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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
D. MOTLEY and M. MOTLEY, ) OTA NO. 20056207  
)  
APPELLANTS. )  
)  
\_\_\_\_\_ )

Transcript of Proceedings,  
taken at 12900 Park Plaza Drive, Suite 300,  
Cerritos, California, 90703, commencing at  
9:30 a.m. and concluding at 10:20 a.m. on  
Wednesday, July 17, 2024, reported by  
Ernaly M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ MIKE LE

Panel Members: ALJ AMANDA VASSIGH  
ALJ KEITH LONG

For the Appellant: D. MOTLEY  
SANFORD MILLAR

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
SONIA WOODRUFF  
NATHAN HALL

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-17 were received into evidence via Judge Le's minutes and orders.)

(Department's Exhibits A-L were received into evidence via Judge Le's minutes and orders.)

O P E N I N G S T A T E M E N T

P A G E

By Mr. Millar 7

A P P E L L A N T ' S  
W I T N E S S E S :

D I R E C T

C R O S S

R E D I R E C T

R E C R O S S

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P R E S E N T A T I O N

P A G E

By Mr. Millar 19

By Ms. Woodruff 24

C L O S I N G S T A T E M E N T

P A G E

By Mr. Millar 32

1 Cerritos, California; Wednesday, July 17, 2024

2 9:30 a.m.

3  
4 JUDGE LE: Let's now go on the record.

5 We' are opening the record in the Appeal of  
6 Motley. This matter is being held before the Office of  
7 Tax Appeals. The OTA Case Number is 20056207. Today's  
8 date is Wednesday, July 17, 2024, and the time is  
9 9:30 a.m. This hearing is being held in person in  
10 Cerritos, California.

11 Today's hearing is being heard by a panel of  
12 three Administrative Law Judges. My name is Mike Le, and  
13 I will be the lead judge. Judge Amanda Vassigh and  
14 Judge Keith Long are the other members of this tax appeals  
15 panel. All three judges will meet after the hearing and  
16 produce a written opinion as equal participants. Although  
17 the lead judge will conduct the hearing, any judge on this  
18 panel may ask questions or, otherwise, participate to  
19 ensure we have all the information needed to decide this  
20 appeal.

21 Now for the parties' introductions. For the  
22 record, will the parties please state their names and who  
23 they represent, starting with Respondent.

24 MS. WOODRUFF: Good morning. Sonia Woodruff for  
25 Respondent.

1 MR. HALL: Nathan Hall, on behalf of Respondent.

2 JUDGE LE: Thank you.

3 MR. MILLAR: Sanford Millar, S-a-n-f-o-r-d  
4 M-i-l-l-a-r, for the Appellant, Dale and Mary Motley.

5 MR. MOTLEY: Good morning. Dale Motley,  
6 M-o-t-l-e-y, Appellant.

7 JUDGE LE: Thank you.

8 Let's move onto my minutes and orders. As  
9 discussed with the parties at the prehearing conference on  
10 June 24, 2024, and notated in my Minutes and Orders,  
11 there's one issue in this appeal, and that's whether  
12 Appellant have shown that they had a higher tax basis in  
13 their property than allowed by Respondent Franchise Tax  
14 Board. D. Motley will testify at this hearing.  
15 Appellant's Exhibits 1 through 17 and Respondent's  
16 Exhibits A through L were entered into the record in my  
17 minutes and orders. This oral hearing will begin with  
18 Appellant's presentation, up to 15 minutes for the witness  
19 testimony and up to 30 minutes for argument.

20 Before we start with Appellant's presentation,  
21 Respondent, any questions or comments at this time?

22 MS. WOODRUFF: No questions or comments. Thank  
23 you.

24 JUDGE LE: Thank you.

25 And turning to the Appellant, any questions

1 before we begin with your presentation?

2 MR. MILLAR: None.

3 JUDGE LE: Thank you.

4 And in that, case, Mr. Motley, would you raise  
5 your right hand.

6

7 D. MOTLEY,

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

11

12 JUDGE LE: Thank you.

13 Okay. Mr. Miller, please proceed.

14

15 OPENING STATEMENT

16 MR. MILLAR: As Your Honor has noted, there is  
17 one issue here and that is the adjusted basis of the  
18 property that was sold. It is the position of the  
19 Appellants that the Franchise Tax Board should have given  
20 credit for the value of the taking by the Coastal  
21 Commission on behalf of the State of California; the  
22 taking, as reflected in the permit dated, July 6th, 1993.

23 The evidence will show that the government has  
24 failed to include the value of the taking as part of the  
25 taxpayer's basis in the real property. And evidence will

1 show that the Franchise Tax Board has failed to include  
2 the amount of an equalizing pavement that the taxpayer  
3 paid to an ex-spouse as part of the taxpayer's basis in  
4 the real property. The evidence will show that the  
5 Franchise Tax Board failed to apply the Cohan doctrine to  
6 determine the taxpayers' basis in the real property. The  
7 evidence will show that when the California Coastal  
8 Commission required the taxpayers to give the California  
9 Coastal Commission an interest in the taxpayers' real  
10 property, that was a taking.

11 JUDGE LE: When you speak, can you lower your  
12 microphone so that way you're speaking directly into the  
13 microphone. Thank you.

14 MR. MILLAR: Sure.

15 The evidence will show that the taking was like  
16 another construction-related cost that the taxpayer  
17 incurred in connection with the real property; that the  
18 taking was just like any permit fee that the taxpayers  
19 paid the City of Malibu. Finally, the evidence will show  
20 that the only evidence of a value of the taking by the  
21 California Coastal Commission is and has been submitted by  
22 the taxpayers. That is a million dollars.

23 The taxpayers have submitted an appraisal of the  
24 value of that taking. The Franchise Tax Board has refused  
25 to acknowledge that it even was taking, requiring just

1 compensation. The Franchise Tax Board has failed to  
2 submit any authority that the value of the taking is not  
3 part of the taxpayers' basis in the real property. The  
4 evidence will show that when the taxpayer, Mary Motley,  
5 obtained a divorce from her first husband, Tom Hirsh, she  
6 had to make an equalizing payment to Dr. Hirsh. The  
7 evidence will show that an exchange for Dr. Hirsch's  
8 interest in the real estate, the taxpayer paid Dr. Hirsh  
9 \$465,000. This \$465,000 is part of the taxpayers' basis  
10 in the real property and should be added to the  
11 acquisition cost of \$135,000.

12 The failure to apply the Cohan doctrine -- the  
13 Cohan doctrine allows the taxpayer to establish items that  
14 should be included in the basis, even if the precise  
15 amount cannot be established. The evidence will show that  
16 because of the passage of 20, 30, or 40 years, it was not  
17 possible to fully and accurately establish the exact  
18 amount of some of the expenses that were part of  
19 taxpayers' basis in the real property. However, the  
20 evidence will show that there is evidence that these  
21 expenses were incurred and that they should be included in  
22 the taxpayers' basis for the real property.

23 With that, I'm ready to proceed.

24 JUDGE LE: Please continue.

25 MR. MILLAR: I'd like to call Dale motley.



1 they came and inspected. This was another construction  
2 cost, and that's how I viewed it.

3 Q In terms of construction cost, there are  
4 \$465,000. Excuse me. There is -- there are a number of  
5 items that were claimed but unsupported by records?

6 A That's correct.

7 Q I'm going to show you a document and ask you to  
8 review the document, in particular, lines 1 through 12.

9 A Yes. I'm familiar with it. This is part of our  
10 brief.

11 Q Okay. And do these expenses represent the kind  
12 of expenses that --

13 JUDGE LE: I'm sorry. Can you let us know which  
14 exhibit you're looking at?

15 MR. MOTLEY: Yes. This is page 16 of the  
16 Appellants' reply brief. It just has a list of expenses.

17 MR. MILLAR: I'm sorry, Your Honor.

18 JUDGE LE: Is that Exhibit A?

19 MR. MOTLEY: It's not an exhibit. It's just a  
20 page from the brief, Your Honor, with a list of expenses  
21 on it.

22 JUDGE LE: Okay. Give me just one second here.

23 Okay. Thank you. You may proceed.

24 MR. MILLAR: Thank you.

25 ///

1 BY MR. MILLAR:

2 Q Now, can you explain Item No. 1, \$45,000 for a  
3 swimming pool?

4 A Certainly. That -- the swimming pool was put in  
5 by Dr. Hirsh. And he indicated to me that he traded  
6 dental services for the installation of the pool. The  
7 pool is about a 40-foot kidney-shaped pool, river rock  
8 trim. It had an attached jacuzzi. And he said he traded  
9 \$45,000 for dental services for the pool. Now, we had no  
10 receipts for that, and I don't believe that the government  
11 allowed the \$45,000. I think their number was \$15,000.  
12 But, clearly, a swimming pool like that is going to cost  
13 you at least \$45,000, but we had no documentation. And  
14 that was done in the late 70s, early 80s. So that's one  
15 example of what Mr. Millar is talking about.

16 Q What about Ziegler Kirven Parrish Architects?

17 A Okay.

18 Q That was \$50,400.

19 A Once again, all the money that was spent with  
20 Ziegler Kirven was for the construction of the property.  
21 They were the architects that did the design and were  
22 involved in the construction of the project all during the  
23 project.

24 Q You didn't own any other property at that time,  
25 did you?

1           A    No.  The only property I owned in Malibu was the  
2 Malibu property that's at issue here.

3           Q    Okay.  \$394,000 in 1994 for the remodel.  What  
4 was that?

5           A    Oh, that was the number that was accepted by the  
6 government.  The ones with the asterisks were the ones the  
7 government did accept.

8           Q    Okay.  \$55,120 to Bill DeLucia in 1996?

9           A    Okay.  Bill DeLucia was one of the members of the  
10 crew that was involved in the construction.  When the main  
11 contractor walked off the job, Mr. DeLucia stayed and  
12 helped me finish the project.  To say the least, it was  
13 chaotic.  We did submit exhibits of some of his check  
14 register regarding expenses that he incurred and then  
15 billed me for in connection with the project.  And that  
16 was another number that the government didn't accept.  But  
17 once again, yeah, this goes back to 1996.  And like I  
18 said, it was incredibly chaotic when the main contractor  
19 left and Mr. DeLucia stepped up and helped me finish the  
20 project.

21          Q    Did you pay Mr. DeLucia by check or by credit  
22 card or in cash?

23          A    I believe credit -- check and credit card.  I'm  
24 not sure if I ever gave him cash.  But once again, we  
25 submitted as an exhibit a portion of his check register.

1           Q    Okay.  What about \$318,287.72, repairs and  
2   upgrades?

3           A    Well, those are additional expenses occurred  
4   between 2006 and 2014.  These were, after the project was  
5   built, there was a continuing need to fix problems from  
6   the original construction, as well as make improvements.  
7   And I've thought of a number of things that I had no  
8   documentation for.  And once again, it was never my intent  
9   to sell the property.  But I know I traded legal services  
10  of \$15,000 to a construction company to remove the debris  
11  from the construction.  There was never any documentation  
12  about that.  I know that I paid a neighbor, who is in the  
13  business, to change our entry date from a single gate to  
14  Twinleaf remote-controlled power gate.  That was another  
15  \$15,000.

16           I spent -- I know I spent \$5,000 working on the  
17  pool.  I'm trying to put in a new bottom on it.  And I  
18  believe that was credit cards.  One of the repairs to the  
19  deck off the bedroom, I used a local tradesman, and I  
20  think I paid him \$10,000, once again by credit card.  But  
21  these are examples of those types of expenses that they  
22  were ongoing and not well documented.  I believe the last  
23  payment I made to another contractor that I had that did a  
24  lot of the repair work was Michael Taylor, and I think I  
25  paid him another \$24,000 after the property was sold.  I

1 don't know if we had documentation on that.

2 So those are all examples of things that clearly  
3 were incurred because, at the end of the day, the property  
4 sold for \$6 million. And everything was in good shape,  
5 had been repaired, and was attractive to the buyer.

6 Q Thank you. Now, what size was the house at the  
7 time it was acquired?

8 A I believe it was 2,200 square feet.

9 Q And your remodel added how much?

10 A When the remodel was done, it was 3,500 square  
11 feet plus a number of decks that didn't exist before the  
12 remodel.

13 Q Okay. And what was the requirement of the  
14 Coastal Commission?

15 A Well, without the Coastal Permit you couldn't do  
16 anything. Yeah. You couldn't even get the permit from  
17 the City of Malibu until you first gave the Coastal  
18 Commission their deed restriction, which they wanted to be  
19 in the first position. In other words, every incumbrance  
20 on the property was subordinated to the Coastal Permit,  
21 including the purchase money first mortgage; that the  
22 Coastal Commission had to be in first position before they  
23 would issue the Coastal Development Permit. And then once  
24 that was issued, then you could go forward with the city  
25 and get city building permit.

1 Q How Long did that process take?

2 A Months and months. I don't really recall now.  
3 Back in 1992.

4 Q Okay. You don't recall if there were any fees  
5 incurred?

6 A There were fees paid to the Coastal Commission in  
7 connection with that obtaining the permit, yes.

8 Q Do you know how much those were?

9 A I don't recall.

10 Q Okay. And just to reiterate, you could not have  
11 gotten the building permit from the City of Malibu without  
12 offering the deed restriction?

13 A The Coastal Permit and deed restriction were the  
14 prerequisite to doing any development on the property.

15 Q Okay. And what did the deed restriction do?

16 A It did a number of things. It granted the  
17 Coastal Commission the right to access the property at any  
18 time they wanted. Once again, it put them in first  
19 position ahead of any incumbrance on the property and  
20 restricted the development of the property to only those  
21 uses that were approved by the Coastal Commission.

22 Q Were there some uses that you had included in  
23 your application that were denied?

24 A I don't recall.

25 MR. MILLAR: Okay. I would like to call the

1 Court's attention to Exhibit B to our brief.

2 JUDGE LE: Exhibit B that's attached to  
3 Appellant's reply brief?

4 MR. MILLAR: Yes.

5 JUDGE LE: Okay. Thank you.

6 MR. MILLAR: Paragraph 3. I can read it. It is  
7 intended that this deed restriction is irrevocable and  
8 shall constitute an enforceable restriction within the  
9 meaning of Article 135(b) of the California constitution.

10 BY MR. MILLAR:

11 Q Was that your understanding?

12 A Yes, that it was a covenant running with the land  
13 that I believe that it was irrevocable and a restriction  
14 on any use not approved by the Coastal Commission.

15 Q Okay. Did you appreciate that it was a taking at  
16 the time it was granted?

17 A As I said, I considered it another expense, like,  
18 writing a check to the city for the building permit.  
19 Instead of writing a check, I wrote it -- I signed a deed  
20 over to the State.

21 Q Now, you have estimated your expenditures based  
22 on your lack of records. How did you come up with that  
23 estimate?

24 A As I'd stated earlier, there were a number of  
25 things that I specifically recalled, and other items I had

1       some documents I had for that I don't believe were  
2       accepted by -- by the government.

3               MR. MILLAR: May I have a moment?

4               JUDGE LE: A moment, yeah. How long do you need?

5               MR. MILLAR: Just a moment.

6               JUDGE LE: Okay.

7       BY MR. MILLAR:

8               Q     You had an appraisal done on the value of the  
9       taking?

10              A     I did.

11              Q     And what was that value?

12              A     The appraisal value of the taking at \$1 million.

13              Q     And the person who did that appraisal was an  
14       competent appraiser?

15              A     Yes, it was. Glass Ratner is a very well  
16       regarded firm.

17              Q     And we have submitted that appraisal?

18              A     I believe it's Exhibit D to the Appellants' reply  
19       brief.

20              Q     Do you know if the State of California submitted  
21       any appraisal?

22              A     I've seen no other evidence of the value of the  
23       taking, other than the appraisal that was submitted on my  
24       behalf.

25              MR. MILLAR: Okay. I have nothing further of

1 this witness.

2 JUDGE LE: Thank you. You made proceed with your  
3 arguments.

4

5 PRESENTATION

6 MR. MILLAR: There is a long line of cases going  
7 back to Dickinson in 1947. Nollan in 1996 and Sheetz in  
8 2000 --

9 JUDGE LE: Give me just one second here.

10 Let me just confirm, Franchise Tax Board, do you  
11 want to ask questions of the witness at this point in  
12 time?

13 MS. WOODRUFF: We have no questions at this  
14 point.

15 JUDGE LE: Okay. Thank you.

16 And let me check with Co-Panelists.

17 Judge Long, any questions for the witness at this  
18 time?

19 JUDGE LONG: I'll reserve my questions for the  
20 moment. Thank you.

21 JUDGE LE: Thank you.

22 And Judge Vassigh, any questions?

23 JUDGE VASSIGH: I don't have any questions at  
24 this time.

25 JUDGE LE: Thank you.

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Go ahead. You made proceed.

MR. MILLAR: Okay.

-- that established that when there is a taking, as a there is in this case, the taxpayer is entitled to compensation. That compensation can take two forms. It can take the form of a cash payment or it can take the form of an adjustment to basis. An adjustment to basis is treated just -- in this case, like a building permit would be an adjustment to basis.

Would you like the citations on Sheetz and Nollan.

JUDGE LE: I believe for this panel, if the citations have already been provided in your briefs, I don't think you no need to cite the citations. You can generally refer to it, if you want.

MR. MILLAR: Okay.

JUDGE LE: Thank you.

MR. MILLAR: What we have here is a clear taking by the California Coastal Commission. The requirement of a irrevocable deed restriction to allow pass or pass by has been determined under Nollan, to constitute a taking, and Dolan.

JUDGE LE: Can you spell that for the stenographer, please.

MR. MILLAR: D-o-l-a-n and N-o-l-a-n [sic]. They

1 are two separate cases.

2 JUDGE LE: Thank you.

3 MR. MILLAR: The Sheetz case is the United States  
4 Supreme Court case holding that there is no distinction  
5 between the actions of an administrative agency and any  
6 other form of taking. In this case, the administrative  
7 agency was the California Coastal Commission, and it  
8 required the deed restriction as a condition of granting a  
9 development permit. The undocumented cost should be  
10 allowed based upon the anecdotal evidence as to the  
11 increase in value of the property based upon the  
12 difference between its acquisition cost and its sale price  
13 and the redevelopment expenditures that were incurred.  
14 Under the Cohan rule, the taxpayer is required -- is  
15 allowed to estimate in good faith, is adjustments to basis  
16 based upon the facts as existing at the time.

17 I have nothing further at this time. I reserve  
18 my time.

19 JUDGE LE: Okay. Thank you so much, Mr. Motley  
20 for your testimony and Mr. Millar for your arguments.

21 Let me turn to my Co-Panelists here to see if  
22 they have any questions.

23 Judge Long, any questions at this time?

24 JUDGE LONG: Yes. I had a question -- a few  
25 questions probably about the land valuation. So it looks

1       like -- if I'm understanding this land valuation  
2       correctly, they're saying that the value of the property  
3       prior to the taking was approximately \$1.5 million in  
4       1993, and the taking was approximately two-thirds of that;  
5       is that correct? Am I understanding that?

6               MR. MILLAR: The valuation was done at a moment  
7       in time, and it was -- the value of the taking was based  
8       upon that moment. So it's not based upon the acquisition  
9       cost.

10              JUDGE LONG: Right. I understand that. But I  
11       mean, what I'm trying to say is -- what I'm trying to  
12       clarify, if you look at the last paid of the valuation we  
13       have 2020 value, most current land assessment, \$13 million  
14       and then discounted rate. It looks like the average is  
15       8 percent. Valuing the property in 1993 at \$1,506,878,  
16       and the taking -- or the alleged taking looks like it was  
17       approximately two-thirds of the property. Is that -- was  
18       that correct? They took 37,806 square feet?

19              MR. MILLAR: No. I believe that the appraiser  
20       states that it was based upon the then current value.  
21       Because he says it was one-sixth of the value of the --  
22       one-sixth of the property, if you look at the beginning of  
23       the appraisal.

24              JUDGE LONG: Okay.

25              MR. MILLAR: So it was based upon the value as

1 of --

2 JUDGE LONG: As of 2020?

3 MR. MILLAR: -- 2020.

4 JUDGE LONG: So if it was based on the value as  
5 of 2020, wouldn't the basis be -- if we were to find that  
6 there was basis -- adjustment based on this taking,  
7 wouldn't that be the value of the taking in 1993 when it  
8 occurred?

9 MR. MILLAR: I believe you could take that  
10 position.

11 JUDGE LONG: Okay. And is there anything in the  
12 evidence that says what the value of the taking would have  
13 been in 1993?

14 MR. MILLAR: No, there isn't.

15 JUDGE LONG: Okay. Thank you. I don't have any  
16 further questions.

17 JUDGE LE: Thank you, Judge Long.

18 Judge Vassigh, any questions for Appellant?

19 JUDGE VASSIGH: Thank you. I don't have any  
20 questions at this time.

21 JUDGE LE: Thank you.

22 I do have a few questions here for the witness.  
23 At the time you bought the Malibu property in 1975, did  
24 you know about the California Coastal Commission?

25 MR. MOTLEY: I did not purchase the property in

1 1995. My wife and her first husband purchased it in '75.

2 JUDGE LE: All right. Thank you. Was there any  
3 legal action filed against any government agency for the  
4 alleged taking of property?

5 MR. MOTLEY: No.

6 JUDGE LE: Thank you. That's all the questions I  
7 have at this moment.

8 Let's now to Respondent Franchise Tax Board.

9

10 PRESENTATION

11 MS. WOODRUFF: Good morning, Panel members, and  
12 thank you for your time today.

13 Are you able to hear me? Okay. Thank you.

14 As you know, the central issue in this case is  
15 whether Appellants have satisfied their burden of proof to  
16 show they correctly reported the basis in their Malibu  
17 residence, which they sold in 2014. The Appellants sold  
18 the residence for \$6 million and reported a total adjusted  
19 basis of approximately \$3 million. Respondent audited  
20 Appellants' 2014 return and found they were unable to  
21 prove the reported basis in their home.

22 So there are three main issues of dispute  
23 regarding Appellants' basis. First, the parties disagree  
24 as to the original purchase price and the amount that may  
25 be included in basis for the acquisition of the home.

1 Appellants originally stated they acquired the home for  
2 \$640,000, but public records reflect Appellant Mrs. Motley  
3 purchased the home for \$135,000 in 1975 with her former  
4 husband.

5 Second, Appellants argue they spent over \$2.3  
6 million in construction cost to remodel the home but  
7 cannot provide evidence to support the vast majority of  
8 these expenses. Appellants point to the amount of loans  
9 taken against the residence to prove these construction  
10 costs, but loan amounts do not show amounts actually spent  
11 on capital improvements. So Respondent looked to public  
12 records to attempt to verify Appellants' claims.  
13 Respondent allowed basis from cost reported in building  
14 permits, as well as any additional costs Appellants were  
15 able to substantiate on appeal. This leaves approximately  
16 \$1 million of the taxpayers' claimed expenses still in  
17 dispute.

18 The third area of disagreement is, as you have  
19 heard today, the issue of whether Appellants may include  
20 the value of an alleged governmental taking in the basis  
21 of their residence. Of course, as I will explain, not  
22 only did no taking occur here, but even if there were a  
23 taking, it could not be included in basis. Basis is the  
24 actual cost of the property adjusted by certain amounts  
25 that are expressly allowed by law. The law does not

1 recognize the taking as an allowable basis adjustment.

2 I'll now address each of these issues in greater  
3 detail. First, the acquisition cost, Appellants initially  
4 claimed an original purchase price of 6 -- or excuse me --  
5 of \$175,000. They now appear to concede the original  
6 purchase price was \$135,000 as reflected in public  
7 records. Appellant Mrs. Motley purchased the home in 1975  
8 with her former husband. She argues she should be allowed  
9 to increase the original cost basis by the value of  
10 property that she gave up incident to her divorce from her  
11 former husband. And she claims the value of that was  
12 \$465,000. Specifically, she argues she should be allowed  
13 to increase basis by the value of her former husband's  
14 dental practice, which he kept in the divorce.

15 Now, Internal Revenue Code section 1041 provides  
16 the clear rule for transfers of property incident to  
17 divorce. That rule states that no gain or loss is  
18 recognized for these transfers because they are treated as  
19 gifts for income tax purposes. The transferee spouse  
20 receiving the property then takes the transferor's basis  
21 in the property. So, in this case, that means Appellants'  
22 basis is \$135,000. And that includes both her share and  
23 her former husband's share of basis in the residence.  
24 Appellants cannot increase this purchase price by any  
25 amounts considered transferred in the divorce.

1           Next, I turn to the improvement costs.  
2           Appellants claim over \$2.3 million in construction costs  
3           for work performed to their Malibu residence. Initially,  
4           they cannot provide any documents to support these costs.  
5           So Respondent looked to the available public records, such  
6           as the building permits to try and corroborate some of  
7           their claim. The building permits offered some  
8           contemporaneous evidence for the price of construction.  
9           Respondent allowed the amounts reflected on those building  
10          permits as capital improvement costs.

11           Now, the taxpayers argue their claimed costs  
12          should be permitted under the Cohan rule. And that rule  
13          stems from *Cohan v Commissioner*, and it permits an  
14          estimation of expenses when it is evident that the  
15          taxpayers have spent some amount and they have deductible  
16          costs, but they cannot prove the exact amounts of those  
17          costs. So it's important to note that the Cohan rule does  
18          not allow for a court to simply accept a taxpayer's  
19          claims, and it doesn't allow for wild speculation of  
20          expenses. The Cohan rule permits a modest estimation of  
21          expenses baring heavily against the taxpayers whose  
22          inexactitude is of their own making.

23           Respondents determined the building cost reflect  
24          a reasonable estimation of amounts. Building permits are  
25          executed close in time to the actual events and were

1 reported by the actual contractors doing the work. On  
2 appeal, Appellants were able to produce some documents to  
3 support their claimed amounts. And after review of those  
4 documents, Respondent allowed approximately \$329,000 in  
5 additional improvement costs. And Respondent's additional  
6 brief provides a breakdown of those amounts allowed and an  
7 explanation for documents that were denied. And I also  
8 want to point out that Respondent is also conceding an  
9 additional basis amount from those documents of \$21,469 --  
10 \$21,469.82. And that stems from the Schaeffer Dixon  
11 invoice reflected in the additional documents.

12 Finally, I want to address the deed restriction  
13 that Appellants claim amounted to a governmental taking.  
14 The deed restriction was imposed by the California Coastal  
15 Commission, and that amounts -- they claim that amounts to  
16 a governmental taking worth approximately \$1 million.  
17 And, accordingly, they argue this amount should be  
18 included in their basis for their residence. This  
19 argument lacks any support in the law and should be  
20 disregarded. Contrary to Appellants' arguments, Respondent  
21 does not concede that they experienced a governmental  
22 taking. Respondent disagrees that the deed restriction  
23 amounts to a governmental taking.

24 The California Coastal Commission imposed a  
25 requirement that coastal property owners seek -- agree to

1 seek approval for any home remodels from the Commission.  
2 And that requirement needed to be recorded in legal title  
3 in the form of a deed restriction. The deed restriction  
4 did not impose a physical taking, and it did not deprive  
5 the property owners of any economic or other use of their  
6 property. Respondent included additional citations and  
7 explanation in its briefing regarding this issue. But  
8 this argue is not relevant to the question of basis --  
9 Appellants' basis.

10 Furthermore, the OTA does not have jurisdiction  
11 to make a finding regarding a government taking by a  
12 sister agency. OTA's rules for tax appeals,  
13 Section 30104, provides some limitations on OTA's  
14 jurisdiction. Specifically, subsections(a) and (b) limit  
15 OTA's ability to make constitutional decisions  
16 interpretations under the California Constitution, such as  
17 whether a taking occurred. Chapter 13 of the Personal  
18 Income Tax Laws of the Revenue & Taxation Code governs the  
19 gains or loss on the disposition of property, beginning  
20 with Section 1801.

21 That section generally conforms California's gain  
22 or loss rules to subchapter O of the Internal Revenue  
23 Code. Subchapter O, which includes sections amount 1001  
24 to 1092, gives us the rules for computing gain or loss on  
25 the sale of property. Basis is clearly defined under

1 subchapter O. IRC section 1012 states that basis is the  
2 cost of the property. And Treasury Regulation  
3 section 1.1012-1 clarifies that cost is the amount paid  
4 for such property in cash or other property. Accordingly,  
5 basis is not a theoretical amount. It is the amount of  
6 cash actually paid or other property transferred. The  
7 deed restriction did not transfer any property, and it  
8 does not amount to other property under IRC section 1012.  
9 Appellants' supposed valuation of the deed restriction is,  
10 therefore, baseless.

11 Further adjustments may be made to basis, and  
12 those are clearly set forth in subchapter O in the  
13 underlying regulation. IRC section 1016 provides that  
14 basis may be adjusted for expenditures, such as capital  
15 improvements, receipts, losses, or other items properly  
16 chargeable to capital account. A governmental taking does  
17 not fit into any of these permissible adjustments to  
18 basis. And this result make sense because basis reflects  
19 a taxpayers' actual cost in cash or other property.

20 Appellants have offered no legal support for  
21 their theory that a taking could increase basis. And it's  
22 the taxpayers' burden of proof to point to an applicable  
23 statute and prove how their claimed deduction amount comes  
24 within its terms. Appellants have failed to do so with  
25 their taking argument, and it should be disregarded.

1           In order to find for Appellants on this issue,  
2           this Panel would need to make three rather extraordinary  
3           conclusions. First, that a deed restriction imposed by  
4           the California Coastal Commission amounts to a regulatory  
5           taking; second, that the value of that taking was a  
6           million dollars; and third, that the value of that taking  
7           could be included in a homeowner's basis for purposes of  
8           computing gain or loss. Not only would these findings  
9           have no support in the law, Appellants' argument does not  
10          make sense factually.

11           The document they submitted from Glass Ratner  
12          alleges the supposed taking reduced the value of the  
13          property by \$1 million. So if that claim is correct, then  
14          the alleged taking already decreased the value of the  
15          property. And that would be reflected in the lowered  
16          sales price. It makes no sense to then reduce the  
17          taxpayers' basis by this amount as well.

18           Finally, as interesting as Appellants' taking  
19          argument may be, it simply cannot be addressed by the tax  
20          code or in this proceeding. Appellants' appropriate  
21          address for a governmental taking would be to sue the  
22          governmental agency that affected their property rights in  
23          a court of competent jurisdiction. Appellants have not  
24          satisfied their burden of proof to support their claimed  
25          basis amount on their 2014 return.



1 under the Internal Revenue Code.

2 As to the value of the taking, the appraisal  
3 prorates the value of the taking based upon the total  
4 incumbrance as against the total square footage of the  
5 residence, at which is estimated at one-sixteenth -- or  
6 one-sixth of the value of the property. So if the Board  
7 were to find that the timing of the appraisal was  
8 inappropriate and that an earlier date should be used, the  
9 methodology of getting there is set forth in the appraisal  
10 as one-sixth of the value.

11 Once again, Nollan addresses the issue of whether  
12 the actions of the California Coastal Commission in  
13 requiring a deed restriction constitutes a taking, and it  
14 clearly finds that it does. I might point out that the  
15 deed restriction allows physical access to the property,  
16 and we're speculating as to what the value of the property  
17 would be without that deed restriction. But as of the  
18 date of the appraisal, the valuation is determined and the  
19 methodology is sound.

20 With, that, I have nothing further at this time.

21 JUDGE LE: Thank you for your arguments.

22 For a final time, let me check on my Panelists to  
23 see if they have any questions for either party.

24 Judge Vassigh, any questions?

25 JUDGE VASSIGH: I do not have any questions.

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Thank you.

JUDGE LE: And, Judge Long, any final questions?

JUDGE LONG: No questions. Thank you.

JUDGE LE: Okay. Thank you.

I have no further questions myself. So if there's anything else, that will conclude our hearing. Thank you everything for coming in today.

This case is submitted on July 17, 2024. The record is now closed.

The Judges will meet and decide your case later on. Then we will send you a written opinion of our decision within 100 days.

Today's hearing in the Appeal of Motley is now adjourned.

Thank you.

(Proceedings adjourned at 10:20 a.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 August, 2024.

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