

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeals of:) OTA Case Nos. 18011725 & 18011727
)
GREGORIO Z. UY AND) Date Issued: May 7, 2019
JOYLYN Y. UY)
_____)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Gregorio Z. Uy, Jr.¹

For Respondent: Judy F. Hirano, Tax Counsel IV

For the Office of Tax Appeals: William J. Stafford, Tax Counsel III

K. GAST, Administrative Law Judge: On January 2, 2019, the Office of Tax Appeals (OTA) issued a decision, based on the written record, in which it sustained respondent Franchise Tax Board’s (FTB) denial of appellants’ claims for refund because they are not entitled to exclude from their taxable income a portion of appellant-husband’s military retirement income for the 2012 and 2013 tax years. Appellants timely filed a petition for rehearing under California Revenue and Taxation Code section 19048. Upon consideration of appellants’ petition, we conclude the grounds set forth therein do not meet the requirements under California Code of Regulations, title 18, section 30604.

As relevant here, a rehearing may be granted where our decision is contrary to law and appellants’ substantial rights are materially affected. (Cal. Code Regs., tit. 18, § 30604(d).) In their petition, appellants do not explicitly contend that this specific ground, which is one of five in the regulation, entitles them to a rehearing. However, we can reasonably conclude, based on the lengthy legal citation to authorities in their petition, that appellants are arguing our decision is contrary to law.

¹ In their appeal on the merits, appellants filed their opening briefs on their own behalf, and subsequent representation was provided by the Tax Appeals Assistance Program. In this petition for rehearing, however, appellants are now representing themselves again.

The question of whether a decision is contrary to law (or against the law) is not one which involves a fact-finder weighing the evidence and finding a balance against the decision. (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*.) Rather, what is required is a finding that the decision was unsupported by any substantial evidence. (*Ibid.*) This requires a review of the decision that “indulg[es] in all legitimate and reasonable inferences” to uphold it. (*Id.* at p. 907.) Thus, the relevant question here does not involve the quality or nature of the reasoning behind the decision, but whether the decision is or is not supportable by substantial evidence in the record. (*Appeal of NASSCO Holdings, Inc.*, 2010-SBE-001, Nov. 17, 2010.) In our review, we consider the evidence in the light most favorable to the prevailing party (here, FTB). (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.)

Appellants make numerous legal arguments to support that their military retirement income in question was properly excluded from their California gross income. For example, appellants contend that even though appellant-husband did not retire from the military due to disability, the U.S. Department of Veterans Affairs (VA) still evaluated him as disabled and granted him nontaxable service-connected disability compensation. Thus, appellants argue, they are entitled to exclude the military retirement income from their gross income under Internal Revenue Code section 104(a)(4). As another example, it appears appellants are contending that both appellant-husband’s VA waiver—which entitles him to waive receipt of part of his taxable military pension equal to the amount of his nontaxable VA benefits—and his receipt of Concurrent Retirement and Disability Pay (i.e., CRDP) do not affect the taxability of the income in question.

However, as set forth in our detailed opinion, we have already considered and rejected the technical merits of these and other similar arguments made in appellants’ petition. Appellants have the burden on appeal of proving error in FTB’s denial of their refund claims, and they cannot satisfy the requirements for the granting of a rehearing by presenting the same or similar arguments presented during the initial appeal. In addition, a petition for rehearing is not

an opportunity to raise new issues or arguments that could have been addressed before. Accordingly, appellants have not shown our opinion was contrary to law.

For the foregoing reasons, appellants' petition for a rehearing is hereby denied.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

DocuSigned by:
Neil Robinson
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Neil Robinson
Administrative Law Judge