

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042834
)
KEITH W. BROWN) Date Issued: April 25, 2019
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_____)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Keith W. Brown
For Respondent: Gi Nam, Tax Counsel

K. GAST, Administrative Law Judge: On February 5, 2019, the Office of Tax Appeals (OTA) issued a decision in which it sustained, for both the 2013 and 2014 tax years, respondent Franchise Tax Board’s (FTB) proposed assessment of tax and imposition of the late-filing penalty. Appellant timely filed a petition for rehearing under California Revenue and Taxation Code section 19048. Upon consideration of appellant’s petition for rehearing, we conclude the grounds set forth therein do not meet the requirements under California Code of Regulations, title 18, section 30604.

A rehearing may be granted where one of the following five grounds exists, and the substantial rights of the complaining party (here, appellant) 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 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 Regs., tit. 18, § 30604(a)-(e).)

In his petition letter, appellant claims that “[d]ue to unforeseen requirements of [his] job, [he] was unable to appear before the [OTA] for the scheduled hearing on December 12, 2018.”

He further claims “[he] was required to travel out of town that week with very little advanced notification.”

None of these reasons, however, satisfy any of the five grounds entitling appellant to a rehearing. In addition, we reiterate—as noted in our decision—that this matter was duly noticed for an oral hearing in Torrance, California, on December 12, 2018, but appellant did not appear, despite having confirmed in writing he would. Appellant also never notified OTA prior to the hearing that he could not attend due to unforeseen scheduling conflicts with his job.

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

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

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Jeffrey I. Margolis
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Jeffrey I. Margolis
Administrative Law Judge

DocuSigned by:
Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge