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New 1031 Filing Requirements for California

There are new annual filing requirements for taxpayers who use Internal Revenue Code (IRC) Section 1031 to defer gain or loss when selling California property. Assembly Bill 92 (AB 92) added California Revenue and Taxation Code Sections 18032 and 24953 creating new annual filing requirements for taxpayers who exchange California relinquished properties for like-kind, non-California replacement properties under IRC Section 1031.

Effective January 1, 2014, all taxpayers who defer gain or loss under IRC Section 1031 (1031-exchanges) by selling California relinquished properties (CA RQs) and acquiring like-kind, non-California replacement properties (Non-CA RPs) will have to file a new information return (California 1031 information return) to track their deferred California sourced gain or loss. This California 1031 information return will generally be required to be filed annually until the deferred California sourced gain is recognized. The new California 1031 information return is currently being developed.

California's new law will help taxpayers and the Franchise Tax Board (FTB) keep track of California sourced gain deferrals from 1031-exchanges. After exchanging CA RQs for Non-CA RPs, many taxpayers later sell their Non-CA RPs and their previously deferred California sourced gain is not reported to California. Here is an example of how this California source deferred gain is determined.

Example

Sue sold a CA RQ on February 19, 2014, for \$4,500 as part of a 1031-exchange. Sue's basis in the CA RQ was \$1,000. Sue realized a \$3,500 gain on the sale of her CA RQ. Sue acquires a Non-CA RP at a total purchase price of \$5,000. Assuming there was no other property (boot), Sue can defer her California sourced gain of \$3,500; but, under the new California law, Sue must also annually report her \$3,500 deferred California sourced gain on a new California 1031 information return.

Who must file: California's new filing requirement applies to all individuals, estates, and trusts, and all business entities regardless of their residency status or commercial domicile. For all exchanges of property that occur in taxable years beginning on or after January 1, 2014, and replaced with Non-CA RPs under IRC Section 1031, the seller/exchanger is required to file the new California 1031 information return regardless of whether they have any other California franchise tax, income tax, or information return filing requirement.

When to file: For taxpayers¹ without a California franchise tax, income tax or information return filing requirement, the new California 1031 information return will be due on the same date that their California return would be due if they were required to file a California franchise tax, income tax, or information return.

For taxpayers who do file a California franchise tax, income tax, or information return, the new California 1031 information return will be filed as an attachment to the taxpayer's California franchise tax, income tax, or information return.

Where to file: For those taxpayers filing only the new California 1031 information return, FTB will provide a specific post office box address for submitting the new California 1031 information return.

Taxpayers filing the California 1031 information return as an attachment to their California franchise tax, income tax, or information return will use the normal addresses for their particular return type.

Failure to file: For taxpayers who exchange CA RQs for Non-CA RPs and fail to file the new California 1031 information return, FTB may issue a Notice of Proposed Assessment to adjust their income for the previously deferred California sourced gain plus penalties and interest.

Stay Tuned

California's legislature gave FTB the authority to establish guidelines, procedures, and standards for implementing the new law, and we are identifying ways to ease the filing requirement for taxpayers. In the next few months we will provide:

- Additional Tax News articles with information as to our interpretation and application of these new statutes.
- A draft of the new California 1031 information return with opportunities for public review and comment before the draft becomes final.
- More specifics regarding compliance with the new law and where to file the new California 1031 information return.

¹ For purposes of the California 1031 information return filing requirement, the term "taxpayer" or "taxpayers" includes individuals, limited and general partnerships, estates, trusts, Limited Liability Companies, Limited Liability Partnerships, and all franchise or income tax paying corporations.

Tribal Leaders Interested Parties Meeting

On September 18, 2013, we held an interested parties meeting (IPM) to discuss issues relating to how we determine whether a tribal member is "living on" or "living off" his or her own tribe's reservation for purposes of California personal income tax. This meeting was one of the most well attended IPMs we ever hosted.

The panel taking comments included our legal and audit staff, as well as, the governor's tribal advisor, Judge Cynthia Gomez. They began by introducing the discussion paper written by our legal staff which proposes adopting a closest connection test to determine whether a tribal member is "living on" or "living off" the reservation. The panel also acknowledged that there is currently no court or legislative guidance on exactly how to make this determination.

Attendees included dozens of representatives and members of tribes. During the discussion, many of them pointed out that life on the reservation doesn't typically lend itself to the types of documents we usually ask for during an audit. For example, many families may share the same dwelling and have no property tax or utilities bills that may be typically requested during an audit. Another example of mail delivery to location 30 miles off the reservation was not representative of the residences' location but the fact that it was the only safe place to have mail delivered. Nearly all tribal members agreed that a letter from the tribal government should serve as sufficient evidence. Many of them also agreed that the tribal government knows undoubtedly who is "living on" and "living off" the reservation. Tribal members also acknowledged that many tribes no longer have enough land for those who want to live on the reservation.

For more information, on this meeting please see the [initial discussion paper](#) presented or read a [transcript](#) of the entire meeting.

We will accept comments through November 4, 2013, on this issue. Please forward any comments you may have to Maria.Brosterhous@ftb.ca.gov. After that date, we will examine all the comments and issue a report with our responses.

Tax-Exempt Automatic Revocations

An organization that fails to file the required e-Postcard for three consecutive years will automatically lose its tax-exempt status. The revocation of the organization's tax-exempt status is effective as of the filing due date of the third year.

Example: The organization's first California e-Postcard is due on May 15, 2011 (for the tax year 2010), but they did not file in 2011, 2012, or by May 15, 2013. The organization lost their tax-exempt status effective May 15, 2013.

We are currently mailing the automatic revocation notices to organizations that have not filed the required FTB 199N, California e-Postcard.

Tax-exempt organizations with average gross receipts less than \$50,000 for tax year 2012 or \$25,000 for tax years 2010 and 2011 are required to file the FTB 199N, California e-Postcard.

How to Reapply for Tax-Exempt Status

If an organization loses its California tax-exempt status, it must reapply using FTB 3500, Exemption Application, and have it approved to regain its tax-exempt status. Any income received between the revocation date and renewed exemption date may be taxable.

Reinstatement of tax-exempt status may be retroactive if you can show that you had reasonable cause for not filing, and show that you were active and operating for your exempt purpose.

Consequences of not Being Tax-Exempt

Loss of tax-exempt status means an organization must file Form 100, California Corporation Franchise or Income Tax Return. The entity would be subject to the franchise tax that is equal to the larger of your California income multiplied by the appropriate tax rate or the \$800 minimum franchise tax (whichever is more.)

All non tax-exempt corporations incorporated or qualified in California are required to pay at least the \$800 minimum franchise tax whether they are active, inactive, operate at a loss, or file a short period tax return (less than 12 months).

Contact Information

Website: **ftb.ca.gov** and search for **charities**

Phone: **916.845.4171**

Assistance is available from 7 a.m. to 4:30 p.m. weekdays, except state holidays.

Mail: EXEMPT ORGANIZATION UNIT MS-F120
FRANCHISE TAX BOARD
PO BOX 1286
RANCHO CORDOVA CA 95741-1286

Enterprise Zone Repeal Legislative Clean-up

Senate Bill 100 and Assembly Bill 106 signed into law on September 26, 2013, made some changes to the expiration of the Geographically Targeted Economic Development Areas (G-TEDAs). The "clean-up" legislation primarily affected two parts.

Hiring Credit Vouchering

This "clean-up" bill affected the timing of receiving vouchers for all G-TEDAs including enterprise zones, manufacturing enhancement areas, targeted tax areas, and local area military base recovery areas. Qualified taxpayers that hire a qualified employee on or before December 31, 2013, may file applications for vouchers during 2014 with their local agents, but all vouchers must be issued on or before December 31, 2014.

Sales or Use Tax Credit

The clean-up bill extended the time allowed to place an asset in service for enterprise zones. For enterprise zones, qualified assets purchased on or before December 31, 2013, may be placed in service on or before December 31, 2014, and still qualify for the credit.

[FAQs regarding the expiration of the areas and details regarding new incentives](#) available in 2014 are now on our website.

Foreclosures and Mortgage Forgiveness Relief

If a lender forecloses on my principal residence or agrees to a short sale, will I owe tax on the deficiency?

The tax consequences for foreclosure are a second hit for people who have had to walk away from their homes. If their lender forecloses on their homes or accepts an amount less than the loan balance from sale of the home, it may result in taxable gain to the homeowner.

For federal and state tax purposes, gross income generally includes income from whatever source derived, including gains from dealings in property. Gain in connection with the sale or exchange of property is the excess of the amount realized on the sale or exchange over the adjusted basis of the property. The amount realized from the sale or disposition of property is equal to the total of any money received plus the fair market value (FMV) of other property received.

Tax on This Seemingly "Phantom" Type of Income

If a taxpayer borrows money from a commercial lender and the lender later cancels (forgives) the debt, the taxpayer may have to include the cancelled amount as income for tax purposes. When the taxpayer borrowed the money, the loan proceeds were not required to be included as income because the taxpayer had an obligation to repay the lender. When that obligation is subsequently forgiven, the amount received as loan proceeds is reportable as income because there is no longer an obligation to repay the

lender. The lender is usually required to report the amount of Cancellation of Debt (COD) to the taxpayer and the IRS on a [Form 1099-C](#), Cancellation of Debt.

A transfer of property from foreclosure or a deed in lieu of foreclosure is treated as a sale or exchange for tax purposes. The amount realized from the transaction depends on the FMV of the property and whether the debt on the property is a **recourse** debt or a **nonrecourse** debt. A recourse debt is a secured debt for which the lender's only recourse is to take the property securing the debt and the borrower is personally liable; a nonrecourse debt is a debt where the borrower is not personally liable.

The tax treatment of the gain will depend on whether the mortgage is considered non-recourse or recourse debt.

In any sale or exchange of property subject to **nonrecourse** indebtedness (including a foreclosure sale or a transfer by deed in lieu of foreclosure), the amount realized includes the balance of the nonrecourse indebtedness. Consequently, the borrower will recognize gain to the extent the amount realized (including the full amount of the nonrecourse indebtedness) exceeds the adjusted basis of the property. The FMV of the property is irrelevant. In addition, the borrower will recognize no income from discharge of indebtedness.

In a sale or transfer of property subject to recourse indebtedness to a creditor (including a foreclosure sale or transfer by deed in lieu of foreclosure), the transaction is split into two transactions:

- 1) A sale or exchange of the property for its FMV.
- 2) To the extent the FMV of the property is less than the outstanding recourse indebtedness, either a continuing obligation to pay or income from the discharge of indebtedness.

In California, purchase money mortgages, which are mortgages where the borrowed funds are used to purchase the person's house, are generally treated as nonrecourse debt. If the bank forecloses on a nonrecourse mortgage, then the homeowner is treated as having sold the home for the amount of the outstanding debt. The difference between the outstanding debt and the homeowner's adjusted basis in the house is considered a gain or loss on the sale of the home. If the home is the taxpayer's principal residence, where they have lived for at least two of the past five years, the gain may be eligible for the gain exclusion on the sale of a principal residence. If the foreclosure results in a loss, the loss may not be taken since it resulted from the sale of a principal residence.

If the mortgage is recourse, any foreclosure may result in a gain on the sale of the house and/or cancellation of debt income. The difference between the FMV of the house and the owner's adjusted basis will result in a gain or loss on the sale of the home. If the outstanding debt exceeds the house's FMV, the amount is treated as

cancellation of debt income. Any gain on the portion treated as the sale of a personal residence may be eligible for the exclusion on the sale of a principal residence; however, as discussed above, the loss may not be taken on the sale. The portion that is treated as cancellation of debt income is taxed as ordinary income and subject to ordinary income tax rates. Relief of debt is considered income because the bank gave the buyer cash to purchase the home when it issued the mortgage. This cash was not taxable because it was a loan and the buyer promised to repay it. When the loan is forgiven or canceled, it becomes income in that year since the buyer will no longer repay it.

Mortgage Forgiveness Relief

For federal purposes, the American Taxpayer Relief Act of 2012 extended the COD exclusion for principal residence debt through 2013. This Act generally provides for an exclusion from gross income for qualified debt forgiveness on a principal residence, up to a maximum of \$2 million. California does not conform to this federal exclusion for 2013. This means that a homeowner who loses a home to foreclosure in 2013, may not use the principal residence exclusion to exclude COD income on his or her California tax return.

When COD Income is Taxable

While COD income is generally includable as taxable income, there are a couple of options for your clients who are caught in this situation:

Bankruptcy: Debts discharged in bankruptcies are generally not considered debt-cancellation income.

Insolvency: Tax will not be assessed on the debt-cancellation income if your client can prove insolvency existed when the debt was discharged. California conforms to the insolvency provision, even if the taxpayer uses the federal principal residence exclusion on their federal tax return. If a taxpayer is insolvent when the debt is cancelled to the extent of the insolvency, some or all of the cancelled debt may not be taxable. A taxpayer is insolvent when the taxpayer's total debts are more than the fair market value of the total assets determined immediately before the discharge. Your client must prove that all assets totaled less than all debts.

The excluded amount is applied to reduce tax attributes in the order listed on Federal Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment). However, an insolvent taxpayer may elect to apply all or a portion of the excluded amount first to reduce basis in depreciable assets or in real property held as inventory, rather than to reduce the tax attributes.

For more information on the basis adjustments, see the instructions for Federal Form 982. California does not have its own version of Federal Form 982. When using different

elections on the federal and California tax returns, create a separate Form 982 for the California tax return listing the exclusions that were used on that tax return, along with any basis adjustments.

If the foreclosure occurred outside of bankruptcy, the taxpayer is solvent, and/or is not a C corporation; they may elect to exclude cancellation of Qualified Real Property Business Indebtedness (QRPBI) income if certain requirements are met (IRC Section 108(c)). Under California law, if a taxpayer makes an election for federal income tax purposes, where California conforms to or incorporates the underlying federal tax law that election is binding for California income tax purposes. No separate California election is allowed.

If you make an election to exclude canceled qualified real property business debt from income, you must reduce the basis of your depreciable real property (but not below zero) by the amount of canceled qualified real property business debt excluded from income. The basis reduction is made at the beginning of the year. However, if you dispose of your depreciable real property before the beginning of the year, you must reduce the basis of the depreciable real property (but not below zero) immediately before the disposition.

If your reporting position is audited by California, you should be prepared to provide documentation and an analysis of your facts in support of your position.

If you have clients who have exhausted their options and cannot pay the additional tax, remember to look into our [offer-in-compromise](#) and [payment arrangement](#) programs.

More information regarding foreclosures and short sales, go to irs.gov.

Tax Practitioner Hotline Webinar: What To Do Before You Call FTB?

Join us as our presenter gives you the following helpful information about our Tax Practitioner Hotline:

- An overview of the tax practitioner hotline.
- Types of assistance we provide.
- Types of assistance we don't provide.
- Security and disclosure information.
- Information on transcript versus tax computation.
- Other helpful tips.

Date: Tuesday, November 5, 2013

Time: 10 a.m. – 10:30 a.m.

[Register Now](#)

Changes to POA Processing Procedures

Starting November 1, 2013, all Power of Attorney (POA), faxed and paper, will be worked on a first-come, first-served basis to ensure we provide the best possible service to all our customers.

Our backlog has grown to where we no longer can process POAs in our published timeframes. We added more staff and should be back within these timeframes by the end of year. To help us reduce our backlog, we ask you to carefully review your POA before you mail or fax it to us. Last year, we rejected almost 16,000 or 17 percent of the POAs we received because they were incorrect or incomplete. To help reduce the number of rejections, we published the article "[Why We Send Your POA Back to You](#)" in the January 2011 edition of Tax News. In 2012, we expanded the instructions to the POA form. We host POA webinars. Go to ftb.ca.gov and search webinars and view our most current POA webinar, "[FTB 3520, Power of Attorney – What's New.](#)"

In addition, we recommend you have your new client complete a POA, and immediately fax it to the POA Unit at 916.843.5440. The information is generally updated to our systems in 7 to 15 working days. By doing so ahead of time, the information should be in our POA database and the Practitioner Hotline representatives should be able to assist you during your first contact.

Also, starting in the fall of 2014, taxpayers will be able to submit their POA online through their My FTB Account. In most cases, taxpayer-submitted POAs will become active immediately after submission. In addition, tax representatives will also be able to

submit their client's POA online. Once the taxpayer accepts the POA through their MyFTB Account, the POA becomes immediately active.

POA Revocation Fax Number

Starting November 1, 2013, we dedicated a special fax line for POA revocations which allows us to process them within five working days. Regular POAs faxed to this number will be processed under our normal POA processing timeframes. For more information on how to revoke a POA, see "Retention or Revocation of a Prior POA" in the FTB 3520 instructions.

The POA Revocation fax number is: **916.845.9144**

Ask the Advocate



CSEA Meeting Recap, Part II

On September 20, 2013, we held our annual liaison meeting with the California Society of Enrolled Agents (CSEA). The FTB staff received several great questions, I've decided to share a few more of the questions I thought our Tax News readers would find most helpful. I also shared some in [last month's column](#).

Question #1

Power of Attorney:

Please explain the extent of power granted to a representative with a signed power of attorney form. A member contacted FTB regarding a misapplication of funds paid by check. Amounts indicated on the check for 2012, FTB recorded to 2013. The FTB told the member that only the client could request a different application of the funds, and that the request needed to be in writing. The client submitted the letter, and the request was denied, stating that the letter didn't meet the standards FTB needed. Since the intent of the taxpayer was on the check, we need clarification why the representative was unable to manage the issue, and what are the FTB standards needed in such a letter.

Response #1

Unless taxpayers specify otherwise in Additional Privileges on the POA, the taxpayer authorizes their representative to act as their attorney-in-fact to:

- Talk to us about their account (and it allows us to discuss the account with the representative).

- Receive and inspect their account information.
- Represent them in matters before us.
- Sign waivers that extend the statutory period for assessment or determination of taxes.
- Execute settlement or closing agreements.
- Receive information from non-tax programs, such as Vehicle Registrations Collections.

With a valid POA, our procedures are to assist the practitioner to move the payment if the tax year is indicated on the check. No letter is needed. The only time we request a letter is for a web payment. We ask for the letter to indicate that the payment was in error and for what year it was intended.

When sending us a payment, we recommend that the taxpayer write their tax identification number and tax year the payment is for on the check. We also recommend that the taxpayer includes a copy of our notice with the check. Taxpayers should not use a specific payment voucher (such as an estimate tax or extension) to make a general payment. This is especially true of the estimated tax voucher. Once a taxpayer makes an estimated tax payment, we cannot move the payment to another year to pay a liability (R&TC section 19364 and Rev. Ruling 77-359). To reduce the risk of payments being misapplied, we recommend using Web Pay as an alternative to using a check.

When corresponding with us regarding this type of issue, we strongly recommend that the letter contain a *detailed* explanation of the facts, including any supporting documents, in order for us to make a determination.

Question #2

MyFTB Account:

Is there a method for reporting and documenting information missing on MyFTB Account, such as estimated tax payments that were paid electronically, but not reflected in the taxpayer's online account information available on MyFTB Account?

Response #2

While we make every effort to apply tax payments as intended, we know that accidents happen. Sometimes payments made by joint filers may only be applied to one of the taxpayers. If a taxpayer selects the wrong payment type or tax year in Web Pay, the payment will end up in an unexpected place. We want to work with you to get these errors corrected.

Before contacting us, please verify with your client that the payment was actually made. Good examples of proof of payment are a canceled check, a bank statement, and an electronic payment confirmation.

Currently, the best way to report discrepancies you find is to contact the Tax Practitioner Hotline by phone at 916.845.7057 or by fax at 916.845.9300. Providing a copy of the canceled check or bank statement will help us quickly correct the issue. To protect your client's privacy, we cannot discuss account information over Live Chat at this time.

Beginning in the fall of 2014, you will have new electronic means to report these issues. We will be adding **Secure Chat**, which will let you discuss account information online with an FTB representative during business hours, and a way to **send a secure message** (and upload supporting documentation such as a canceled check) at any time.

Steve Sims, EA

Taxpayers' Rights Advocate

Follow me on Twitter at twitter.com/FTBAdvocate.

Event Calendar

As part of education and outreach to our tax professional community, we participate in many different presentations and fairs. We now provide a [combined-calendar](#) to show the events we are attending, as well as other events happening with us such as interested party and board meetings.



Enterprise. Data. Revenue!

EDR in the News

EDR Helps Us Improve Our Service

Since its inception in July 2011, Enterprise Data to Revenue (EDR) delivered a variety of tools that make it better and easier for taxpayers and tax practitioners to do business with us. Here is a summary of just some of the many improvements EDR has already made.

More Convenient Installment Agreements

Early on, EDR implemented up-front validation checks to the installment agreement web application. This provides better service to the taxpayers by letting them know sooner if they qualify for an installment agreement. In addition, EDR allowed taxpayers to set up installment agreements by making a free phone call to an easy-to-use self-service application. The application improves the installment payment plan process while freeing call center staff to assist more taxpayers with complex issues.

Another Chance to Resolve Collection Issues

In June 2012, we began using an automated calling system to contact personal income tax taxpayers to resolve their collection issues, and later we began using the automated calling system to call businesses. We immediately connect taxpayers with a live agent or leave a message for them to call us back. This new contact method allows us to help more taxpayers resolve their issues and avoid entering our involuntary collection process.

More Efficient Tax Return Processing

In January 2013, we implemented 2D-barcode technology, allowing us to capture all the data from personal income tax (PIT) paper-filed tax returns quickly and efficiently. As more software developers add 2D barcodes to tax returns, the volume of data captured from PIT returns will continue to expand. This makes our paper-return processing faster and more accurate, often resulting in faster refunds for taxpayers.

With just over two years to go, EDR will continue to make improvements to our customer service by expanding the options and data available on MyFTB Account, enhancing our Interactive Voice Response system, and more.

Inside FTB

Top 500 Income Tax Debtors List Updated

We updated our [Top 500 Delinquent Taxpayers](#) list with 300 individuals and 52 businesses comprising the new list. Combined, they owe the state more than \$169 million.

In August, we sent letters to 500 taxpayers who potentially could appear on the list if they failed to resolve their tax liabilities. Of this total, 148 taxpayers resolved their accounts, and paid more than \$5.3 million, to prevent their being publically named on the list. More than \$274 million has been collected from the top debtors program since its October 2007 inception.

Being on the Top 500 Delinquent Taxpayer list carries added provisions which includes:

- Suspension of state-issued licenses including driver's licenses and occupational or professional licenses.
- Published professional and occupational license information.
- Prohibits state agencies from entering into certain contracts with listed debtors.
- Published names and titles of principal officers of listed corporations.

We remove a taxpayer from the list once the tax is paid or the taxpayer agrees to make payments under an approved installment agreement or offer in compromise. Tax liabilities in bankruptcy cases are not included on the list.

Individuals on the list can contact us at 888.426.8555 to resolve their accounts. Business taxpayers can call 888.426.8751.

The Top 500 list is published twice a year in April and October.

The Board of Equalization has a [similar list](#) of the state's top sales and use tax delinquencies, which they update quarterly.

Criminal Corner

Police Embezzler Sentenced to 10 Years

According to the Santa Barbara Independent, Karen Flores admitted to stealing over \$600,000 in parking citation fees. Despite pleas from her attorney and letters of support from nearly 30 friends and family members, the former supervisor of the Santa Barbara Police Department's business office was sentenced to 10 years in state prison. She was also ordered to pay just under \$685,000 in restitution and \$112,000 to us.

Karen Flores had worked for the SBPD for 15 years, pocketing cash and fudging records during a seven-year period from June 2003 to August 2011. She was reportedly motivated to steal because she had been given more responsibility but without a raise; her take-home salary at the time was approximately \$55,000 a year. Flores was arrested in August 2011 after ironically being assigned to a task force charged with finding out what had happened to the missing funds. Though she tried to explain away the lost money by claiming the department's tracking system was inaccurate, authorities would later find parking tickets she destroyed or altered.

Flores was represented Thursday by attorney Dan Murphy who argued his client had fully admitted her guilt and was sufficiently remorseful that she should be placed on probation, not put behind bars. During her years of embezzling, Murphy said, Flores's judgment had been clouded by major depressive disorder brought on by postpartum depression, and that her sadness was only exacerbated by the guilt she experienced from stealing on a weekly and sometimes daily basis.

Admitting that Flores was living beyond her means during the seven years of theft, Murphy said she and her family weren't living an overly-extravagant lifestyle. She stole because she had to as soon as the debt started piling up and family members came to rely on her for support, he went on. "Once the hamster wheel started spinning, she couldn't get off," he said. Continuing with his argument for probation, Murphy said putting Flores in prison would unfairly separate her from her six-year-old son during his formative years, and that she had been a perfectly law-abiding citizen until the summer 2003. "She never even had a parking ticket!" he exclaimed, eliciting titters around the room and a chuckle from Judge George Eskin.

Prosecutor Brian Cota countered the points one-by-one, noting first that Flores's supposed depression was never officially diagnosed and that the term was only used in a letter written by the counselor Flores started seeing after her arrest. The counselor, Cota went on, was justifiably in her patient's corner, but was basing her assessment on self-reported information. If Flores is depressed, Cota said, it's because she's been caught and is facing substantial punishment. Plus, there was nothing to suggest in her letters of support that Flores had displayed signs of depression over the years. On the contrary, said Cota — she was known as a hard worker with an active lifestyle and considered by those who knew her to be upbeat and reliable. And while she may indeed be remorseful, the prosecutor went on, it's for herself and her impending sentence, not for the betrayal of her employer and the ripple effect it had on the department and the rest of the Santa Barbara community.

Cota talked about how Flores bought a boat, two cars, two ATVs, and jet skis in one 15-month period, also purchasing golf clubs, wake boards, and a foosball table over the years. He conceded that she and her family were living beyond their means in their home in Santa Ynez, but stated, "People do that all the time without stealing. You make sacrifices." While Murphy said more than once that Flores had used much of the stolen money to support family members during hard times, Cota said her bank statements

didn't reflect that reality. Flores's husband, he noted, made around \$30,000 a year working construction — she made around \$55,000 — but that the family was annually funneling around \$160,000 through their bank account that went toward high-end personal expenses. Plus, he said, a good deal of the stolen money was cash that was never reported or deposited. Cota said there was no evidence to suggest Flores's husband was aware of her thieving, and that he avoided any tax-related charges since she was in charge of the family's bookkeeping.

Traveling 80 miles to and from work every day, Flores drove a Ford Excursion, which gets around 15 miles a gallon and is one of the most impractical commuter cars on the market, Cota continued. So why, he rhetorically asked, buy such a vehicle in the first place? "To tow the boat," he answered. Cota also noted that since Flores was released on her own recognizance earlier this year — she had only spent a few days in County Jail — she's been spotted driving a BMW by her next door neighbor, a DA investigator. "She just doesn't seem to get it," Cota said, calling Flores greedy and without a functioning moral compass.

Before he handed down his sentence, Judge Eskin made it clear he struggled with the decision and had special concern for Flores's young son. And though he said he appreciated Flores admitting her guilt and trying to make amends, her actions had profound effects. People lost their jobs and services were cut to make up for the lost funds, he said, and the SBPD unfairly suffered a black eye because of her selfish acts.