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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

9
10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL²**
12 **DOUGLAS A. SHIEPE¹**) Case No. 421046
13)
14)

	<u>Years</u>	<u>Proposed Assessments</u>
15	2000	\$5,357.00
16	2001	\$3,487.00
17	2002	\$7,760.00

18 Representing the Parties:

19 For Appellants: Scott F. Sonken, CPA, P.C.
20 For Franchise Tax Board: Adam J. Susz, Tax Counsel

21
22 **QUESTIONS:** (1) Whether appellant has met his burden of proving error in the Franchise Tax
23 Board's determination that appellant is not entitled to a charitable contribution
24 deduction under Internal Revenue Code (IRC) section 170 for eight single-family
25 homes purportedly donated to the Watts 13 Foundation (Foundation).
26

27 ¹ Appellant appears to reside in Beverly Hills, California.
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² The above mentioned case was postponed from the October 28, 2008, hearing calendar and rescheduled to the February 24 - 26, 2009, Culver City calendar at appellant's request.

1 (2) If so, whether appellant properly valued the eight single-family homes transferred
2 to the Foundation.

3 HEARING SUMMARY

4 Background

5 Between November 1985 and November 1998, appellant purchased eight parcels of land in
6 the City of Los Angeles. The parcels were improved with single-family residences (the structures) which
7 had been constructed in the 1940's.³ The structures ranged from approximately 1,100 to 1,280 square
8 feet. Each structure included two or three bedrooms, one bath, a kitchen, living and dining areas, and a
9 two-car garage.

10 It appears that at some point in 2000, appellant decided to construct a truck terminal on
11 the parcels. Before the removal of the existing structures, appellant met with officials from the
12 Foundation.⁴ Soon after, appellant and the Foundation entered into an agreement whereby appellant
13 agreed to donate the structures and \$12,000 cash to the Foundation, in exchange for which the
14 Foundation then allegedly promised to relocate and reuse the structures on another site. The Foundation
15 referred appellant to Dale Wood of L. Dale Wood Real Estate Services to appraise the structures.
16 Following the removal of the structures, the property was converted to a truck terminal operation.

17 L. Dale Wood Appraisal

18 On October 31, 2000, Mr. Wood appraised seven of the eight structures.⁵ In arriving at
19 the structures estimated fair market values (FMV), Mr. Wood valued the structures primarily by use of
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21 _____
22 ³ The eight structures at issue are on S. La Cienega Blvd., Los Angeles, CA 90016 located at: 3200; 3206; 3210; 3216; 3222;
23 3228; 3234; and 3240.

24 ⁴ On July 21, 1997 Herbert A. Simmons, who was then Watts 13's president, explained in a letter, entitled "A Letter From the
25 Board of Directors," that Watts 13 was formed in response to the 1965 Watts riots in order to relieve poverty in South Central
26 Los Angeles by promoting social welfare, and operated as a legitimate tax-exempt charity under Internal Revenue Code
27 (IRC) § 501(c)(3) and California Revenue and Taxation Code (R&TC) § 23701. During 1995 through 1996, Watts 13
28 received cash and non-cash contributions, which exceeded \$4,000,000. Mr. Simmons further predicted income for Watts 13
for 1997-1998 of \$10,000,000 or more and stated that Watts 13 was entering into the category of "Big Business." The
Internal Revenue Service (IRS) audited Watts 13 and consequently revoked Watts 13's tax exempt status on February 20,
2001. The following year, the FTB also revoked Watts 13's tax exempt status.

⁵ In his appraisal report, Mr. Woods did not include the structure that was located at 3210.

1 the replacement cost method, with secondary consideration given to the comparable sales approach.⁶
2 Mr. Wood did not physically examine each structure himself. Rather, the appraisal was based solely on
3 images and information supplied by the appellant.⁷

4 Mr. Wood states that the specifications, conditions and cost estimates for each structure
5 were considered in his appraisal. He determined a total cost of \$135 per square foot and an estimated
6 life of 50 years.⁸ Utilizing the replacement cost of each structure to be indicative of its FMV, Mr. Wood
7 concluded that the total value of each structure is as follows:⁹

- 8 • The FMV of the structure at 3200 had a remaining life expectancy of 28 years and
9 a total value of \$83,160; (FTB Reply Br., exhibit J, p.6.)
- 10 • The FMV of the structure at 3206 had a remaining life expectancy of 20 years and
11 a total value of \$65,600; (*Id.*, at p.10.)
- 12 • The FMV of the structure at 3216 had a remaining life expectancy of 28 years and
13 a total value of \$96,768; (*Id.*, at p.14.)
- 14 • The FMV of the structure at 3206 had a remaining life expectancy of 30 years and
15 a total value of \$91,440; (*Id.*, at p.20.)
- 16 • The FMV of the structure at 3228 had a remaining life expectancy of 30 years and
17 a total value of \$98,400; (*Id.*, at p.24.)
- 18 • The FMV of the structure at 3234 had a remaining life expectancy of 28 years and
19 a total value of \$93,352; (*Id.*, at p.31.)

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21 ⁶ The replacement-cost approach values the property based on the cost of replacing the land and building currently less an
22 allowance for diminished utility. This method, used alone, usually does not result in a determination of FMV. The
23 comparable sales approach involves gathering information on sales of property similar to the subject property, then
24 comparing and weighing them to reach a value for the property being appraised.

25 ⁷ Appellant's representative states that appellant will provide color pictures of the structures at the hearing.

26 ⁸ In determining the cost for replacement valuation, Mr. Woods claimed that he contacted local building contractors,
27 architects, material suppliers, and public records. Also, he claimed to have interviewed local sources and reviewed
28 comparable property values. The formula to calculate the estimate is: base costs \$100; garage and walks \$12; regional
adjustment, [$\$112 \times 16\%$] 18%; soft costs \$5; for a total cost per square foot of \$135. (FTB Reply Br., exhibit J, p.4.) The
average estimate remaining life was computed by using a scale from Craftmans Publishing, 2000, 24th edition, that
represents a 50-year life and estimates the remaining life of a quality frame and stucco, single family residence. (*Id.*, p.42.)

⁹ The formula that was utilized by Mr. Wood in his valuation:
[total sq. ft. \times total cost \$135] \div [50 years estimated life] \times [remaining life expectancy] = the total structure value

- 1 • The FMV of the structure at 3240 had a remaining life expectancy of 28 years and
2 a total value of \$88,900; (*Id.*, at p.35.)

3 Although, Mr. Wood predominately used the “Reproduction Cost” method it appears he
4 also attempted to utilize the comparison sales method.¹⁰ The comparable properties are listed in a
5 document entitled “comparable sales.” (FTB Reply Br., exhibit J, p.44.)¹¹ The list included: the sales
6 date, sales price; the cost per square foot; the lot size as well as the square footage, and the year the
7 home was built. According to Mr. Wood, comparable properties in the subject area showed structural
8 values that ranged from \$10,000 to \$150,000. Also, his comparison depended upon the sales of other
9 properties being sufficiently alike in respect to the year of construction, the type, the design, and overall
10 condition.¹² Staff notes that each of these factors was not compared to its counterpart on the structures.
11 Thus, the seven structures were not revalued, or devalued, to reflect Mr. Wood’s estimate of the increase
12 or decrease in the sales price of the comparable structures that would have occurred had the factor been
13 of the quality possessed by those seven structures. Also, staff notes that Mr. Wood did not remove the
14 land value from the comparable sales. Mr. Wood concluded that the seven structures had a combined
15 FMV of \$617,620 as of October 31, 2000.

16 Forms 8283 were individually signed by Mr. Wood, on November 30, 2000.¹³ (FTB
17 Reply Br., exhibit A-H, p.1.) On one of the forms, Mr. Wood stated that the structure that was located at
18 3210 (3210 structure) had an appraised FMV of \$153,900.¹⁴ (FTB Reply Br., exhibit C, p.1.) Thus, the
19 total combined FMV of the structures increased to \$771,520. In addition, the Foundation acknowledged
20 on the same forms that it had received the allegedly donated structures. (FTB Reply Br., exhibit A-H,
21 p.1.) Also, it is undisputed that at some time after November 30, 2000, the appraised structures were
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23 ¹⁰ Mr. Wood appears to use “replacement cost” interchangeably with “reproduction cost” in his report.

24 ¹¹ Staff notes that the comparable home sales located primarily within the area, which Mr. Wood used as a comparison, did
25 not contain a condition that involved removing the structures from their lots.

26 ¹² Staff notes that Mr. Wood did not physically inspect the seven structures.

27 ¹³ Mr. Woods also certified on Forms 8283 that he was an appraiser who was qualified to appraise the allegedly donated
28 structures.

¹⁴ Staff notes that there is no supporting documentation supporting Mr. Woods’ stated value of the 3210 structure.

1 removed in some manner from their lots and appellant built what appears to be a truck terminal. (FTB
2 Reply Br., exhibit I, pp.1-40.)

3 Tax Years 2000-2002

4 On October 10, 2001, the appellant reported charitable contributions totaling \$771,520 on
5 his California Resident Income Tax Return (Form 540) for tax year 2000. Only \$57,623 was deducted
6 for that tax year, and the balance of \$713,897 was available as a carry-forward to subsequent tax years.¹⁵
7 (FTB Reply Br., exhibit N, p.19.) On his Form 540 for the 2001 tax year, appellant claimed charitable
8 contributions totaling \$42,706, which included \$41,206 of the amount of the carry-forward from tax
9 year 2000. (FTB Reply Br., exhibit O, p.25.)

10 The balance of \$672,691 was available as a carry-forward to subsequent tax years. On
11 his Form 540 for the 2002 tax year, the appellant claimed charitable contributions totaling \$93,862,
12 which included \$83,462 of the amount of the carry-forward from tax year 2001. (FTB Reply Br.,
13 exhibit P, p.19.)

14 On audit the FTB determined that the appellant was not entitled to a charitable
15 contribution deduction for the transfer of the structures to the Foundation.¹⁶ Accordingly, the FTB
16 issued to the appellant three Notice of Proposed Assessments (NPA's) for 2000, 2001 and 2002, on
17 September 27, 2004. (FTB Reply Br., exhibit R, pp. 1, 3, 5.) The FTB proposed a deficiency
18 assessment of \$5,357, \$3,487, and \$7,760, respectively, for 2000, 2001, and 2002.¹⁷

19 Facts Common to All Years

20 Appellant protested each of the NPA's in a letter dated November 15, 2004, contending
21 that the facts and circumstances of the transaction substantiate the basis for allowing the charitable
22 contribution deduction. (FTB Reply Br., exhibit K, pp.1-3.) After receiving no credible evidence from
23 appellant, on June 25, 2007, the FTB issued three separate Notice of Actions (NOA's), which affirmed
24 the 2000, 2001, and 2002 NPA's. (FTB Reply Br., exhibit S, pp.1, 3, 5.) As a result, appellant filed this
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27 ¹⁵ Appellant also deducted \$12,255 for the cash contribution he made to a tax exempt organization. (FTB Reply Br.,
exhibit N, p.19.)

28 ¹⁶ The FTB apparently did not disallow the cash contribution of \$ 12,000.

¹⁷ Since the charitable contribution was disallowed for 2000, the carryover to the subsequent years was also disallowed.

1 timely appeal.

2 Appellant's Contentions

3 Appellant's representative (appellant) argues that if the surrounding circumstances are
4 considered, he is entitled to a deduction under IRC section 170 as a result of the contribution of the
5 structures. He argues that his claimed deductions are legitimate and not a sham. Appellant also argues
6 that the appraisal date of October 31, 2000 confirms that the structures at issue were donated to the
7 Foundation with a value of \$771,520. Also, appellant makes a number of arguments to support his
8 position that Mr. Wood's appraisal was proper.

9 Appellant argues that the exemption letter issued to the Foundation, plus proof that the
10 Foundation received the structures (namely the charitable receipt), should defeat the determination by
11 the FTB that a charitable gift is invalid. Appellant, relying on a 1994 IRS decision that allowed a
12 charitable deduction under similar facts and circumstances, urge that the contribution to the Foundation
13 is legally permissible. Thus, appellant contends that the FTB is bound by decisions made by the IRS.

14 Appellant further argues that the cash gifts to the Foundation do not present any
15 relationship to the donated structures. Also, appellant argues that the Foundation received the structures
16 intact and what happened to the property afterwards did not concern him.

17 FTB's Contentions

18 Respondent's primary contention is that the alleged donation of the structures lacks
19 charitable substance, no bona fide gift occurred, and the donation was a sham to allow appellant to claim
20 a charitable contribution deduction in the amount of \$771,520 in 2000 (with carryovers to later years)
21 and allow the Foundation to receive \$12,000 tax-free.

22 Alternatively, respondent argues that appellant has not shown that the structures at issue
23 were delivered to the Foundation. Respondent cites the *Appeal of James N. Harger* (2003-SBE-003),
24 decided by this Board on May 28, 2003 (*Harger*), in which the Board found that a similar transaction
25 with the Foundation did not entitle Mr. Harger to a charitable cash deduction because he had not shown
26 delivery of the remaining "scraps" of structures to the Foundation. Here, instead of donating the
27 structures, respondent contends that the structures were demolished and that appellant has failed to show
28 delivery of the structures to the Foundation, an essential element required to claim a charitable

1 contribution deduction.

2 Respondent further contends that, even if appellant did deliver the structures at issue to
3 the Foundation, his claimed charitable deduction should be denied because he has not established the
4 value of the structures. In this light FTB takes the position that the appraisal by Mr. Wood is not
5 probative because the appraisal valued intact homes rather than structures awaiting demolition or
6 removal. In addition, the FTB argues that there is no demand for a house that is subject to a condition
7 that it must be removed from its lot.

8 Applicable Law

9 Revenue and Taxation Code (R&TC) section 17201 adopts IRC section 170, relating to
10 deductions for charitable contributions. IRC section 170(a)(1) provides, subject to certain limitations, a
11 deduction for charitable contributions described in IRC section 170(c), payment of which is made within
12 the taxable year. IRC section 170(c)(2) states, in part, that the term “charitable contribution” means a
13 contribution or gift to or “for the use of” a corporation, trust, or community chest, fund, or foundation
14 created in the United States; organized and operated exclusively for religious, charitable, scientific,
15 literary, or educational purposes; and no part of the net earnings of which, inures to the benefit of any
16 private shareholder or individual.

17 In resolving an issue on appeal, the FTB's determination is presumed correct and
18 appellant has the burden of proving such determinations erroneous. (*Todd v. McColgan* (1949) 89
19 Cal.App.2d 509, 514; *Appeal of Pearl R. Blattenberger*, 52-SBE-002, Mar. 27, 1952.)¹⁸ This
20 presumption is, however, a rebuttable one, which appellants must produce sufficient evidence to
21 overcome. (*Wiget v. Becker* (1936) 84 F.2d 706, 707-708; *Appeal of Joseph J. and Julia A. Battle*, 71-
22 SBE-011, Apr. 5, 1971.) The FTB's determinations cannot, however, be successfully rebutted when the
23 taxpayer fails to present credible, competent, and relevant evidence as to the issues in dispute. (*Appeals*
24 *of George H. and Sky Williams, et al.*, 82-SBE-018, Jan. 5, 1982.) It is well settled that deductions are a
25 matter of legislative grace and appellants bear the burden of proving their entitlement to those
26 deductions. (*INDOPCO, Inc. v. Commissioner* (1992) 503 U.S. 79, 84; *Deputy v. Du Pont* (1940) 308
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28 ¹⁸ State Board of Equalization cases (designated “SBE”) can generally be viewed on the Board's website (www.boe.ca.gov).

1 U.S. 488, 493; *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.)

2 This Board has held that it is not bound to adopt a conclusion reached by the IRS in any
3 particular case, even when that determination results from a detailed audit. (*Appeal of Raymond and*
4 *Rosemarie J. Pryke*, 83-SBE-212, Sept. 15, 1983.)

5 Gift

6 As used in IRC section 170, the term “charitable contribution” is synonymous with the
7 term “gift.” (*Seed v. Commissioner* (1971) 57 T.C. 265, 275; *DeJong v. Commissioner* (1961) 36 T.C.
8 896, 899, affd. 309 F.2d 373 (9th Cir. 1962).) In applying a provision of Federal tax law, State law
9 controls in determining the nature of a taxpayer’s legal interest in property. (*United States v. Natl. Bank*
10 *of Commerce* (1985) 472 U.S. 713, 722.) In order to make a valid gift for Federal tax purposes, a
11 transfer must at least effect a valid gift under the applicable State law. (*Woodbury v. Commissioner*
12 (1967) 49 T.C. 180, 193-194.) The determining factors of what constitutes a valid gift under California
13 case law was stated by the 9th Circuit Court of Appeal in *Knupfer v. Lindblade* (9th Cir. 2003) 322 F.3d
14 1178, 1188. Under California case law, the six following factors determine whether a transaction is a
15 gift:

16 (1) competency of the donor to contract; (2) a voluntary intent on the part of the donor to
17 make a gift; (3) delivery, either actual or symbolic; (4) acceptance, either actual or
18 imputed; (5) complete divestment of all control by the donor; and (6) lack of
consideration for the gift.

19 (*Knupfer v. Lindblade, supra* at 1188.)

20 California case law has held that delivery is an essential element of a completed gift.
21 (*Yamaha Corp. of America v. State Bd. of Equalization* (1999) 73 Cal.App.4th 338, 358.) Whether a gift
22 is complete and effectual is a question of fact to be determined from all the evidence. (*Id.*, at 359-360.)
23 In *Harger*, this Board concluded that the appellant did not provide credible evidence to show that the
24 structure of the home for which he claimed a charitable deduction was delivered to the Foundation and,
25 therefore, denied the deduction. (*Appeal of James N. Harger*, 2003-SBE-003, May 28, 2003.) In
26 *Harger*, the appellant, as appellant in the instant case, provided a Form 8283 with the Foundation’s
27 acknowledgement that it received the structure, as well as a donation receipt from the Foundation.

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1 Receipt of Adequate Consideration

2 A gift to a charitable organization must be a voluntary transfer of money or property
3 without the receipt of adequate consideration, made with charitable intent. (*Hernandez v. Commissioner*
4 (1980) 490 U.S. 680, 690 (*Hernandez*)). A purported gift is at least presumptively negated by the
5 receipt of a substantial benefit in return. (*Transamerica Corp. v. United States* (Fed. Cir. 1990) 902
6 F.2d 1540, 1544.) No deduction will be allowed where the taxpayer expects some economic benefit in
7 return for the alleged gift. (*Wedvik v. Commissioner* (1986) 87 T.C. 1458, 1465.) The Supreme Court
8 has instructed that in ascertaining whether a given payment or property transfer was made with the
9 expectation of any return benefit or quid pro quo, we are to examine the external, structural features of
10 the transaction, therefore, it is not required to inquire into the motives of an individual. (*Hernandez v.*
11 *Commissioner, supra* at 690-691.) A transaction that has an "inherently reciprocal nature" will not
12 satisfy the requirements for a charitable contribution deduction. (*Id.*, at 692.) In *Hernandez*, the
13 Supreme Court found a lack of donative intent in the taxpayers' payments to the Church of Scientology
14 for certain "auditing" and training sessions. The external features revealed the "inherently reciprocal
15 nature of the exchange" involving the payments and the services provided by the church.¹⁹ In other
16 words, the transaction was not a disinterested gift, but rather it was structured as a quid pro quo, which
17 had an "inherently reciprocal nature." (*Id.*, at 692.)

18 A payment of money [or transfer of property] generally cannot constitute a charitable
19 contribution if the contributor expects a substantial benefit in return. (*United States v. American Bar*
20 *Endowment* (1986) 477 U.S. 105, at pp. 116-117 (*American Bar Endowment*)). In *American Bar*
21 *Endowment*, the Supreme Court proposed a two-prong test which a gift must satisfy in order to be
22 deductible in part as a dual payment: (1) The excess payment must have been made with the intention of
23 making a gift, and (2) the amount of the payment must exceed the fair market value of the benefit
24 received. Therefore, if appellant received consideration for his contribution, his charitable contribution
25 deduction fails unless he can at a minimum demonstrate that he *knowingly* contributed money or
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28 ¹⁹ The external features cited by the Court included the church's establishment of fixed price schedules for the sessions, calibrated to length and level of sophistication; the provision of refunds if session services went unperformed; and the categorical prohibition on providing the sessions for free.

1 property in excess of the value of any benefit he received in return. (*Id.*, at 118; see also *Sklar v.*
2 *Comm'r* (9th Cir. 2001) 282 F.3d 610, at pp. 620-622.)

3 Valuation

4 Where a taxpayer makes a contribution in property rather than cash, the amount of the
5 charitable contribution deduction is generally the fair market value of the property at the time of the
6 contribution. (Treas. Regs. § 1.170A-1(c)(1).) The FMV of donated property is the price at which the
7 property would change hands between a willing buyer and a willing seller, neither being under any
8 compulsion to buy or sell and both having reasonable knowledge of relevant facts. (Treas. Regs.
9 § 1.170A-1(c)(2).) The fair market value of property as of any given date is an issue of fact to be
10 resolved by considering and weighing all the relevant evidence in the record. (*Symington v.*
11 *Commissioner* (1986) 87 T.C. 892, 896.) Expert opinions are evaluated in light of all the evidence in the
12 record and their opinions may be accepted or rejected in whole or in part, according to the [trier of fact's]
13 judgment. (*Estate of Mellinger v. Commissioner* (1999) 112 T.C. 26, 39.)

14 In general experts usually utilize one or more of the three commonly recognized methods
15 of valuing real property and other assets: (1) The replacement cost approach; (2) the comparable sales
16 approach; and (3) the income capitalization approach. The validity of the reproduction cost approach
17 with respect to valuing the structures is an appropriate measure of value only where the appellant
18 establishes a *probative* correlation between such cost and the fair market value of the property. (*Estate*
19 *of Palmer v. Commissioner* (8th Cir. 1988) 839 F.2d 420, 424.) Basically, reproduction cost is to be
20 considered, but only to the extent it is of probative value. Generally, a correlation between replacement
21 cost and FMV has been proved where the property is unusual in nature and other methods of valuation,
22 such as comparable sales or income capitalization, are not applicable because of the property's
23 uniqueness and non-income producing nature. (See, e.g., *Estate of Palmer v. Commissioner, supra* at
24 424.)

25 Characterization of Transaction

26 A number of factors are considered in determining whether a charitable contribution has
27 been made. (*Allen v. Commissioner* (1989) 92 T.C. 1, 8-9.) Included in these are whether the charity
28 actually received the gift and whether the purported gift had any value. (*Id.*) Where a taxpayer claims a

1 deduction for a contribution of money or property of value to an organization, consideration must be
2 given to whether the taxpayer parted with and the donee received property or money. (*Id.*) In
3 determining whether appellant is entitled to a charitable deduction, we look to the substance of the
4 transaction and determine “whether what was done, apart from the tax motive, was the thing which the
5 statute intended.” (*Gregory v. Helvering* (1935) 293 U.S. 465, 469.)

6 STAFF COMMENTS

7 Gift

8 It does not appear that appellant has as of yet provided any credible evidence of effective
9 delivery of a gift or donation. Appellant argues that all the elements of a gift to a charitable organization
10 have been satisfied. One of those elements, however, is delivery to a donee of the subject matter of the
11 gift. Staff does not believe that such element is satisfied where the purported donor (appellant) does not
12 present any credible evidence of delivery of the purported gift (structures). Appellant believes that the
13 donation receipt he received from the Foundation is sufficient evidence that he successfully delivered
14 the structures. (FTB Reply Br., exhibit L, p.1.) However, the Board has previously decided that a
15 donation receipt from the Foundation is not credible evidence of delivery in the *Appeal of James N.*
16 *Harger, supra*, which is factually similar to the present appeal. Appellant should be prepared to discuss
17 how his appeal differs from the *Harger* appeal and whether he can demonstrate that the structures were
18 in fact delivered to the Foundation.

19 Receipt of Adequate Consideration

20 The external features of this transaction appear to reveal the "inherently reciprocal nature
21 of the exchange" involving the payment by appellant and the services provided by the Foundation
22 (namely minimizing demolition or removal costs). It appears that the Foundation received a cash
23 payment of \$12,000 and appellant had the structures removed from his lots with minimal cost in
24 preparation for the installation of a truck terminal. Thereafter, the Foundation's exempt status was
25 revoked first by the IRS in 2001 and then by the FTB in 2002. It appears that the Foundation navigated
26 appellant through the process of receiving a deduction once the agreement was consummated, in the
27 same manner as they did with prior individuals. The Foundation, for instance, referred appellant (just as
28 they did with prior individuals), specifically to Mr. Wood to appraise the value of the structures. In

1 other words it appears that appellant received a quid pro quo; the ability to construct a truck terminal at a
2 lower cost. Appellant may wish to address how his transaction with the Foundation differed from that in
3 *Harger*.

4 Valuation

5 Appellant relies on Mr. Wood's appraisal to establish that he contributed property worth
6 \$771,520. However, staff notes that there are a number of problems in Mr. Wood's appraisal estimate
7 of the FMV of structures. The condition of the structures was based solely on information provided by
8 appellant, rather than his own inspection. His report plus exhibits contained a brief discussion of the
9 reproduction cost approach methodology, a list of his credentials, and his valuation conclusions;
10 adjustments made in his report are not supported with information. Mr. Wood did not disclose how
11 depreciation was determined or utilized. Mr. Wood never disclosed, for instance, the diminished
12 condition of each component in the structures. Assuming that Mr. Wood did analyze the condition of all
13 of the components of the structures, staff questions how this was accomplished in the absence of a site
14 visit. Appellant should be prepared to provide additional evidence to demonstrate how Mr. Wood can
15 value the remaining life of the property (in particular due to the age of the structures) without a physical
16 inspection.

17 Second, Mr. Wood did not provide any reasonable explanation in his report favoring the
18 reproduction cost method in this appeal over other methods. Under the sales comparison approach,
19 further explanation of the adjustments made to the sales would be appropriate. In utilizing the
20 comparable sales method, it appears to staff that Mr. Wood did not remove the land values in the
21 comparable sales. Also, the comparables sales were a list of intact homes, rather than structures that are
22 to be severed from their lots.

23 Third, when dealing with older, structures such as the ones in this appeal, it is
24 questionable whether the reproduction cost method can be used to provide a true indication of the FMV
25 of the property. It appears doubtful that a buyer would want to replicate these structures. Appellant may
26 wish to address whether there is legitimate demand for eight single family structures built in the 1940s,
27 which are severed from their lots, such that these structures had a FMV.

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Characterization of the Transaction

Appellant may wish to discuss how his transaction with the Foundation differed from any of the other alleged donation activity for which the Foundation lost its Federal and State tax exempt status, in particular, the transaction in the *Harger* appeal.

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