

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

ERIC A. THORESON

) OTA Case No. 18011350
)
) Date Issued: March 18, 2019
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)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Eric A. Thoreson

For Respondent: Andrew Amara, Tax Counsel III

S. HOSEY, Administrative Law Judge: On August 30, 2018, the Office of Tax Appeals issued a decision to Eric A. Thoreson (appellant) in which it sustained respondent Franchise Tax Board’s (FTB) proposed assessments of additional tax, penalties and interest for the taxable years 2007, 2008, 2009, 2010, 2011, 2012 and 2013. By letter dated September 25, 2018, appellant perfected his petition for rehearing of this matter.

Upon consideration of appellant’s petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing, as required by the *Appeal of Wilson Development, Inc.*, 94-SBE-007, October 5, 1994.¹ Good cause for a new hearing may be shown where one of the five following grounds exists and the rights of the complaining party are materially affected: 1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; 2) accident or surprise, which ordinary prudence could not have guarded against; 3) newly discovered evidence, material for the party making the petition for rehearing, which the party could not, with reasonable diligence, have discovered and produced prior to the decision of the appeal; 4) insufficiency of the evidence to justify the decision, or the decision is against law; or 5) error in law. (*Appeal of Do*, 2018-OTA-002P, Mar. 22, 2018.) Appellant does not clarify which grounds he is arguing, but


¹ BOE precedential opinions are generally available for viewing on the BOE’s website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>. OTA precedential opinions are available on OTA’s website: <<https://ota.ca.gov/opinions>>

rather rehashes arguments from his initial appeal. Those arguments are that FTB failed to provide appellant with the evidence on which its assessments were based, that the electronic nature of the evidence makes it untrustworthy, and that his due process rights have been violated.

Appellant's arguments are reiterations of arguments already presented and considered in his appeal and do not constitute grounds for a rehearing. Appellant did not file California income tax returns for the 2007-2013 tax years at issue, but paid mortgage interest in those same years.² We found the FTB's estimation of appellant's income based on the mortgage interest paid was both reasonable and rational. Appellant did not explain nor provide any supporting evidence showing that FTB's reconstruction was incorrect, or show nontaxable sources from which he was paying his mortgage and other cost of living expenses during those tax years. Appellant had the burden of proving error in FTB's proposed assessments of additional tax, and he failed to meet that burden of proof. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) None of appellant's arguments regarding the evidence FTB provided or his arguments about alleged constitutional violations warrant a rehearing. Those arguments already were considered in our written decision. Appellant's attempt to reargue the same issues a second time is not a ground for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P, Nov. 28, 2018.)

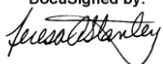
Therefore, appellant has not shown good cause for a new hearing, as designated under *Appeal of Wilson Development, Inc., supra*; *Appeal of Do, supra*; or California Code of Regulations, title 18, section 30602(c)(5).


For the foregoing reasons, appellant's petition is hereby denied.

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Sara A. Hosey
Administrative Law Judge

² FTB provided federal Forms 1098 showing appellant's mortgage interest payments for each of the tax years at issue.

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Alberto T. Rosas
Administrative Law Judge