

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011807
)
DAVID W. SWANSON AND CONNIE L.) Date Issued: May 14, 2019
SWANSON)
)
)
)
_____)

DECISION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Joe Alfred Izen, Jr.
Izen & Associates, P.C.

For Franchise Tax Board (FTB): Eric A. Yadao, Tax Counsel III

G. THOMPSON, Administrative Law Judge: On October 22, 2018, this panel held an oral hearing in this matter. On January 29, 2019, we issued an opinion finding that appellants are liable for the additional tax determined by FTB for the 1993, 1994 and 1995 tax years. We removed the accuracy-related penalty for 1993, reduced the accuracy-related penalties for 1994 and 1995 to 20 percent of the underpayments, and determined we did not have jurisdiction to review the post-amnesty penalties. We otherwise sustained FTB’s actions on appellants’ protests for the years at issue.

On February 28, 2019, appellants filed a timely petition for rehearing under California Revenue and Taxation Code section 19048. A rehearing may be granted where one of the following grounds exists, and the substantial rights of the complaining party are materially affected: (1) an irregularity in the appeal proceedings which occurred prior to the issuance of the written opinion and prevented fair consideration of the appeal; (2) an accident or surprise which occurred during the appeal proceedings and prior to the issuance of the written opinion, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to the issuance of the written opinion; (4) insufficient evidence to justify the written opinion or the opinion is contrary to law; or (5) an error in law. (Cal. Code of Regs., tit. 18, § 30604(a)-(e).)

Appellants’ petition for rehearing makes the same arguments they raised prior to our opinion. Among other things, appellants again argue that the federal Offer in Compromise that they reached with the Internal Revenue Service should bind FTB. We considered this argument previously and see no error in our decision.

Appellants also reiterate their argument that FTB denied them an audit and therefore deprived them of due process. As we indicated in our opinion, consistent with applicable federal authority, we will not look behind FTB’s notices to question FTB’s procedures leading to its determination. (*See Clapp v. Commissioner* (9th Cir. 1989) 875 F.2d 1396, 1401.) Furthermore, appellants have had multiple opportunities to offer evidence and question FTB’s proposed assessments. Again, we see no error in our opinion.

Appellants have not set forth any valid ground for rehearing. Accordingly, appellants’ request for a rehearing is denied.

DocuSigned by:
Grant S. Thompson
FC572D5881AE41B...
Grant S. Thompson
Administrative Law Judge

We concur:

DocuSigned by:
Nguyen Dang
4D465973E644469...
Nguyen Dang
Administrative Law Judge,
on behalf of Douglas Bramhall
Administrative Law Judge

DocuSigned by:
Linda Cheng
8B585BEAC08946D...
Linda Cheng
Administrative Law Judge