Oh, okay. Thank you for the
18 correction. \$30.57.

19 MR. ZIMAN: \$30.75.

20 JUDGE STANLEY: 75.

21 MR. MATHER: 75, yes.

22 JUDGE STANLEY: Okay. Thank you.

23 For 2003, are Appellants entitled to a reduction
24 of partnership liabilities in Arden Realty Limited
25 Partnership, which I may refer to as ARLP, which exceeds

1 Mr. Ziman's basis and would result in recognition of gain.

2 Number three, did Appellants receive a taxable
3 distribution from JETA Reality Group, Inc. -- that I'll
4 refer to as JETA -- to Appellants' marital trust in 2005.
5 And for that particular issue, Appellants have raised
6 threshold issues of whether the Office of Tax Appeals has
7 jurisdiction to decide that matter, and, if so, which
8 party bears the burden of proof. Are Appellants entitled
9 to -- the next one is, are Appellants entitled to a
10 further reduction in interest greater than the 1,246 days
11 conceded by the Franchise Tax Board.

12 Mr. Mather, does that state the issues as you
13 know them?

14 MR. MATHER: Yes, it does.

15 JUDGE STANLEY: And Mr. Knoll?

16 MR. KNOLL: Yes.

17 JUDGE STANLEY: Okay. We have several
18 stipulations or conceded issues. They were in the minutes
19 and orders, so I'm not going to read them on camera right
20 now. But we'll move on to the exhibits. The Office of
21 Tax Appeals did send a hearing binder to the parties. It
22 was just yesterday, so hopefully everybody is familiar
23 with it enough to refer to it in their arguments and
24 presentations.

25 For Appellants exhibits, Appellants submitted

1 Exhibits 1 through 15.3. The Franchise Tax Board didn't
2 object to Exhibits 1 through 7, and those will be admitted
3 into evidence.

4 (Appellants' Exhibits 1-7 were received
5 in evidence by the Administrative Law Judge.)

6 The new exhibits -- the new exhibits were
7 submitted by the extended deadline, 12 through 13.4 and 15
8 through 15.3.

9 Mr. Knoll, does the Franchise Tax Board object to
10 those exhibits?

11 MR. KNOLL: Yes. The Franchise Tax Board wants
12 to request that the record be kept open for -- for
13 Franchise Tax Board to respond to the declarations that
14 were submitted, just to include in as like a supplemental
15 brief.

16 JUDGE STANLEY: Okay. And I was going to ask the
17 parties if they wanted that, but at this time the
18 Franchise Tax Board has no objection?

19 MR. KNOLL: We do not have an objection right
20 now.

21 JUDGE STANLEY: Okay. And Appellant requested
22 also add Exhibits 14 through 14.8, which it had already
23 been submitted with the reply brief.

24 Mr. Knoll, does the Franchise Tax Board object to
25 those?

1 MR. KNOLL: No.

2 JUDGE STANLEY: Okay. Franchise Tax Board
3 identified Exhibits A through EEE, triple E. Appellants
4 did not object to Exhibits A through DDD, and those will
5 be admitted into evidence.

6 (Department's Exhibits A-DDD were received in
7 evidence by the Administrative Law Judge.)

8 They submitted -- the Franchise Tax Board, I
9 believe yesterday or the day before, submitted
10 Exhibit EEE.

11 Does Appellant object to that, Mr. Mather?

12 MR. MATHER: Appellant objects to the
13 computations but not to the exhibits.

14 JUDGE STANLEY: Okay. Then that exhibit will be
15 admitted without objection as well, and you can argue the
16 numbers as you wish.

17 (Department's Exhibit EEE was received in
18 evidence by the Administrative Law Judge.)

19 And I don't think I specifically said that we'll
20 also enter into evidence Appellants' Exhibits 12
21 through 14.8.

22 (Appellants' Exhibits 12-14.8 were received
23 in evidence by the Administrative Law Judge.)

24 Are there any other issues with exhibits,
25 Mr. Mather?

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MR. MATHER: I don't believe so.

JUDGE STANLEY: Mr. Knoll?

MR. KNOLL: No.

JUDGE STANLEY: Okay. Great. So today we have two people who are going to testify as witnesses, Mr. Mather and Mr. Ziman; is that correct?

MR. MATHER: Correct.

JUDGE STANLEY: Okay. And I'm going to ask that you both raise your right hand.

R. ZIMAN,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

S. MATHER,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE STANLEY: Okay. Thank you.

We're going to start with your opening statement, Mr. Mather. You can proceed when you're ready.

MR. MATHER: I -- I'm not really going to distinguish between my opening statement and my testimony

1 since I'm sworn, if that's okay. So I'll just kind of go
2 through the presentation on the four issues, and you can
3 take what you like as testimony and what you like as
4 argument, if that's acceptable?

5 JUDGE STANLEY: That's perfect. Thank you.

6 MR. MATHER: Okay.

7

8 PRESENTATION

9 MR. MATHER: As the Court pointed out, there's
10 four issues in the case, and I will address them in the
11 order that we put them in our previous papers.

12 The first one is the issue that we refer to as
13 the Arden basis issue. So in 1997 it was Mr. Ziman and
14 his professionals determine that it would be beneficial to
15 generate some gain for that year because there expiring
16 net operating losses. The target of that tax planning was
17 to have it to trigger enough gain to -- to reach an
18 \$8 million total. There was already a planned exercise of
19 some Arden options into Arden shares -- Arden Realty
20 options into Arden shares, so that was going to be about a
21 million-and-a-half dollars based on the price of the Arden
22 stock at the end of the year, which was in the
23 neighborhood of \$30.

24 There was a \$20 exercise price that had to be
25 paid, and it was paid. The rest of the \$8 million, the

1 biggest chunk of the rest of that was to come from the
2 conversion of OP units in Arden Realty Limited
3 Partnership, ARLP. Those had zero basis and at the price
4 of \$30.75 a share, which it was at the end of the year.
5 It was determined that they would convert 178,882 OP
6 units. That was of a total, I think at the time, of
7 around -- well, initially there were 582,000 units. So
8 178,000 of the 582,00 were exercised. There were also
9 some additional pieces that made up another million
10 dollars, and that's how they -- how they got to the
11 \$8 million total. The OP unit conversion was \$5.5 million
12 dollars at the prevailing rate because it had zero basis.

13 The return was prepared for the 1997 -- this all
14 occurred in 1997. And the reporting was done in the
15 record -- on the 1997 return on the record on page 47 of
16 the record, which is the detail for the Schedule D on
17 the -- on Mr. Ziman's 1997 return. That included only the
18 listing of the 178,000 OP units. But according to the
19 deposition of the -- or the declaration of the return
20 preparer at pages 354 and 355, Mr. Eddie Leevan, there
21 were limitations in the fields for the description of the
22 software, so only the largest item was described, even
23 though it is his conclusion that, in fact, the additional
24 exercise of the Arden options was included in the line
25 item. Because otherwise, a total of 7,998,000 could not

1 be possibly derived from the exercise of the 178,000 OP
2 units themselves.

3 So as I said, the FTB has conceded the \$20 basis
4 based on the actual payments by Mr. Ziman for the 133,333
5 shares. And so the issue is the additional \$10.75, which
6 our position is it was reported on that line item in the
7 Schedule D to the 1997 return. And so, therefore, the
8 basis in 2003, when the shares received pursuant to the
9 exercise of the option, were sold, would be the full
10 \$30.75.

11 There's a second issue that also relates to 2003
12 with respect to certain Citibank shares of stock. We
13 don't have additional documentation of the purchase price
14 for those Citibank shares, but the testimony of Mr. Ziman
15 who is here will address the issue. The second issue is
16 one of two issues where I think the position of the
17 Franchise Tax Board is simply frivolous. This is an issue
18 where the Franchise Tax Board, I think, understands the
19 facts and is asserting a position that has no basis
20 whatsoever. No pun intended.

21 So this is -- the first of these two issues --
22 there's actually two issues that I put in the same
23 category. And the first of the two is what I refer to as
24 the EY issue, which I believe was referred to as the
25 distribution in excess of basis issue. So on this issue

1 there's actually two -- there's two components of what
2 we're -- what we're -- what was involved in the
3 determination by the Franchise Tax Board, both of which
4 are wrong. Clearly demonstratively incorrect.

5 The first is whether the amount of a deemed
6 distribution to Mr. Ziman during the year. This was all
7 as a result of an alleged result of the reduction in his
8 allocation of debt from ARLP. And the second component of
9 the issue is whether the amount of any such distribution
10 exceeded Mr. Ziman's basis in ARLP. The FTB computed the
11 basis incorrectly by treating certain transactions as
12 distributions when, in fact, they were not distributions
13 at all.

14 So I'll start with the deemed -- the amount of
15 the deemed distribution. On page 537 of the record, which
16 was Table 1 to one of the Franchise Tax Board's brief, it
17 shows that essentially the -- the Franchise Tax Board
18 computed a distribution or a decrease in liabilities in
19 2003 of \$12,510,047. So where does that come from? Well,
20 if you look at in the record on page 63, which is the ARLP
21 K-1 to Mr. Ziman for 2002, it reflects qualified
22 nonrecourse financing of \$14,270,442. Then if you look at
23 page 65 in the record, which is the 2003 K-1, in the
24 subsequent year, it shows on that same line the qualified
25 nonrecourse financing of \$1,760,465.

1 So the difference between those two numbers is
2 the \$12,510,000 that the FTB says was a deemed
3 distribution. In -- during 2003, was the beginning
4 balance was \$14 million. The ending balance is \$1.7
5 million. So where do these numbers come from? Well, we
6 actually know where they come from. If you turn from
7 page 62 in the record, for the declaration, that's part of
8 the Declaration of Franky Low. The Ernst & Young was able
9 to provide a -- the work paper that was used to determine
10 the line items for the debt allocations for ARLP. The
11 page 62 is the work paper for the 2002 K-1.

12 And there are three numbers that make up the
13 total from the columns on this worksheet. There's a
14 \$5,600,000 bottom-dollar debt guarantee, a \$7,700,000 BIG,
15 which I understand to be built-in gain item, and \$970,442
16 of regularly allocated debt. So -- and the total of those
17 amounts is \$14,270,442, which exactly matches the number
18 on the K-1, which is page 65 in the record. So that's --
19 we know that in the 2002 amount that the FTB is relying on
20 consists of these three items.

21 Well, the Declaration of Frankly Low says that
22 there -- there was at least one mistake in this item in
23 that the \$7,700,000 amount was not actually included in
24 the similar calculations of debt allocation in 2000, 2001.
25 Was included 2002 as we see here. Wasn't in 2003. Wasn't

1 in 2004. So the conclusion from that is that this was an
2 aberrant error in this year. But for our purposes, as
3 we'll see later, that doesn't particularly matter because
4 essentially it gets added to the basis and then
5 subtracted. So even though we think it's a mistake, it
6 doesn't -- it's not a mistake that really makes a
7 difference.

8 So then we turn to page 64 in the record, which
9 is the same schedule for 2003. And we have two columns --
10 we have three columns that have numbers in them again, but
11 only two of them are added to determine the amount on the
12 K-1. There's a \$2,013 amount under Tier 2. And these,
13 again, are on that line for Richard Ziman, you know, the
14 taxpayer in our case. And then there's a Tier 3, which is
15 \$1,758,452. The total of those is the \$1,760,465, which
16 is the exact amount on the K-1, which is page 65 in the
17 record. So we know that those two amounts make up the
18 total for 2003.

19 Well, as you recall is what I said before, is
20 that the change between those two amounts from 2002 to
21 2003 is what the Franchise Tax Board claims to be a
22 distribution due to reduction of basis. But what we see
23 on the schedule, however, is that there is \$5,600,000,
24 just like there was in 2002. But what EY apparently did
25 this year is they moved it from the column for qualified

1 nonrecourse financing and put it in a recourse column.
2 The debt didn't go away. It was there the whole time.
3 They just changed the characterization for the purpose of
4 completing the K-1 and took it out of the qualified
5 nonrecourse category.

6 There's no reduction in debt. That debt existed
7 from the start of ARLP all the way through until Mr. Ziman
8 disposed of his interest. So that is just plain and
9 simple not a distribution. And FTB, I think, knows it,
10 and they included it nonetheless. They are continuing to
11 maintain their position with the entire change in that
12 qualified nonrecourse finding -- financing number is -- is
13 a distribution because of relief from debt. You get debt
14 from recourse find -- or you get basis from resource
15 financing exactly the same as you get it from qualified
16 nonrecourse financing. This is a change that does not
17 affect the basis whatsoever -- the distribution amount
18 whatsoever.

19 So that's -- that's the first mistake in the
20 Franchise Tax Board's characterization, and they've had
21 this schedule for a long time. They've seen it. Here
22 they are still arguing that something that didn't -- that
23 absolutely categorically didn't happen did happen.
24 They're -- they're somehow suggesting this \$5.6 million
25 went away when, in fact, it absolutely positively did not.

1 It's also instructive on this issue to look at
2 all of the K-1s that -- that appear in Exhibit A in -- in
3 the record. I didn't get my page numbers -- or all of my
4 page numbers down. But the first K-1 is from 1996, the
5 first year of the partnership. And for that year, the
6 qualified nonrecourse financing is a \$1,620,000, and they
7 have other debt share of liabilities, \$5,480,000. That's
8 our bottom dollar debt guarantee from the beginning, and
9 that's on page 372 of the record. On page 373 of the
10 record, the next year, we still have qualified nonrecourse
11 financing of \$1.6 million, and we have other, \$5.6, again,
12 our bottom dollar debt guarantee.

13 So that continues for another year or two. But
14 then -- then in 1999, for reasons known only to EY, on
15 page 379 of the record, all of a sudden the \$5,600,000
16 goes away. But our qualified nonrecourse financing jumps
17 by about \$5.6 million. So clearly what happened is EY
18 decided it was qualified nonrecourse financing, the \$5.6.
19 The \$5.6 is still there. They just changed the category
20 and moved it to the qualified nonrecourse line. So for
21 the next several years that -- that pattern continues.
22 They include the \$5.6 million in the qualified nonrecourse
23 amount.

24 And then as we saw on the 2002 schedule, they
25 added in the \$7.7 million only for 2002 to bump that

1 number way up. But then in 2003 the \$5.6 million gets
2 moved to the recourse column by EY. And then in 2004,
3 which is page 397 of the record, there it is back in the
4 qualified nonrecourse category. Still \$5.6 million our
5 qualified nonrecourse line from 2003 of a \$1,760,000 now
6 becomes \$7,229,000, which clearly includes the
7 \$5.6 million number so that every year throughout this --
8 throughout this entire sequence, the \$5.6 million is still
9 there. It's still a bottom-dollar guarantee. It still
10 gives Mr. Ziman basis, and EY is just moving it around
11 from line to line, and Franchise Tax Board is saying,
12 ah-ha, that's a debt relief, which is just a complete
13 fabrication of the facts.

14 But even in 2005, which I think is the last K-1
15 in our record at page 399, there it is again,
16 \$9.6 million, all qualified nonrecourse. The \$5.6 is
17 obviously included there. So if you look at the pattern
18 of those K-1s, it's very clear what happens. \$5.6 is
19 always there. It just bounces back and forth in EY's
20 presentation from one category to the other. No way -- no
21 way is that a distribution.

22 So the distribution amount, instead of the
23 \$2,510,000 that the Franchise Tax Board suggests, has to
24 be reduced by the \$5.6 million, which never went away.
25 Never -- never changed. It just got moved from column to

1 column. So the new distribution amount is \$6,910,047.
2 That's -- that's the maximum amount that the distribution
3 could possibly be. So that's the first part of our
4 equation.

5 The second part of the equation then is what --
6 what's Mr. Ziman's basis. Because only if he has a
7 distribution, if the \$6.9 million is a distribution, it
8 has to be in excess of basis before it's a taxable
9 distribution. So we have -- we have the FTB's computation
10 of basis, one of the other tables that they continue to
11 stick to, which is page -- it's Exhibit YY, which is
12 page 540 in the record. And at the top half in Table 4A,
13 there's bunch of numbers where that Franchise Tax Board
14 computes the basis. It starts with \$446 of beginning
15 basis add \$7.1, add \$2.58, add \$7.17 to get a preliminary
16 basis amount of \$16,853,081. But that's also subject to
17 reductions that occurred over the years.

18 So there was a loss in 1996 of a \$1.6 million and
19 cash withdrawals of \$3.046 million. We accept all of
20 those numbers. The problem is the next number, fair
21 market value of OP unit withdrawals, \$13,050,715. That
22 number should be zero. There, in fact, were no
23 distributions of OP units. The table for B on that same
24 page suggests what the distributions are. If you add up
25 the tax/FMV column, that equals exactly the \$13,050,000

1 number. So the Franchise Tax Board somehow treated these
2 transactions as distributions of OP units from the
3 partnership ARLP to Mr. Ziman. Did not happen.

4 Mr. Ziman started with 582,000 units. All of
5 these units are accounted for in the accounting for his
6 dispositions of units. They were dispositions of the
7 number of the units that he originally had when ARLP was
8 formed in 1996. No distribution whatsoever. So -- and to
9 make matters even worse, these -- most of these
10 distributions relate to other issues in our case, and we
11 know what the treatment was of those other issues. The
12 first one, which is in 1997, was the conversion of the OP
13 units that we talked about on the Arden basis issue. We
14 know that that was -- that was reported as taxable with
15 zero basis and a \$30.75 share price. So that -- not only
16 is FTB incorrect on the facts, is they're including this a
17 second time. They're essentially double taxing Mr. Ziman
18 on the same item.

19 The other items are contributions to charity,
20 which were the UCLA gifts. That's why we added back in
21 Exhibit 14, which was the Declaration of Julie Sina from
22 UCLA. Those were not distributions to Mr. Ziman. They
23 were transfers of his existing inventory of OP units as
24 charitable contributions to UCLA. And each year they
25 recomputed the basis, and so none of these amounts -- none

1 of these amounts are, in fact, distribution.

2 So what we have is we have for the correct -- the
3 correct basis for Mr. Ziman in ARLP at the time of this
4 distribution is minus \$858,209, but you have to add back
5 in the \$13,050, which means that's he's got basis of
6 \$12,192,506. So has basis of \$12.2 million, and he has a
7 deemed distribution of 6.9. No way. No how that is a
8 taxable distribution. And just -- just to clear up the
9 point that I made before with respect to the \$7.7 million
10 BIG amount that was included by EY on the 2003 schedules,
11 I said we didn't really care. So going -- turning back to
12 Exhibit YY again on page 540, essentially, what this
13 computation of basis does is it -- on the line for
14 increase of liabilities from '97 to 2002, which is
15 \$7,170,000, it includes in that the \$7.7 million.

16 So in effect, FTB is giving us basis for the \$7.7
17 million, and then when that \$7.7 million went away the
18 following year, it's in the distribution. But as we see,
19 since the basis is more than adequate to cover the real
20 amount of the distribution, after you remove the erroneous
21 5.6, there's no way in the world that is -- we're anywhere
22 near a taxable distribution. And the proof of this is
23 actually in this same Exhibit YY because you see what
24 happens is that basically throughout the entire time
25 period, there's a regular allocation of QNR, qualified

1 nonrecourse debt of around \$2 million.

2 You add in, as represented on the schedule, 2.5
3 plus of income subtract 2 -- or 1.6 loss. You have
4 \$3 million in distributions, all of which are accurate,
5 which basically brings your basis down to close to zero.
6 But we still have the \$5.6 million bottom dollar
7 guarantee, which gives us a basis of around \$5.6 million,
8 according to my calculation, before the \$2,192,506 basis
9 minus the \$6,910,047 corrected distribution equals excess
10 basis. Excess basis after the distribution of
11 \$5.3 million. So it all -- it all ties out. It all makes
12 sense. The \$5.6 million never went away. It's not part
13 of the distribution, and it's -- it's -- it is still
14 remaining basis, even after the FTB's claimed
15 distribution. So there's just no basis for that
16 adjustment whatsoever.

17 The next issue is what I refer to as Malibu Road.
18 And there's at least five reasons that this -- this issue
19 has no merit whatsoever. The first, as Judge Stanley
20 indicated, was this issue can't be raised at all. OTA
21 lacks jurisdiction of over this issue altogether. So
22 let's -- let's kind of go through why that is. So
23 pursuant to Revenue & Taxation Code 19033(a), the -- if
24 the FTB determines that additional tax is due, determines
25 a deficiency, they are authorized to issue a Notice of

1 Proposed Assessment, an NPA.

2 Then once that the NPA is protested and is being
3 contested, the protest process acts to redetermine whether
4 the determinations in the NPA are correct. So what
5 happened in our case? Well, if you look at page 21 of the
6 record, which is the Noticed of Proposed Assessment for
7 2005, we have three determinations made in the NPA. The
8 first one is \$4,485,000 for a 1031 exchange issue. That
9 was conceded by the Franchise Tax Board in 2022. We have
10 \$2,232,000, which is a UCLA gift-related issue, also
11 conceded by Franchise Tax Board. And we have \$2,465,000,
12 which I'm not sure, but I believe that's conceded by
13 Franchise Tax Board also. Not quite sure what it is. And
14 then we have a penalty of \$189,000, also conceded by
15 Franchise Tax Board.

16 So what do he have? So we have a determination
17 with those four issues included, all of which are
18 conceded. So why are we here for 2005? We got
19 determination, protest, concession. Done. 2005 done.
20 So -- but -- and -- and we also have -- then in 2018 we
21 have the Notice of Action, which appears in the record at
22 page 151, which affirms the NPA. So the four issues
23 raised in the NPA are the four issues in the Notice of
24 Action; and those are the four issues that were conceded
25 by Franchise Tax Board in this appeal.

1 But -- so Franchise Tax Board says, oh, wait a
2 minute. Wait a minute. We made a new determination
3 during protest. Raised it initially on page 561 of the
4 record in a preliminary determination letter where we were
5 coming up with something brand new. Something -- wasn't
6 part of the audit. Wasn't part of the NPA. Wasn't part
7 of the protest until 2018. Eight years --
8 seven-and-a-half years into the protest we've got a new
9 issue. It doesn't have anything to do with any of the
10 other determinations. It doesn't have anything to do with
11 any determination that was made in the audit.

12 So we've got a claimed distribution of Malibu
13 Road from JETA to Mr. Ziman. So that's the first time
14 that this is done at the same time that all of the other
15 issues are conceded. So, essentially, if you look at it
16 from the NPA standpoint, the NPA was conceded down to zero
17 by the other concessions. And then, magically, a new
18 issue appears in 2018, 13 years after the end of the tax
19 year where now there's a new issue. It has nothing to do
20 with any of the other issues in the case.

21 So that is why there is no jurisdiction because
22 the NPA was conceded. The determinations -- the
23 determination -- determination is a real term. You know,
24 there's -- there's a case on the IRS side called Scar
25 versus United States. It says when you determine a

1 deficiency -- or Scar versus Commissioner, you determine a
2 deficiency. That's -- that's an act. It's not just --
3 you know, the word determine means something. You
4 determine it. In the NPA they determine four issues.
5 They conceded four issues. That's end of story. So no
6 jurisdiction over the --

7 JUDGE STANLEY: Mr. Mather.

8 MR. MATHER: Yeah.

9 JUDGE STANLEY: Mr. Mather, just to clarify for
10 our record, can you spell Scar.

11 MR. MATHER: S-c-a-r versus Commissioner. It's a
12 Ninth Circuit case from 25 to 30 years ago.

13 A different context but still, it was dealing
14 with what the critical aspect of what determination is in
15 the statute for IRS and the same word in the FTB
16 statute -- or the Revenue & Taxation Code. So that's why
17 this issue shouldn't even be considered today because it's
18 not -- it was not an issue that was determined in the NPA,
19 and it can't just be added willy-nilly.

20 Well, the Franchise Tax Board, of course, not one
21 to admit defeat doubled-down on this issue. It -- on
22 Monday. So when they first raised the issue in the reply
23 brief on February 15, of 2022 -- and I'll just read the
24 sentence from this. This is at page 365 of the record.
25 It said when they first raised the taxable distribution,

1 it was more than the one -- the dollar amount was more
2 than the amount of the adjustment relating to the 1031
3 issue that they had just conceded.

4 So what they say is, since adjustments from the
5 taxable distribution -- the new issue -- of \$9
6 million-plus exceeds the original proposed additional
7 income of \$4,485,960, which was the amount of the 1031
8 adjustment in the NPA from disallowing the like-kind
9 exchange. The additional income from the distribution
10 will be limited to the originally proposed amount. So
11 when they raised the new issue, illegitimately, they say
12 okay. We'll only -- we'll only raise it to the extent of
13 the \$4,485,960 amount that was kind of associated with
14 this issue in the NPA. Okay. Don't like it. But at
15 least it has some sense.

16 Well, what did they do Monday -- Monday? So on
17 Monday, they file the computations. And on page 583 of
18 the record, this is the revised computations based on the
19 concessions. Instead of \$4,485,000 for the Malibu Road
20 distribution, now it's \$8,450,682. Raised two days before
21 the hearing. Increased from \$4,400,000 to \$8,400,000.
22 And where do the -- and where does that come from? Well,
23 they're backing into that number by suggesting that the
24 original NPA had tax of \$945,869, the additional tax
25 asserted, and a penalty of \$189,174.

1 So they add those two numbers together and said,
2 oh, well, we had -- we were -- we were after a \$1,135,000
3 even though \$190,000 of it was penalty. And so we still
4 get to go after \$1,135,000. So that means now as of
5 Monday our distribution that we're raising is \$8,450,000,
6 when until Monday it had officially been \$4,485,000. So
7 yeah. Just an astonishingly obnoxious thing for the
8 Franchise Tax Board to do. They're -- they're groundless
9 on the law in the first place, and then this stunt to
10 raise -- to basically double the distribution amount two
11 days before the hearing is just unconscionable. Okay.
12 That's the first reason that this issue should not be
13 brought before the Board.

14 The second is, even if somehow there is
15 jurisdiction, the Office of Tax Appeals has to have the
16 authority to dictate when it's appropriate to have a new
17 issue raised. Every tribunal, the Tax Court, every --
18 every court anywhere has the inherent authority to decide
19 is it fair? Can you -- is it fair under the circumstances
20 to raise these issues? As I said, the issue doubled
21 almost two days ago, which is obviously particularly
22 unfair. But let's look at the -- let's look at the
23 timeframe on this.

24 So this new issue, the Malibu Road distribution,
25 was officially raised for the first time February 15th of

1 2022, when FTB conceded the 1041 issue. At that point,
2 the Notice of Action had been issued for three-and-a-half
3 years. The Noticed of Proposed Assessment had been issued
4 for eleven-and-a-half years. The audit had started
5 fourteen-and-a-half years earlier, and the return was
6 filed fifteen-and-a-half years earlier. So at some
7 point -- at some point, there's got to be too much, too
8 late. Sorry.

9 You know, this is something that the Office of
10 Tax Appeals has to -- has to stand up for and say look,
11 you know, maybe a decade -- after a decade, at least, you
12 can't come up with new stuff. So that's issue -- that's
13 reason number two, is that even if there's somehow
14 jurisdiction, OTA should say enough is enough. It's
15 laches. It's whatever. It's just way too long to be
16 coming up with a new issue that has entirely different
17 facts than the issues that had been raised before.
18 Certainly, the Tax Court would never allow this. No other
19 court would allow this. It is way, way, way beyond the
20 time where any -- any tribunal would allow this -- this
21 issue to be raised.

22 So the third issue, now, we'll get down to
23 there's three reasons on the merits that the -- that the
24 Franchise Tax Board is completely out to lunch on this
25 issue. The first one is the -- the transaction at issue

1 here was that, essentially, that Mr. Ziman purchased the
2 Malibu Road property, put it into JETA because he wanted
3 to characterize it as separate property, and JETA helped
4 him do that. Within a couple of months, resolved things
5 that had been rocky with his wife and distributed it out.
6 So the property was in and out within a couple of months.

7 But the important thing for our purpose is to
8 determine what the amount of the distribution was because
9 the property was purchased for \$11.5 million, and it was
10 financed with an \$11 million loan from City National Bank.
11 So what the -- what the Franchise Tax Board says is,
12 ah-ha, this is \$11.5 million dollar distribution, and you
13 don't have enough basis. And so it's another distribution
14 and an excess of basis. And the obvious question is, what
15 about the loan? The loan was used to purchase the
16 property. It was a loan to JETA. At least that was the
17 way it was documented. But we have in -- in the
18 declaration of Mark Forbes, specifically on page 279 of
19 the record, he say this was a loan to Ziman. JETA, we
20 weren't led -- we weren't going to loan \$11 million to
21 JETA. We were loaning \$11 million on Ziman's promise to
22 repay the personal guarantee.

23 They say, ah-ha, we got personal guarantee of
24 S corp. We've seen that issue before. We've all seen
25 that issue before. But, importantly, there's a case of

1 Selfe, S-e-l-f-e, versus Commissioner, 778 F.2d 769, an
2 Eleventh Circuit case. And it says that in situations
3 like this, you look at the substance of what's going on,
4 and you look at the economic reality. What's the economic
5 reality of the loan? Well, the economic reality of our
6 loans is it was a -- as City National Bank says, it was a
7 loan to Ziman.

8 Ziman then put, if -- if you will, if you say the
9 property is JETA's property, Ziman puts the \$11 million in
10 to buy the property. No question that the \$11 million was
11 used to purchase the property. Zero. So under the Selfe
12 case, this is really should be treated as a loan to Ziman
13 and a contribution to Ziman. So we got plenty of basis.
14 That gives us \$11 million more in basis. We got all kinds
15 of basis. So even if it's \$11.5 million distribution, it
16 doesn't matter. Okay. So that's the first reason that
17 the Franchise Tax Board has to fail on the merits.

18 The second reason is -- is the reason that was
19 used by Mr. Leevan, the return preparer, is the \$11
20 million and the \$11.5 million purchase are inseparable.
21 The Franchise Tax Board wants to say, hey, you distributed
22 \$11.5 million dollar property and stuck JETA with an
23 \$11 million loan. Well, that's just not true. It's not a
24 fair characterization of any part of the facts because it
25 is abundantly clear that within a couple of months after

1 the property was distributed out to the marital trust for
2 the Zimans, Mr. Ziman personally paid off the loan.

3 So probably a loan to Ziman in the first place
4 personally, definitely paid off by Ziman in the second
5 place personally. So how do you divorce this loan from
6 this asset and call this a distribution, \$11.5 million
7 dollars, and just ignore the debt. You can't ignore the
8 debt. The debt goes with the property. It's not -- not
9 secured by the property, but it absolutely, positively
10 went into the property and was paid off by Ziman
11 personally. So what Mr. Leevan did, which appears in the
12 record at page 356, is he netted the two as makes perfect
13 sense.

14 So instead of an \$11.5 million distribution, like
15 the Franchise Tax Board suggest, it's a \$500,000
16 distribution. The Franchise Tax Board admits that
17 Mr. Ziman has way more than \$500,000 of basis. So that,
18 again, is not a taxable distribution. So you net them.
19 It's a \$500,000 distribution. FTB loses.

20 So the third reason that FTB has to lose on the
21 merits is, even if you're going to say, okay, fine. We'll
22 say -- we'll ignore reality and say this was an \$11
23 million distribution of property. Without the loan, it's
24 undisputed that Mr. Ziman, in fact, personally repaid the
25 \$11 million loan. So from -- from the standpoint of just

1 the basis computation for a distribution during the year,
2 under Internal Revenue Code section 1368, that
3 determination is made at the end of the year.

4 So if you say there was an \$11.5 million
5 distribution when the property came out, two months later
6 Ziman repaid \$11 million of what had to be JETA's debt
7 under this theory. So repaying JETA's debt out of his own
8 pocket is a contribution of \$11 million. Still during the
9 same year, and according to 1368 of the Internal Revenue
10 Code, is in that equation to determine if it was taxable.
11 So even though the determination of the taxability of the
12 distribution is at the end of the year, it takes into
13 account everything that happened during the year. And so
14 under the Regulations in 1367 and 1368, you add in all the
15 pluses and then you subtract out the minuses.

16 Well, we have \$11 million dollar-plus from
17 repaying the debt that is JETA's debt according to the
18 FTB's characterization of this issue. Those are the only
19 three ways that you can look at this; either Ziman's loan,
20 either netting them, or distribution, contribution.
21 There's no other possibility. Under all three of these,
22 Franchise Tax Board loses. This is a poorly considered
23 issue. Tardily raised. Shouldn't be considered by the
24 Board here and has zero merit. So there's no way in the
25 world that this -- this issue can be sustained.

1 So lastly I'll turn to the interest abatement
2 issue. So we have an audit that started in 2007 and ends
3 up with a Notice of Action in 2018, 11 years later. The
4 Franchise Tax Board said, oh, well, you know, the audit it
5 only took 3 years -- 3-plus years. So, you know, there
6 shouldn't be any interest abatement during the audit
7 because we had -- you know, we were kind of working on it
8 for most of the time. Well, what -- as Mr. Ziman's
9 testimony will reflect, it was multiple different
10 auditors, different issues all times, and then they came
11 up with this piece of garbage; that's the Notice of
12 Proposed Action for these 3 years. All of which -- almost
13 all of which is either conceded or completely without
14 merit. So some abatement for 3 years of just futzing
15 around is -- is definitely required.

16 So then we get to the protest. The protest was
17 filed in December of 2010, and the Notice of Action was
18 August of 2018, almost 8 years in protest. So
19 magnanimously, the Franchise Tax Board says, okay. Well,
20 you know, 8 years is probably more than it should be and
21 there was -- so we'll go back and look at the time periods
22 where we weren't doing anything at all. Didn't touch the
23 case just left it sit. Days, weeks, months, years went
24 by. That's the 1,246 days that they've conceded where
25 they did absolutely nothing in the protest.

1 Well, but the protest is pending for 2,788 days.
2 As the FTB concedes, there were three or four requests for
3 information. We complied within 30 days every single
4 time. So -- but, you know, they're waiting for our stuff.
5 Okay. That's fair. We'll subtract out that 120 days.
6 That leaves us 2,668 days. Subtract the 1,246 that they
7 admit, they did absolutely nothing on, we're still left
8 with 1,422 days; almost 4 years to resolve this protest.
9 Now, I have some -- some sympathy for Mr. Knoll who
10 handled the protest in this case because it was a piece of
11 garage. The audit was a total piece of trash.

12 It did require some time to sort out, but 4
13 years -- 4 years in protest? Not -- at least half of that
14 time has to be abated. Two years is reasonable under the
15 circumstances. Four years is excessive. And, certainly,
16 we can't be justifying extra time in protest because the
17 audit was such a piece of trash. So, clearly, there's got
18 to be additional interest abatement. Although, by the
19 time we get through the rest of the issue, I'm not sure
20 there's a tax deficiency anymore. So it could be that we
21 end up being moot on that issue. But if it's not moot,
22 there's got to be more abatement.

23 So that's my presentation on the four issues that
24 we've discussed and the end of my remarks.

25 JUDGE STANLEY: Thank you.

1 I'll see if, Mr. Knoll, do you have any questions
2 for Mr. Mather at this point?

3 MR. KNOLL: I do not.

4 JUDGE STANLEY: Judge Tay, do you have any
5 questions?

6 Okay. Judge Vassigh, do you have any questions
7 for Mr. Mather?

8 JUDGE VASSIGH: I do not. Thank you.

9 JUDGE STANLEY: Just give Judge Tay a moment to
10 consider whether he has a question.

11 JUDGE TAY: Mr. Mather, I just want to ask you a
12 quick question regarding when can a new issue be raised
13 here at Office of Tax Appeals? Is there any -- you
14 mention some dates with regard to the fact that -- and I
15 think it was February in 2022 this new distribution
16 argument was made. And then that's after the fact that
17 the NOA -- after the NOA was issued; is that correct?

18 MR. MATHER: Yes. It was first mentioned -- to
19 be fair, it was first mentioned during the protest as an
20 alternative argument 6 years into the protest.

21 JUDGE TAY: Right. I understand. And then you
22 mentioned laches and other things. Are there any other
23 kind of legal authority that you have to give guidance as
24 to when a new issue cannot be raised at the Office of Tax
25 Appeals?

1 MR. MATHER: Well, I think, as the 2005 -- well,
2 as the process is designed, and this is what I was
3 attempting to convey. This starts with issues in the NPA.
4 Once the issues in the NPA are conceded, there's no NPA
5 anymore. You know, the -- at that point, there's no new
6 issues. Period. Because, essentially, the amount at
7 issue in the NPA was reduced to zero. And then it was the
8 \$4,485,000 comes in, and then the \$8,450,000 comes in
9 Monday.

10 So those cannot be raised after the issues in the
11 NPA have been conceded because there's a determination.
12 The NPA has determination, and that is what sets the
13 jurisdiction for the protest. And the protest goes into
14 the NP -- the Notice of Action, and that becomes the
15 issues in this case.

16 JUDGE TAY: Thank you. I understand. I have no
17 further questions. Thank you.

18 JUDGE STANLEY: Okay. At this point, if you want
19 to proceed with, either having Mr. Ziman testify in the
20 narrative or if you want to ask him some questions, you
21 can proceed.

22 MR. MATHER: I'll ask questions.

23 MR. ZIMAN: Thank you.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. MATHER:

3 Q Mr. Ziman, can you describe your educational
4 background?

5 A An undergraduate degree in 1964 from USC in
6 history and a law degree from USC also in 1967.

7 Q And what professional certifications do you have,
8 if have any?

9 A I don't know what you mean by certifications.
10 Give me an example.

11 Q Do you have a license?

12 A I have an inactive California bar license. I
13 also have three honorary degrees and the equivalent -- if
14 I mention those, they're not professional degrees, but --

15 Q Anything in the real estate area? Are you a
16 broker or anything like that?

17 A No, I'm not a broker.

18 Q Okay. Could you briefly describe your work
19 experience?

20 A How far back you want to go?

21 Q From college. After college.

22 A Well, after college -- after college I entered
23 law school, and my first job after entering -- after
24 college was as a -- a -- working for the California
25 Division of Contracts in Rights of Way, which was the

1 condemning arm in the State of California for -- mostly
2 for freeways. And I did that for approximately
3 three-and-a-half -- maybe 3 months.

4 I then -- my first private was I became an
5 associate at the Law Offices of Loeb and Loeb and in 3
6 years became a full partner.

7 THE STENOGRAPHER: Can you spell the firm's name,
8 please?

9 MR. ZIMAN: Loeb, L-o-e-b, and Loeb.

10 An practiced law for a total of 10 years,
11 retiring from the firm in 1979. In 1979 I formed a
12 company called Pacific Financial Group, which through the
13 1980s was a -- a diversified real estate investment firm
14 of apartments, office buildings, and mobile home parks.
15 The office buildings were sold off probably around 1989
16 and 1990, about four-million square feet. And the mobile
17 home parks were liquidated between 18 -- 1989, and 1990,
18 and '91, the apartments had been earlier liquidated.

19 I formed a company in 1991 called Arden Realty,
20 which is known today as Arden Realty, Inc., and began
21 acquiring office buildings at a brisk pace acquiring a
22 portfolio of about four-million square feet and around 35
23 properties. And took that portfolio public on the
24 New York Stock Exchange in 1996, growing that company
25 ultimately to the largest office landlord here in Southern

1 California, approximately 20-million square feet. Sold
2 that company to GE in 2006.

3 Meanwhile in 2002, I had formed another company,
4 a private company called Rexford Industrial Reality. And
5 that company was in industrial real estate focusing only
6 on Southern California. And through friends and family
7 and private investors, we did a series of funds
8 culminating ultimately with a \$110 million fund in 2011.
9 In 2011 we were still coming out of the Great Recession in
10 the real estate industry, and we had tremendous problems
11 with Bank of America who had -- because they had their own
12 problems, and decided to roll up all of our partnerships
13 with approximately 530 investors, and we took Rexford
14 public on the New York Stock Exchange in 2014. I was the
15 founder, as I said cofounder with another gentleman, and I
16 was the founding chairman and continue to be chairman of
17 the board of Rexford Industrial Real Estate, a New York
18 Stock Exchange company.

19 The other thing I spend a majority of my time on
20 now and have for the last 20 years, while both Arden was
21 in existence and with Rexford, is I am the CEO of the
22 Rosalinde and Arthur Gilbert Foundation, 1 of the 15
23 largest foundations in Greater Los Angeles. And
24 Mr. Gilbert passed away in 2001 and left approximately
25 \$90 million in assets to this foundation with two people

1 to run it; in essence, myself and an associate. And he
2 took the laboring oar because I obviously had Arden Realty
3 at the time. And we have grown that foundation to where
4 our total assets today are in excess of \$600 million and
5 are projected to distribute this year between \$15 and
6 \$20 million. And our grants are focused mainly on the
7 lower social economic classes here in Greater Los Angeles;
8 access to higher education of those classes. We're
9 feeding 5,000 people a day in the Greater City of Los
10 Angeles, and various other projects.

11 UCLA is one of our largest recipient, especially
12 in areas of homelessness and affordable housing. We're
13 also doing medical research, grants for medical research
14 and cancer, immunology, diabetes, and AIDS. Oh, I forgot
15 one in the interlude. In the interlude between selling
16 Rex -- Arden and really taking Rexford public, I also went
17 out and raised from five pension funds CalPERS, CalSTRS,
18 which may be familiar to you; two of the largest pension
19 funds here in the United States; Each \$100 million
20 together with \$100 million each from the retirement
21 systems of New York, New Mexico, and North Carolina for a
22 total of half-a-billion dollars, which was invested in
23 minority-owned and progressive relationships in real
24 estate. And --

25 JUDGE STANLEY: Mr. Ziman, I'm just going to

1 interject for just a moment, if you forgive me. Can you
2 kind of relate your history -- answer the question as it's
3 relevant to this case.

4 MR. ZIMAN: He said give my work background.

5 MR. MATHER: Yeah.

6 JUDGE STANLEY: I understand the question he
7 asked.

8 MR. ZIMAN: Okay. I'm glad to move on.

9 BY MR. MATHER:

10 Q Okay. Mr. Ziman, I copied some pages from the
11 record for you. Do you have them handy there?

12 A Yes.

13 Q Could you refer to Exhibit 4, page 9 of 30, which
14 is page 37 in the record. And can you describe what this
15 is?

16 A This is something that started at the IPO of
17 Arden in 1996. It's compiled by our general counsel for
18 Arden and also the CFO, or the chief accounting officer
19 later in time. It's a continuing -- it's not just done
20 for me. It's done for all of the senior executives or any
21 executives that were recipients of grants or options that
22 had filings with the SEC or any other state, any state.

23 Q So in a -- there's a Footnote C that says initial
24 ownership 10/14/96. Can you describe what's -- what's
25 represented there?

1 A Well, line by line I'll have to. The 100 shares
2 is, I was the first buyer of the first 100 shares. Sort
3 of a symbolic thing of \$20 a share at the date of the IPO.
4 The 178,882 were the shares that I converted to take
5 advantage of an expiring tax loss in 1997. 133,000 of
6 shares, 33 is the shares -- grant shares that were granted
7 at the IPO that I exercised in 1997. 465 is -- those are
8 shares that -- those are shares that came and were held by
9 NAMIZ, which Ziman spelled backwards. And the 2,000
10 shares were contributed to, I think First Rexford. Yes,
11 First Rexford contributed to First Rexford, a third-party
12 partnership. 89,000 and 43,000, that's the aggregate of
13 the 133,000 shares that were exercised and then sold as it
14 says here December 31, 1997. 17,000 shares here came out
15 of the converted 178,000 shares and sold also on 12/29/97.

16 Q So as it relates to our case, we were -- we were
17 talking about the 133,333 shares. So that's -- that's the
18 89,733 and the 43,600 from this list?

19 A Yes.

20 Q And what -- describe the circumstances of that
21 exercise of the options?

22 A The options were granted at the IPO with an
23 exercise price of \$20. And I decided to exercise those in
24 1997. I believe that those were -- were 3-year options,
25 but I decided to exercise them earlier because they had an

1 exercise earlier date, and I exercised them. I purchased
2 the shares with paying the \$20 million exercise price and
3 then sold the shares subsequent.

4 Q \$20 per share; right?

5 A At \$20.

6 Q Not a million?

7 A No. \$20 per share, I'm sorry, was the exercise
8 price and sold the shares for ultimately \$30.75.

9 Q So the \$30.75, if you could -- if you could
10 return to page 45 in the record, Exhibit 4, page 17 of 30,
11 which is the next page in your packet. What are -- what
12 is this, and what does it -- how is it significant?

13 A This is an ex -- this is taken directly from
14 EDGAR, E-D-G-A-R, filing with the SEC. This --

15 Q And what --

16 A This is the SEC record.

17 Q And so what does it show as the share price on
18 December 31 of 1997?

19 A \$30.75.

20 Q If you could turn to the next page in your
21 exhibit packet, which is pages 46 and 47 of the record,
22 which is Exhibit 4, pages 18 and 19, what is reflected
23 here?

24 A This is the front page of my personal return.

25 Q Okay. So turn then to page 47, and there's a

1 very large number near the bottom of the page there. Can
2 you explain how this relates to our Arden basis issue?

3 A This is Schedule D, long-term capital gains, and
4 the bottom line says, "On December 30, 1997, 178,802
5 shares were sold for," I mean, "were converted as a
6 taxable event." Not sold, just converted from operating
7 partnership units to shares, which is a taxable event with
8 a value of \$7,998,993.

9 Q So that we saw before that the price per share
10 was \$30.75 for the Arden Realty shares; right?

11 A Right.

12 Q So if I multiple 17,882 times \$30.75, it's about
13 \$5.5 million?

14 A Correct.

15 Q So what -- why is there that difference, if you
16 know?

17 A Difference between the 77 --

18 Q The 7 -- the \$8 million and the \$5.5 million?

19 A It's a mistake. Am I right? I mean, if the
20 178,882 adds up to 5 --

21 Q 5.5?

22 A Yes.

23 Q So is there something else in the \$8 million? Or
24 how do -- what was the significance of \$8 million dollars?

25 A Oh, the \$8 million was I had a loss carry-forward

1 expiring, and I wanted to use up losses as much as I
2 could -- or gains as much as I could equal to \$8 million.
3 And as you said, 178,882 times \$30.75 adds up to -- what's
4 that number?

5 Q About \$5.5 million?

6 A \$5.5 million. So there's another \$2.5 million
7 dollars of gain taken somewhere. And where did it come
8 from? All of the other sales transactions that I had that
9 year -- in the end of the year, including the 133,333
10 shares, because that's the reason I exercised the option.
11 And as my accountant said in his declaration and
12 reiterated to me, they couldn't put all of these in. And
13 so they just bundled it under here for their purposes
14 because of the software limitation.

15 Q So do you conclude then that the extra \$10.75 a
16 share that we've been talking about for the Arden basis
17 is -- is in there somewhere?

18 A It's the only reason. Why would otherwise I have
19 a reason for selling it, other than taking -- taking the
20 gain to offset the losses, but there were many others. It
21 wasn't just -- it wasn't just the Arden shares.

22 Q But all of these were done at the end of '97 to
23 generate --

24 A All done at the end of '97. You see the --
25 you'll see most of the sales. There may have been some a

1 bit earlier. But you'll see most of the sales tailed in
2 those last few days of 1997; tailored to using as much of
3 that loss carry-forward as I could, both in the federal
4 and state tax level.

5 Q So I'd like to turn now to the Citibank shares.
6 If you turn to the next page in your packet to -- which is
7 exhibit -- or page 28 in the record, Exhibit B, page -- or
8 no. Too many exhibits here -- Exhibit 3, page 7 of 7.
9 But page 28 of the record in any event. So there's a
10 transaction here for Citigroup Inc. Explain what the
11 circumstances of that transaction were?

12 A This is 2003. Am I correct?

13 Q 2003.

14 A Yes. Yeah. That's right. It says sold. This
15 is -- well, Citibank, I -- the shares -- in this year, I
16 had a number of shares, the stocks, held at Lehman
17 Brothers. And I had -- my main account was Salomon Smith
18 Barney. And I closed the Lehman account and moved
19 everything into the Salomon Smith Barney account,
20 including -- including the Citibank and as well as the
21 Morgan. There were others that were moved in from time to
22 time. But I closed that Lehman account ultimately.

23 This shows that -- that 2,000 shares of Citigroup
24 acquired -- various, in the lingo of a stock brokerage
25 firm means there is many dates that you acquired the

1 stock. And so they use word various rather than list each
2 of those dates when it's more than maybe one, two, or
3 three. So there could have been five or six times I
4 bought the stock, maybe more. And it shows right there
5 what the -- what the price was, the cost at \$90,000. It
6 was sold for \$87,000 for a loss of \$2,614.

7 Q So we've been unable to produce documentation of
8 the purchase in this case. But how -- how do you -- how
9 do you know that \$90,000 cost basis is a -- is in the
10 ballpark?

11 A Because -- because that's transferred over
12 usually from the former Lehman Brothers who I bought the
13 stock through.

14 Q Well, what was -- what was your plan for the
15 Citigroup stock? Why was it a good investment or a bad
16 investment? Why did you buy --

17 A Oh, I bought -- I bought a number of banks at the
18 same time. Let's see. When did we buy Morgan? Here, JP
19 Morgan Chase. I bought a bunch of stocks right around the
20 same time thinking the stocks were really going to have an
21 issue, a good -- a good quarterly earnings and as a good
22 investment. But in terms --

23 Q So -- so bank stocks --

24 A Bank stocks.

25 THE STENOGRAPHER: Can you please speak one at a

1 time.

2 MR. ZIMAN: Yeah. Bank stocks. And -- and all
3 of us -- I read the Wall Street Journal everyday that it
4 comes out. And all of a sudden start I started getting a
5 feeling these bank stocks were going to take a hit because
6 there were some lending issues and some other issues. I
7 can't remember particularly what it was that day. So I
8 just -- or what it was from time from time right over a
9 few days. So I decided to sell the stocks. Simple as
10 that. Just a business decision.

11 Q And do you remember if you had a gain or loss on
12 the stocks?

13 A Today I don't remember. I only know what I see
14 here.

15 Q All right. I'd like to turn to what we've
16 referred to as the EY issue. That's specifically -- take
17 a look of the pages of the record, pages 63 and 65. Do
18 you recognize what these are?

19 A Yes.

20 Q And what are they?

21 A These are K-1s, informational returns from a
22 partnership to the individual partners.

23 Q And, specifically, which partnership and which
24 partner for these two?

25 A This is ARLP, Arden Realty Limited Partnership.

1 Q To you as partner; correct?

2 A And to me individually as partner.

3 Q And what would you typically do with these K-1s
4 when you receive them?

5 A I give them to my accountant.

6 Q Did you verify all the numbers?

7 A Not numbers that came from ARLP. I assumed that
8 all those numbers were correct. It's done by E&Y. They
9 were -- I mean, they were the top real estate accounting
10 firm in the country, number one. They were -- they had
11 merged in with Kenneth Leventhal, which was the key real
12 estate group within E&Y. So I would -- I would not even
13 look at these numbers. I may not have seen these
14 personally because they may have gone from E&Y directly to
15 my accountant, Eddy -- Eddy Leevan. But if I -- if I did
16 see them, I would look at them and I wouldn't think much
17 of them.

18 Q Okay. So what is a bottom dollar debt guarantee?

19 A Bottom -- when we rolled up the partnerships at
20 the time of the IPO, we had debt in those partnerships.
21 And we had personal debt in those partnerships, qualified,
22 unqualified, or recourse, qualified recourse. And when we
23 rolled it up, those debts were all paid off. So in order
24 to avoid a reduction in basis because of the old debts,
25 the IPO you take on all new debt, and that new debt is

1 usually much larger. Before, we had individual mortgages
2 on each property, and we can take advantage of basis
3 through those mortgages.

4 Those mortgages were all paid off as part of the
5 IPO. And then Arden issued debt of \$50 million at one
6 time, and so we needed to maintain basis and not have a
7 tax event. We would have these bottom line guarantees of
8 the needed amount to maintain the same basis for from the
9 debt -- of the amount of the debt we had in the roll up.

10 Q So did you have that -- I mean, we've been
11 talking about a \$5.6 million bottom dollar debt guarantee.
12 Did you have that from the beginning of ARLP?

13 A Day one. Day one and it was monitored extremely
14 closely by the accounting department because it wasn't
15 just me. It was dozens of people. And when people would
16 do 1031 exchanges down the road after the IPO into the
17 ARLP partnership, they had the same problem we had. And
18 the accounting department had a particular person who
19 watched these bottom line guarantees and to make sure that
20 everything was done right. Because loans were paid off
21 that we guaranteed, and they came back with new financing.
22 So we'd have to undertake the bottom line guarantees for
23 the new financing.

24 Q So in the -- well, let's take a look at -- at
25 page 372 of the record, which is the next page. This is

1 your K-1 for 1996 from ARLP, and is that the first year of
2 ARLP?

3 A 1996.

4 Q And so on the other line there, there's
5 \$5,480,000.

6 A Correct.

7 Q What -- what is that? Is that --

8 A That's -- that's part of the -- probably the
9 underlying debt. It says, "Share of liabilities." Yes,
10 that would be the bottom line guarantee.

11 Q The bottom line guarantee?

12 A Yes.

13 Q And then on the next page, which is page 373 of
14 the record, we have exactly \$5,600,000 on that line;
15 correct?

16 A Correct.

17 Q And that's -- what's that?

18 A Bottom line guarantee.

19 Q Okay. So from the beginning you had this
20 \$5,600,000 bottom line guarantee. Did -- did it ever
21 change or go away?

22 A No. It never. As I said, it was closely
23 monitored. It was monitored by the outside accounting
24 firms, and it was monitored inside because it was not just
25 me. It was maybe -- as time went on, we did more 1031

1 exchanges in. There were more investors. And sometimes a
2 given exchange in would involve seven investors -- new
3 investors in ARLP. And -- and so that was always very
4 closely monitored because no one wanted to trigger this
5 artificial gain, which wasn't a real gain to begin with.

6 Q So when -- when did you -- so when did the bottom
7 dollar guarantee end? I mean, you said that you had it
8 the whole time. How -- how long did your stake in ARLP --

9 A Oh, we sold the company to GE in 2006, 10 years
10 later after we sold the IPO.

11 JUDGE STANLEY: Okay. Be careful to wait until
12 he finishes the question before you answer so that our
13 stenographer can get it.

14 MR. ZIMAN: Sorry.

15 BY MR. MATHER:

16 Q So the bottom dollar guarantee was put on in 1996
17 and stayed in the same amount until 2006?

18 A Yes.

19 Q Okay. Now let's -- let's turn to page 62 in the
20 record.

21 A And by the way, I might just add that when the
22 company was sold, the bottom line guarantees came off
23 because 100 percent of the stock was bought by GE, and we
24 had no further interest in the company or debt. I
25 recognized income -- huge income.

1 Q So turning to page 62 in the record, this is the
2 schedule from Ernst & Young; right?

3 A Right.

4 Q And who -- who would have prepared this, and how
5 would it have been done, if you know?

6 A This was done by -- by Ernst & Young. And I am
7 sure our accountant, our in-house financial people, and
8 maybe even general counsel looked at it and --

9 Q So -- so when you say in-house financial people,
10 in 2002, which is the year this schedule is for, who would
11 that have been in-house at ARLP?

12 A Andres -- I just missed his last name. Andres --

13 Q Gavinet?

14 A Gavinet. Andres Gavinet was our Chief Accounting
15 Officer. He was not the CFO. He was Chief Accounting
16 Officer, I think about this time. Maybe -- maybe not
17 quite, but he definitely was the Chief Accounting Officer
18 for a number of years. He had been with the company since
19 almost the IPO. He was the second level -- second person
20 in the accounting firm. The accounting firm was about 30
21 people, by the way. And he -- he really oversaw most
22 of -- most of this.

23 Q So, specifically, if you see on the line for your
24 name, which is line 12, there's Bottom Dollar Guarantee
25 \$5.6 million. Would EY have confirmed that in any manner?

1 A Oh, they would have to. The auditors have to
2 confirm the numbers that are -- that's part of their due
3 diligence.

4 Q And so would Andres or somebody from the
5 accounting department have also confirmed that?

6 A Oh, yes. Yes.

7 Q And turning now to page 64 in the record, which
8 is the same schedule for 2004 -- or I'm sorry -- 2003. Is
9 everything you said for 2002 apply to this 2003 schedule?

10 A Yes.

11 Q So it would have been confirmed by EY and by the
12 accounting department --

13 A Yes.

14 Q -- at Arden?

15 A Yes.

16 Q So now I'd like to turn -- again, we've been here
17 before -- to Exhibit YY, which is page 540 of the record.
18 And you may have heard in my presentation the discussion
19 of the fair market value of OP unit withdrawals of
20 \$13,050,715 and then a table below that represents what
21 those are. Now, can you explain where -- where these OP
22 units that are referenced in Table 4B come from -- came
23 from?

24 A They were OP units held by me since the IPO.
25 These were -- the 178 came out of the IPO. The 88,000,

1 you know -- all the -- every one of my OP units came at
2 the IPO. I never got any OP unit afterwards.

3 Q So there was never a distribution of OP units
4 from the partnership to you after 1996?

5 A That's correct.

6 Q So let's turn back to the first page in our
7 packet here which was page 37 from the record. And we
8 talked about this before. This is the schedule prepared
9 by the attorneys or for Arden to report SEC matters.
10 There's a Footnote A. We talked before about Footnote C,
11 but Footnote A, also initial ownership 10/14/96, 582186.
12 What -- what does that represent?

13 A That represents the number of shares I
14 individually received at the IPO.

15 Q And these are not Arden shares or --

16 A No, no. These are -- Arden shares are publicly
17 traded shares on the New York Stock Exchange of the
18 general partner. Arden is the general partner of ARLP.
19 ARLP, these are operating partnership units of ARLP.

20 Q So explain a little bit --

21 A Partnership interest.

22 Q Sorry. Explain a little bit of how that --
23 what's Arden, and what's ARLP? How did that work when
24 the -- when the roll up occurred?

25 A In order -- pursuant to a revenue -- Treasury

1 Revenue ruling in the early -- very early 1990s, it was
2 deemed that a real estate partnership interest -- traded
3 for a real estate partnership interest was a tax-free
4 exchange. In the early 90s, we had a real estate crisis
5 in this country, and everyone was going literally broke
6 and the lenders had problems. It was a -- was huge
7 debacle, not the magnitude of -- it was a different kind
8 in '08 -- '07, '08. And there was a lot of crises, and
9 developers didn't have access to capital. The banks had
10 problems.

11 And so Wall Street came up with the concept of
12 creating public real estate companies to generate capital,
13 but they needed to do it in a -- in a tax fashion way
14 because of the basis problems of real estate developers.
15 So they got a private Treasury Revenue ruling that said a
16 tax -- it was a tax-free exchange of partnership interest
17 to partnership interest. So when Arden went public we
18 created -- before it went public, we created a partnership
19 called Arden Realty Limited Partnership. And
20 concurrently, we created a corporation called Arden
21 Realty, Inc., the sole general partnership of the limited
22 partnership.

23 So you have the limited partnership up here and
24 then the general partner here. The general partner, Arden
25 Realty, went out and raised the money as a New York Stock

1 Exchange company and contributed it into ARLP at the IPO.
2 And concurrently the former investors of the various
3 partnerships exchanged their interest in the properties
4 for interest in ARLP. So those properties went also
5 contributed to ARLP. So the minute after the public
6 offering was completed, you had a limited partnership
7 of -- the only limited partners at that point in time were
8 the roll up partners from the underlying previously
9 existing partnerships. They were limited partners of
10 ARLP.

11 The sole general partner of which is -- was Arden
12 Realty, Inc., which concurrently raised enough cash on the
13 public offering to pay off the bank debt and all the
14 mortgages we talked about earlier and then had issued new
15 debt, which we then gave underlying guarantees for.

16 Q Okay. So then you got in this transaction
17 582,186 OP units --

18 A Correct.

19 Q -- in ARLP?

20 A Correct.

21 Q And then -- that's reflected. What happened to
22 those is reflected in A -- Footnote A. And then in
23 Footnote C, which we went through earlier was your
24 shares --

25 A These are my shares.

1 Q Of what?

2 A Arden Realty, Inc., the sole general partner, the
3 public company. These were the tradeable shares.

4 Q And so the OP units that you received in ARLP
5 were convertible into Arden Realty, Inc., shares?

6 A At any time on a one-for-one basis, you could
7 convert your OP units to shares and they were -- as part
8 of that conversion process, they were listed on the
9 New York Stock Exchange -- listed, with the SEC, and then
10 you could then sell them.

11 Q Okay. So in section A --

12 A But that was a taxable event.

13 Q Right. So in section A, we see the 178,882 OP
14 units. It says, "Converted to common shares 12/29/97,"
15 and that's what you paid tax on in --

16 A No. That's -- that's what I took a taxable gain
17 on to offset the expiring losses, and you said it was
18 \$5.5 million.

19 Q And that -- and so that was the gain that we saw
20 on page 47 on the Schedule D for 1997 --

21 A Part of the gain.

22 Q -- of \$7 million?

23 A It was part of that \$7,998,000 gain.

24 Q Right.

25 A Part of.

1 JUDGE STANLEY: You two need to be careful as you
2 keep doing that.

3 MR. ZIMAN: I apologize.

4 JUDGE STANLEY: You keep answering questions
5 before he finishes asking them, Mr. Ziman.

6 MR. ZIMAN: Sorry.

7 JUDGE STANLEY: Thank you.

8 BY MR. MATHER:

9 Q So turning then, again, to Exhibit YY, which is
10 page 540. So the first transaction there, which is the
11 same 178,882 shares, FTB is calling this a distribution.
12 But as we saw, you paid tax on that with zero basis?

13 A I had a gain on that, correct.

14 Q And your basis claimed for that was?

15 A Zero.

16 Q Zero. And then the other transactions --

17 A I wish it was -- I wish it was higher, but it was
18 zero.

19 Q The other transactions here, do you recall what
20 those were?

21 A These here, I think the balance of these
22 transactions are UCLA, if I'm not mistaken.

23 Q And --

24 A '88 --

25 Q -- FTB in fact conceded that you gifted those OP

1 units to UCLA in this case; correct?

2 A Correct. Correct.

3 Q So all of these transactions are accounted for
4 otherwise, and none of them involved distributions from
5 ARLP to you?

6 A No. The distributions were originally in 1996.

7 Q All right. I'd like to turn to Malibu Road
8 issue. Can you describe what you were doing with that
9 transaction?

10 A In 19 -- in -- what year was this? I'm sorry.

11 Q 2005.

12 A -- 2005, I negotiated very -- it was a very
13 competitive negotiation to buy this home. And I made an
14 offer finally and was successful because I would close
15 immediately, 30 days, 20 days. And at that time you could
16 not get a conventional mortgage because a conventional
17 mortgage at that time had to go through a process, a
18 documentation, because the lenders wanted to take
19 conventional mortgages at that time, roll them up, and do
20 a collateralized mortgage package. And, therefore, as
21 much -- it's a very formal way to do. You need appraisals
22 and all kinds of things. It'd take time.

23 So I went to the bank, and said I need
24 \$11 million. And City National Bank was my personal bank
25 at the time, and they agreed to loan me this -- the

1 \$11 million. And in the escrow instruction, if I recall
2 right, I had the right to designate a nominee. The money
3 ultimately was based on my credit, and ultimately I would
4 have to pay that loan down and off with proceeds from a
5 conventional mortgage -- a much smaller amount -- and my
6 personal funds, which was my separate property.

7 At the time I had an enormous dispute with my
8 then wife. Ultimately ended in divorce. And I was going
9 to be using separate property funds. And I wanted to
10 maintain this as a separate property. But in order to do
11 that, I had to get a quit claim deed from her, if you've
12 ever been in this situation. And she was unwilling to do
13 it. And she wanted everything to be in the marital trust
14 and this -- it wasn't so much important here, but it was
15 some other property, some other things that I was doing at
16 the time. And she was unwilling to cooperate on those at
17 the time.

18 So I shoved it into this corporation that I owned
19 and controlled and was my separate property, JETA Reality,
20 Inc. Knowing at one time I would have to figure this out
21 and ultimately take it out of the corporation, because the
22 bank wasn't going to loan -- this probably was a 90-day
23 loan, maybe a 6-month loan, and I'd have to pay it off.

24 So I went to the bank and I explained them the
25 circumstances. They loaned me the money. They -- two

1 things. One, they would -- they said no split borrowings,
2 which means I cannot go to any other bank and borrow. And
3 most banks require that when you have a -- this was
4 base -- this was an unsecured loan of \$11 million. And at
5 the time, you know, was I good for \$11 million unsecured?
6 Maybe, maybe not. And then secondly, it limited my
7 borrowings at City National. So I had to ultimately pay
8 this loan off.

9 And I resolved the issues with my wife. This was
10 the sacrificial lamb going into the marital trust, and it
11 went into the marital trust. I regret that to this day
12 still, quite honestly. But it did went into the marital
13 trust -- I don't know -- a month or two later, maybe three
14 months. I don't remember the timing exactly. And I then
15 went through the steps with City National putting a
16 conventional \$6.5 million 10-year mortgage on the property
17 amortizing loan and from my own personal property.
18 Actually, my separate property as it turned out was now
19 became joint property. Paid down the balance of the loan
20 for four -- was it \$4.5 million dollars. And that's the
21 story.

22 Q So would City National Bank have made this loan
23 to JETA?

24 A Without my personal guarantee, absolutely not.
25 JETA had insignificant assets. Insignificant assets.

1 Q And --

2 A And you don't make an \$11 million secured loan on
3 a house when you've just paid \$11.5 million for it. It's
4 just not a conforming loan. So they couldn't make a real
5 estate loan on it.

6 Q So this was essentially the only type of loan
7 that you could get to close on this property?

8 A Only type of loan they would give me and then I
9 can get in time.

10 Q And why was the loan -- the documents were made
11 to JETA. Why was that?

12 A Because that was the borrower. I didn't need a
13 quit claim deed from my wife, number one. And number two,
14 I can then decide how and what I was going to do.

15 Q So -- so did -- did you ask to have the loan made
16 to JETA or did City National?

17 A No. I asked them to make the loan to JETA.

18 Q And -- and was that because JETA was holding
19 title at that time?

20 A JETA -- in escrow instructions, you have to write
21 to designate, and I designated JETA at that time.

22 Q But in reality, in substance and economically,
23 this was a loan to you?

24 A Absolutely.

25 Q Would -- would a loan that had been made directly

1 to you have had any different terms or any different
2 subsequences to you?

3 A Other than the marital issue, no.

4 Q And I -- I refer to this as a bridge loan. Do
5 you think that's a fair characterization?

6 A That's exactly what it was. And then that's what
7 the bank called it, I think, a bridge loan.

8 Q So what -- what is a bridge loan?

9 A A bridge loan is a loan -- a loan that you take
10 out on a very short interim basis to bridge your -- your
11 initial acquisition of the property to your permanent
12 financing.

13 Q And that's exactly how this functions?

14 A Exactly.

15 Q And was that the plan all along?

16 A It was the plan from when we closed escrow.

17 Q So would City National have let JETA or you sell
18 the property and not pay the bridge loan?

19 A They -- they didn't have a mortgage on the
20 property. I could sell the property however I wanted and
21 transfer it however I wanted, which I did to the marital
22 trust and then assume -- you know, continue to make the
23 payments of interest. JETA didn't have the money to pay
24 the interest. I paid. As I recall, I paid the interest,
25 and then I paid -- a couple of months after the loan was

1 done, I paid -- I paid \$4.5 million with a new mortgage of
2 \$6.5, I think.

3 Q So you couldn't have transferred JETA -- or the
4 title to Malibu Road out of JETA and then stiff City
5 National for the loan?

6 A No, I couldn't. How could I stiff them? I
7 was -- first of all, I was personally liable on the loan,
8 and I wouldn't stiff the bank. It was my obligation from
9 the beginning and the end. It was me who inter --
10 interposed JETA, not the bank.

11 Q And that was because of the marital issues;
12 right?

13 A Yes.

14 Q So turning, finally, to the interest abatement
15 issue. What -- what experience did you have Monday, April
16 15, 2024 with the FTB audit in terms of how it progressed?

17 A Huge frustration. This is the longest experience
18 I think I've ever had in my life; I think longer than my
19 marriage -- my marriages. It was just an
20 extraordinarily-long aggravating -- constantly there. I
21 had to live with it. And, you know, we'd win something.
22 We'd -- they'd concede something, especially, on these
23 UCLA grants. I mean, it was unbelievable. It was patent.
24 They even admitted -- one of the auditors admitted that
25 I'd had a rogue auditor. Called one of my auditors a

1 rogue auditor. And they --

2 Q How -- how many -- I'm sorry. How many auditors
3 did you have if you recall?

4 A I --

5 Q Auditors. Not -- not the appeal but in the audit
6 when Eddie was handling it?

7 A There was -- there was one -- there was like one
8 time he gave me a call and he's now in charge of the
9 thing, and never heard of him again. And then I got
10 another -- I don't remember -- contact. I don't remember
11 if it was verbal or if it was written from another one who
12 was there for -- I don't know -- not -- didn't seem very
13 long. He's gone. And -- and they -- they would call and
14 lot of the stuff was through my accountant. And my
15 accountant would call me. Well, now they need this, and
16 now they need that. And then wouldn't hear anything. And
17 they would need this.

18 And these -- these were boxcar numbers when you
19 add up what was originally claimed here, and when you add
20 up the interest and the penalties. And, you know, when
21 you're doing business and you've got this hanging over
22 your head for years, you have to disclose this on
23 financial statements to your lenders. This is that
24 material. And -- and I got questions, and it never ended.
25 I would call up Eddie. I would call up him. Let's get it

1 done. Let's get it done. Tell them to move it along.

2 I said I remember in law school the Doctrine of
3 laches. This is horrible, and it was -- it was constantly
4 there. It was on -- you know, it was -- it was just -- it
5 was painful, and it seemed like no one was home. Nothing
6 was happening. Nothing happened for years and then all of
7 a sudden it was rush, rush, rush, rush, rush, rush. And
8 then sporadic calls or sporadic contact. And it was
9 just -- I just -- I was -- and I even mentioned it to Brad
10 Sherman who used to be former -- he's a Congressman now.
11 He was a former member of the Board of Equalization. I
12 said, my god, what's going on with the FTB? And -- and I
13 just -- it's been a terrible experience quite honestly. A
14 personal terrible experience that's gone on way too long.
15 Aggravating.

16 And it seems like they -- they were trying to get
17 me because they'd concede on points and come up with new
18 point. And they wouldn't concede time after time when it
19 was crystal clear that they had no grounds. There were --
20 the papers that I sent UCLA with the OP unit certificates,
21 they were so crystal clear. They said, I'm delivering to
22 you certificate number or certificate of operating
23 partnership units. And yet, they kept claiming time after
24 time I converted the units. I said no, here it is.

25 We sent this to UCLA. Here. I finally had to

1 get declarations and statements from UCLA. Now I will
2 tell you 'cause I still -- I just got done contributing
3 funds to the UCLA Foundation and -- and some appreciated
4 stock. And I said -- I said, get the right language, and
5 I got the right receipt. I didn't get a receipt for
6 shares. I got a receipt for OP units even their printed
7 form said shares. And I got a letter from them
8 acknowledging OP units. It's a personal letter on
9 someone's letterhead. And I got emails.

10 It's just too long, too aggravating a cast of
11 thousands. It just -- it never went away. And then --

12 Q So we're -- we're talking about a period from the
13 start of the audit until the Notice of Action, of
14 approximately 11 years. How -- why do you -- and
15 they're -- and the Franchise Tax Board is offering to
16 concede 3 -- 3 years out of the 11 years as being a
17 reasonable delay. Why do you think that 8 years is --

18 A People die in 8 years. I mean that's
19 ridiculously long to do anything -- to do anything.

20 Q And did you always provide the information that
21 was requested timely?

22 A Promptly. We were told within 30 days. We never
23 asked for an extension.

24 MR. MATHER: I have no further questions.

25 JUDGE STANLEY: Okay. Thank you.

1 you due to a marital issue; is that correct?

2 A Correct.

3 Q Economically, how did that effect the loan to
4 JETA? How -- what was the economic effect of having it
5 made out to JETA instead of you?

6 A JETA was a company owned by me as my sole and
7 separate property.

8 Q Why did you have it made out to JETA instead of
9 you?

10 A Because in order for me to get title insurance at
11 the closing in my individual name, I would have needed
12 a -- in my name, I would have needed her to be on title or
13 to give me a quit claim deed.

14 Q So that purpose of having JETA hold the loan
15 carried economic significance?

16 A None.

17 Q Then why wasn't it given to you instead of JETA
18 if it had no significance?

19 A Because the title insurance and trust company
20 would not issue an owner's policy of title insurance
21 without my wife being a -- on the title or, in lieu of,
22 that giving me a quit claim deed.

23 MR. JOHNSTON: Okay. Those are my questions.
24 Thank you.

25 JUDGE STANLEY: All right. Thank you.

1 Judge Vassigh, do you have any questions?

2 JUDGE VASSIGH: I do not. Thank you.

3 JUDGE STANLEY: Judge Tay?

4 JUDGE TAY: No questions. Thank you.

5 JUDGE STANLEY: And I don't have questions at
6 this time either. Thank you for your presentation.

7 I'll move now to the Franchise Tax Board.

8 You may proceed with your presentation.

9

10 PRESENTATION

11 MR. KNOLL: Good afternoon. I am Brandon Knoll
12 representing Respondent Franchise Tax Board. My
13 Co-Counsel is Roman Johnston, Assistant Chief Counsel of
14 the Business Entities Bureau.

15 For the taxpayers at issue, Mr. Ziman
16 Appellant-husband was organizer, Chairman of the Board and
17 Chief Executive Officer of Arden Realty Incorporated, a
18 real estate investment trust or REIT, which engaged in
19 owning, acquiring, managing, leasing, and renovating
20 office properties in Southern California. Arden was a
21 general partner and Mr. Ziman, as an individual, was a
22 limited partner of Arden Realty Limited Partnership, an
23 operating partnership.

24 This appeal concerns issues where Mr. Ziman has
25 not met his burden of showing Franchise Tax Board's

1 assessments are incorrect. There are four issues in this
2 appeal: First, Mr. Ziman had a reduction of partnership
3 liabilities from 2002, 2003, resulting in distribution of
4 money; second, Mr. Ziman has not fully substantiated the
5 basis of stock sold in 2003; third, Mr. Ziman received a
6 taxable distribution of property from his S corporation in
7 2005; and finally, the Franchise Tax Board did not abuse
8 its discretion in granting additional interest abatement
9 for 1,246 days.

10 Moving on to the first issue for the reduction of
11 partnership liabilities in 2003, during the years at
12 issue, Mr. Ziman was a limited partner in Arden Realty
13 Limited Partnership. On his 2002 K-1, the partnership
14 reported a liability of qualified nonrecourse financing of
15 approximately \$14 million. On his 2003 K-1, the
16 partnership reported a liability of \$1.7 million, which is
17 a difference of approximately \$12.5 million. Franchise
18 Tax Board never received Mr. Ziman's requested basis
19 schedules for his partnership. Therefore, Franchise Tax
20 Board calculated Mr. Ziman's basis for the beginning of
21 2003 based on his K-1s starting in 1996 when the
22 partnership was formed and public filings with the SEC.

23 Mr. Ziman and Mr. Mather have now presented
24 information regarding the partnership basis. Based on
25 this presentation, Respondent would like additional time

1 to review its basis calculations to determine what -- to
2 re-review to determine the basis of the partnership in
3 2000 -- beginning of 2003 to determine the correct amount,
4 if any, of the reduction of liabilities of the
5 \$12.5 million amount.

6 Mr. Ziman also asserts that there are two errors
7 that make up the reduction of liabilities. First, Ernst &
8 Young, the preparer of the partnership returns, forgot to
9 include a \$5.6 million bottom dollar guarantee on his 2003
10 K-1. Second, the liability on Mr. Ziman's 2002 K-1 was
11 erroneously overstated by \$7.7 million attributed to the
12 allocation of built-in gain. Mr. Ziman asserts that
13 there's an entry error and no event in 2002 would have
14 caused this allocation. Under Todd and McColgean, and
15 Appeal of Wright Capital Holdings LLC, Franchise Tax
16 Board's determination to assess additional tax is presumed
17 correct, and a taxpayer has the burden of proving it to be
18 wrong. Unsupported assertions are not sufficient to
19 satisfy a taxpayer's burden of proof.

20 Mr. Ziman has provided sworn testimony from
21 Franky Low, a CPA and managing director employed by Ernst
22 & Young, attesting to these errors after reviewing E&Y's
23 work papers for the partnership. Mr. Low's Declaration
24 does not state that he had firsthand knowledge of
25 preparing the 2003 partnership returns or attests that he

1 directly supervised the debt computations for the
2 partnership. Instead, Mr. Low attests that he has
3 reviewed the Ernst & Young work papers. The \$5.6 million
4 bottom dollar guarantee document was never viewed by
5 Mr. Low and has not been provided by Mr. Ziman.
6 Additionally, Mr. Low did not state that he was involved
7 in the preparation of the 2002 partnership return, which
8 contained the claim \$7.7 million error. Mr. Low explains
9 that the \$7.7 million was an entry error but could not
10 provide any further context or explanation than what could
11 be read in the spreadsheets.

12 Under Appeal of Don A. Cookston, the failure of a
13 party to produce evidence within his control, which if
14 true, would be favorable to him, gives rise to presumption
15 that the evidence is unfavorable. A taxpayer's inability
16 to produce records does not relieve the taxpayer of the
17 burden of proof. Mr. Ziman has failed to show -- has
18 failed to provide corroborating documentation to show that
19 he did not have an over \$12.5 million reduction of
20 partnership liabilities from to 2002 to 2003. Since
21 Franchise Tax Board's determination is presumed correct,
22 and Mr. Ziman has failed to meet his burden, the reduction
23 of liabilities amount should be considered a distribution
24 of cash and should be sustained.

25 For the second issue, for the basis of stock sold

1 in 2003, in 2003 Mr. Ziman sold shares in his REIT, Arden
2 Realty, Inc., and Citigroup, reporting on a Schedule D.
3 Please refer to Respondent's Exhibit WW, which provides a
4 table of stock at issue. In chronological order, there's
5 a sale of 2,000 shares of Citigroup, a sale of 89,733
6 Arden shares, a sale of 43,600 Arden shares, and a month
7 later a sale of 17,000 Arden shares, which is a total of
8 150,333 Arden shares.

9 Mr. Ziman has never provided any documentation
10 regarding the basis of the Citigroup shares. For the
11 Arden shares, Franchise Tax Board has made adjustments
12 under the basis ordering rules under Treasury Regulation
13 section 1.1021 subsection (c)(1) Roman numeral I, which
14 provides if a taxpayer sells or transfers shares of stock
15 in a corporation that the corporation -- that the taxpayer
16 purchased or acquired on different dates or at different
17 prices and the taxpayer does not adequately identify the
18 lot from which the stock is sold or transferred, the stock
19 sold or transferred is charged against the earliest lot
20 the taxpayer purchased or acquired to determine the basis
21 and the holding period of this stock.

22 Based on public filings, Mr. Ziman acquired 100
23 Arden shares from his initial contribution, 133,333 from
24 stock options, and 178,882 from an exchange of operating
25 partnership units. Based on the documentation provided by

1 Mr. Ziman, Franchise Tax Board adjusted the basis of the
2 Arden shares of 100 shares at zero dollars from his
3 initial contribution, 133,333 shares at \$20 per share for
4 the stock options, and the remaining 16,900 at \$44.72 per
5 share based on the gain reported on Mr. Ziman's 1997
6 Schedule D.

7 Mr. Ziman, for the stock at issue, reported a
8 loss of approximately \$500,000 for these shares.
9 Franchise Tax Board's adjustments total a gain of \$700,000
10 for a difference of \$1.2 million. Mr. Ziman claims the
11 stock's options were exercised at a share price of \$30.75
12 and should be given additional basis -- a total basis of
13 \$1.4 million. Mr. Ziman points to a contemporaneous SEC
14 filing that states that he received a value realized of
15 that same amount. Mr. Ziman claims this amount was not
16 reported as compensation on his '97 return but was
17 included in the around \$8 million gain reported on his
18 Schedule D. Mr. Ziman has not provided any evidence that
19 he recognized any gain from the exercise of his stock
20 options on his return.

21 Mr. Ziman's Schedule D clearly states that almost
22 \$8 million in long-term capital gain was from the exchange
23 of his operating partnership units to Arden shares. He
24 points out that the gain is inflated over the fair market
25 value of the Arden shares of the \$30.75 amount and,

1 therefore, includes the gain from the stock option.
2 However, if this was true, the math does not add up. If
3 the 178,882 Arden shares were purchased at \$30.75 with a
4 zero basis, the gain would be approximately \$5.5 million.
5 If you would include the gain of \$1.4 million from the
6 stock options, the total would be around \$6.9 million,
7 which is over a million less than the gain reported on
8 Mr. Ziman's Schedule D.

9 Second, Mr. Ziman has not explained why the gain
10 from his stock options would be included in a Schedule D
11 and not as executive compensation. Mr. Ziman has failed
12 to provide any corroborating evidence to support that the
13 gain was recognized from his exercise of the stock
14 options. Therefore, Franchise Tax Board correctly did not
15 include any additional gain in the basis of the Arden
16 shares in 2003.

17 Moving onto the third issue for the 2005 S
18 corporation property distribution. In 2005, Mr. Ziman's
19 S corporation, JETA, acquired property located on Malibu
20 Road. The funds used to purchase this Malibu Road
21 property was from a \$2 million transfer of funds from
22 Mr. Ziman to JETA and an \$11 million line of credit from
23 City National Bank with a personal guarantee by Mr. Ziman.
24 A month after escrow closed, JETA transferred the Malibu
25 Road property to Mr. Ziman's marital trust. Within the

1 same year, the \$11 million line of credit was paid off by
2 Mr. Ziman by Mr. Ziman's marital trust, executing a \$6.5
3 million trustee loan secured by the property and Mr. Ziman
4 paying the remaining \$4.5 million balance.

5 Based on the latest calculation, as included --
6 as Respondent's Exhibit EEE, Respondent or Franchise Tax
7 Board calculated Mr. Ziman had a stock basis of \$4.5
8 million in JETA. Therefore, since the value of the Malibu
9 Road property exceeded Mr. Ziman's stock basis, he
10 received a taxable distribution of property under Internal
11 Revenue Code section 1368, which provides that a
12 distribution is taxable to the shareholder for amounts
13 that are in excess of accumulated earnings of profits,
14 accumulated adjustments of accounts, and the shareholder's
15 basis in his stock.

16 First, Mr. Ziman asserts that the OTA lacks
17 jurisdiction for Franchise Tax Board's determination that
18 there was a property distribution because it's new matter
19 not raised in the Notice of Action. However, the property
20 distribution issue is not a new matter at appeal. In
21 Franchise Tax Board's 2005 NOA, it affirmed the NPA in
22 accordance with the January 29th, 2018, determination
23 letter and June 27th, 2018, letter marked as Respondent's
24 Exhibits BBB and DDD. On page 18 of Respondent's
25 determination letter, the last paragraph, Franchise Tax

1 Board asserted its alternative position of a property
2 distribution that it would pursue if it was determined
3 that there was a valid 1031 exchange.

4 Mr. Ziman had an opportunity to address this
5 alternative position at protest, but in Mr. Ziman's
6 response to the determination letter, marked as
7 Respondent's Exhibit CCC, they chose not to. Since the
8 property distribution issue was brought during protest,
9 and the position was affirmed in the 2005 NOA, this is no
10 longer a new issue at appeal.

11 Second, Mr. Ziman argues that the property
12 distribution is reduced by the line of credit that was
13 assumed by Mr. Ziman, citing to IRC section 301(b)(2) and
14 Treasury Regulation section 1301-1(f)(1). However, this
15 is not the applicable law in this matter. The IRC section
16 and Treasury Regulation cited apply to C corporations'
17 distributions of property under subchapter C. However,
18 property distributions of S corporations are governed
19 under subchapter S. One major difference between a
20 C corporation and S corporation is that S corporation has
21 a shareholder stock basis and a separate debt basis.

22 So a shareholder stock basis is used to determine
23 whether an S corporation's distribution of property is
24 taxable. A distribution is taxable to the shareholder for
25 amounts that are in excess of the accumulated earnings and

1 profits, accumulated adjustments accounts, and the
2 shareholder's basis in his stock. IRC section 1368
3 provides that in a case of a S corporation, which has no
4 accumulated earnings and profits, the amount of the
5 distribution that exceeds the shareholder's adjusted basis
6 of the stock shall be treated as gain from the sale or
7 exchange of property.

8 A shareholder's debt basis generally references
9 to the amount of debt a S corporation owes to a
10 shareholder, which is not -- which is not affect the
11 amounts calculated for determining whether a distribution
12 is taxable. Under IRC section 1367(b) (2) (A),
13 distributions, losses, and deductions reduce stock basis
14 to zero, and any excess losses and deductions reduce debt
15 basis. A shareholder's debt basis is only reduced by the
16 amounts specified in IRC section 1367(a) (2) (B), (C), (D),
17 and (E), relating to losses, deductions, noncapital,
18 nondeductible expenses, and certain oil and gas depletion
19 expenses.

20 Specifically excluded from reducing the
21 shareholder's debt basis is IRC Section 1367(a) (2) (A),
22 which are distributions by the corporation which are not
23 includable in the income of the shareholder under 1368.
24 Therefore, debt basis is not used in calculating whether a
25 property distribution is taxable under IRC 1368.

1 Mr. Ziman's personal guarantee of the line of credit is
2 irrelevant for determining the taxability of a property
3 distribution for an S corporation because it would only
4 affect his debt basis, not his stock basis.

5 Even if the OTA determines that the shareholder's
6 debt basis does reduce the amount of property
7 distribution -- distributions determination of gain,
8 Mr. Ziman's personal guarantee of the line of credit would
9 not generate debt basis. Prior to the issue -- prior to
10 the issuance of regulations governing debt basis in 2014,
11 courts applied the judicially created actual economic
12 outlay test to determine whether a debt created -- a debt
13 basis in an S corporation for an S corporation holder. In
14 *Perry v Commissioner* under the economic outlay doctrine to
15 obtain basis in an S corporation with respect to debt, a
16 shareholder must make an actual economic outlay. The
17 outlay must somehow leave the shareholder worse in
18 materials sense, and a debt must run directly between the
19 shareholder and the S corporation.

20 Here, there was no actual economic outlay because
21 Mr. Ziman was not made financially worse by his guarantee
22 on the line of credit. Only once the Malibu property was
23 distributed to his marital trust, Mr. Ziman paid the line
24 of credit with a new debt with the property -- on the
25 property in cash. There was no economic effect on

1 Mr. Ziman while JETA held the Malibu real property for 2
2 months. Additionally, the debt was not directly between
3 Mr. Ziman and JETA. The line of credit between City
4 National Bank and JETA with Mr. Ziman's personal
5 guarantee. Therefore, Mr. Ziman's personal guarantee on
6 the line of credit would not increase that basis on the
7 S corporation.

8 Respondent calculated Mr. Ziman's stock basis
9 while on a -- based on available information in JETA's
10 S corporation return and included the \$2 million capital
11 contribution based on the documentation provided at
12 appeal. Mr. Ziman's stock basis is \$4.5 million. The
13 escrow statement provided by Mr. Ziman states that the
14 value of property distribution of Malibu Road is
15 \$13 million. Therefore, Mr. Ziman had a gain of
16 \$8.5 million. The additional tax amount from this gain
17 exceeds the amount stated on FTB's NPA. Therefore, FTB
18 respectfully requests that the 2005 NPA be sustained in
19 full. Now, once Mr. Ziman made the payments on the line
20 of credit, that would increase his debt basis. But,
21 again, that basis has no influence on the determination of
22 whether a property distribution is taxable.

23 Finally, last issue is interest abatement.
24 Franchise Tax Board did not abuse its discretion in
25 granting interest abatement for a total of 1,246 days.

1 Respondent made proper, meticulous, and fair interest
2 abatement determination based on facts and law. Franchise
3 Tax Board abated interest according to the activity
4 provided, which are labeled as Respondent's Exhibits LL to
5 UU. There's no evidence that Franchise Tax Board abused
6 its discretion in refusing to abate interest during the
7 audit or protest periods. And it did not act arbitrarily
8 or capriciously in its determination not to abate
9 additional interest.

10 Mr. Ziman has not demonstrated that the Franchise
11 Tax Board abused its discretion in making its interest
12 abatement to determinations based on the activity
13 conducted -- conducted on appeal. And, accordingly,
14 Appellants are not entitled to additional abatement of
15 interest. Since Mr. Ziman has failed to meet his burden
16 on the matters of this appeal, Respondent respectfully
17 requests that the OTA sustains Respondent's
18 determinations.

19 As previously mentioned, Franchise Tax Board
20 request that the record to be held open to respond to the
21 declarations that were newly submitted, and to review its
22 basis schedules to see if it made -- force -- determine
23 the correct determinations on the reduction of liabilities
24 for 2003.

25 If you have any further questions, I'll be happy

1 to answer them. Thank you.

2 JUDGE STANLEY: Thank you.

3 Judge Vassigh, do you have any questions?

4 JUDGE VASSIGH: Not at this time. Thank you.

5 JUDGE STANLEY: Judge Tay, do you?

6 JUDGE TAY: Just one question. Just to clarify,
7 did you say that when Mr. Ziman paid the \$4.5 million --
8 repaid the \$4.5 million that that created debt basis in
9 the S corp?

10 MR. KNOLL: Yes. Once -- once the personal
11 guarantee is paid by the shareholder, that would have
12 created debt basis. Again, debt basis is only used when
13 stock basis is used and only for certain losses and
14 deductions of the S corporation.

15 JUDGE TAY: Okay. That's all the questions I
16 have.

17 JUDGE STANLEY: Okay. At this point then, I'm
18 going to go ahead and turn it back to Mr. Mather to do any
19 rebuttal that he wishes to do.

20 MR. MATHER: Thank you.

21

22 CLOSING STATEMENT

23 MR. MATHER: I don't have much in the way of
24 rebuttal. The Franchise Tax Board is living in a fantasy
25 land. On the EY issue, we have documentation up, down,

1 and sideways to show exactly why the \$5.6 million bottom
2 dollar guarantee was not a -- a deemed distribution as a
3 result of debt basis. The only way that you can possibly
4 decide that the Franchise --- or that we have failed to
5 meet our burden of proof on that issue is just ignore
6 everything in the record. I mean -- and Franchise Tax
7 Board wins every case if you do that, because you can
8 never satisfy the burden if you ignore every single piece
9 of evidence, which is dozens of documents and -- and
10 unimpeached testimony from declarations and Mr. Ziman.

11 The Malibu Road, I'm not sure I followed that
12 explanation and computation of basis, but it is a -- it is
13 a fabrication. It is a complete misstatement of the law.
14 You know, the notion that somehow a property distribution
15 comes out of some basis but not other basis. And then
16 when you repay the debt as a capital contribution that it
17 is debt basis, it's -- it's just bizarre. It's a bizarre
18 explanation of what -- how the basis rules works. So the
19 fact remains that on Malibu Road you can't separate the
20 debt from the property, and it's -- in one way or another,
21 it's a \$500,000 distribution for which there was plenty of
22 basis.

23 And then again with respect to the -- the issue
24 of the alternative argument that came up 8 years after the
25 protest was filed, once those issues -- once the NPA

1 issues were conceded -- I've said this multiple times --
2 you know, that's that. You know, there's no new NPA.
3 There's no coming in with a Notice of Action that's based
4 on arguments that are entirely different and new from what
5 was -- what was submitted in the audit, what was
6 protested, and what was included in the NPA, and what was
7 protested.

8 So -- and then I don't even know, you know,
9 whether -- this is not an issue that I addressed
10 previously, because I just think that it would be a
11 travesty to allow this issue to even be raised. But at
12 least at a bare minimum, all of the facts on the Malibu
13 Road have to be construed against the Franchise Tax Board
14 for raising this issue so far after -- after the fact.
15 And we've got abundant facts to show how -- how that debt
16 was inextricably linked to that -- to that property.

17 So apart from that, I think that concludes my
18 rebuttal.

19 JUDGE STANLEY: Okay. Thank you.

20 And, Mr. Knoll, we had given time in case
21 Franchise Tax Board wanted to respond to the arguments
22 with respect to raising the new issue and, particularly,
23 as to whether the burden of proof shifts to the Franchise
24 Tax Board.

25 MR. KNOLL: I'm sorry. Did you want me to

1 respond whether if it's a new matter that the burden has
2 shifted, or whether Franchise Tax Board should present the
3 alternative -- or the argument based off if it has the
4 burden of proof?

5 JUDGE STANLEY: Well, I think that you did in
6 your presentation address what your -- what your position
7 is with respect to raising a new theory. But I didn't
8 hear whether you addressed whether or not if it is indeed
9 a new theory that's been raised, would the burden of proof
10 shift to the Franchise Tax Board to prove that particular
11 issue.

12

13 CLOSING STATEMENT

14 MR. KNOLL: Franchise Tax Board believes that
15 this is not a new matter brought at appeal, which would
16 require that the Franchise Tax Board have the shifted
17 burden of proof based off it's alt -- based on this
18 altered imposition that was asserted during protest, and
19 it was affirmed in the Notice of Action. So, therefore,
20 this is not a new matter at appeal. Mr. Ziman had the
21 opportunity to address this alternative argument that was
22 presented in the determination letter and did not choose
23 to do so.

24 JUDGE STANLEY: Okay. Do you have any final
25 response, Mr. Mather?

1 ADDITIONAL CLOSING STATEMENT

2 MR. MATHER: I want to know what a Notice of
3 Proposed Assessment is. It just seems to be a number on a
4 page. It's not a determination of anything. It doesn't
5 have anything to do with any issues. The Franchise Tax
6 Board just slaps a number on a page and makes the stuff up
7 later. I mean, that to me is -- is just a -- a system
8 that I've never heard of, and I'm kind of astonished that
9 they would even make those -- that -- that position.

10 JUDGE STANLEY: Okay. Thank you.

11 Judge Vassigh, do you have any final questions?

12 JUDGE VASSIGH: I do not. Thank you.

13 JUDGE STANLEY: Judge Tay?

14 JUDGE TAY: No questions. Thank you.

15 JUDGE STANLEY: Okay. And I don't either, so
16 we're going to conclude this hearing.

17 First of all, were concluding it within -- well
18 within the time that we had set out for this, and I think
19 it's in part to the preparation of the parties. I think
20 you've done a great job with getting a 500-something page
21 exhibit binder last night near close of business and being
22 able to point us to the correct pages in the file and
23 present in the way that you have. It's been very easy to
24 follow. So we appreciate the efficiency and the
25 presentations of the parties.

1 We are going to be holding the record open for
2 the purposes stated by Mr. Knoll; first of all, to allow
3 the Franchise Tax Board to address the new exhibits; and
4 second of all, to allow them to review calculations for
5 the 2003 reduction and liabilities issue. So what I'll do
6 is I'll issue an additional briefing request or order, and
7 I'll have the Franchise Tax Board file theirs first and
8 then allow Appellants to respond to that.

9 Mr. Knoll, how long do you think you'll need?

10 MR. JOHNSTON: Judge Stanley, may I make a
11 comment?

12 JUDGE STANLEY: Yes.

13 MR. JOHNSTON: FTB would like the opportunity to
14 propound questions to the declarants of those new ones,
15 and then after receipt of those, then file a supplemental
16 brief to the OTA to explain the relevance -- the
17 declarations and the responses relevance. In terms of
18 timeframe, if the questions go out next week, I would
19 anticipate allowing the declarant 30 days to respond to
20 us. And then I would request 30 days in order to prepare
21 a brief to explain to the OTA FTB's view on the relevance.
22 So I would request 75 days.

23 JUDGE STANLEY: Okay. And I was going to say
24 that with respect to questions, I believe that our
25 regulations state that if you wanted to propound

1 questions, it should be within 15 days so that we follow
2 the timeline that you've laid out. So I'll go ahead and
3 give the Franchise Tax Board 15 days to propound questions
4 and then as you said, give 30 days for the declarants to
5 respond to that, and additional 30 days for the --

6 Did you say an additional 30 days?

7 MR. JOHNSTON: That's correct, Judge Stanley.

8 JUDGE STANLEY: -- for the Franchise Tax Board to
9 file its additional brief. And then 30 days after that,
10 we're going to give the Appellants the opportunity to file
11 an additional brief that's responsive, not to rehash any
12 of the other subjects that we've already addressed fully.
13 So it'll be limited to just the declarations and anything
14 new that the Franchise Tax Board raises.

15 I do also need to state on the -- or get an
16 agreement on the record. I skipped the stipulations and
17 concessions earlier in the hearing, but we do -- the
18 Office of Tax Appeals has consolidated the two cases, the
19 one with Ms. Edwards. So I want to clarify for the record
20 that Mr. Knoll -- the Franchise Tax Board intends to grant
21 innocent spouse relief to Ms. Edwards; is that correct?

22 MR. KNOLL: That's correct.

23 JUDGE STANLEY: And Mr. Ziman is not objecting;
24 is that correct?

25 MR. MATHER: That's correct.

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Mr. Ziman: Correct.

JUDGE STANLEY: Okay. So consolidated case can have one sentence in the opinion when it come out.

Okay. Does anybody else have anything else before we conclude?

MR. MATHER: Nothing for Appellant.

MR. KNOLL: Nothing for Respondent.

JUDGE STANLEY: Okay. Then the record will be closed once post-hearing briefing is concluded. And the Judges will meet and deliberate and issue an opinion within 100 days after the record closes. So after the date of the letter that goes out to the party saying briefing is now complete, we will issue our opinion.

Thanks, everyone, for participating, and thanks, as I said, for your preparation and efficiency.

Mr. Johnston?

MR. JOHNSTON: May I make one additional question? FTB requested time to review its adjustments. Would you like that to be submitted along with our supplemental brief?

JUDGE STANLEY: Yes.

MR. JOHNSTON: Thank you.

JUDGE STANLEY: Okay. Then if there's nothing else, then we're going to adjourn this hearing for the day.

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And thank you, again, for participating, and we
look forward to hearing from you again.

(Proceedings adjourned at 4:42 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 12th day of April 2024.

ERNALYN M. ALONZO
HEARING REPORTER