

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011045
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MARK MORGAN) Date Issued: May 23, 2019
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_____)

DECISION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Mark Morgan
For Respondent: Gi Nam, Tax Counsel

L. CHENG, Administrative Law Judge: On June 19, 2018, this panel held an oral hearing in this matter. On September 19, 2018, we issued an opinion finding that appellant is liable for the tax, penalties, and interest determined by respondent Franchise Tax Board (FTB) for the 2013 tax year. Accordingly, we sustained FTB’s action. We also imposed a frivolous appeal penalty of \$500.

By correspondence dated October 18, 2018, appellant filed a timely petition for rehearing under California Revenue and Taxation Code (R&TC) section 19048.¹ 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).

¹ California Revenue and Taxation Code section 20 provides that on and after January 1, 2018, the term “board,” with respect to an appeal, means the Office of Tax Appeals (OTA) unless context requires otherwise.


See also *Appeal of Sjofinar Masri Do*, (18-OTA-002P) 2018 WL 6377629, and *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.)

In his petition for rehearing, appellant does not set forth specific grounds for a new hearing; instead, he repeats the same or similar arguments that he made to the panel during the initial appeal (e.g., appellant is not defined as a taxpayer, income tax is an indirect excise tax or special licensing tax, FTB did not provide the information appellant requested, appellant does not know what California tax laws he fails to comply with). Appellant’s contentions were previously addressed in the initial appeal. We rejected appellant’s contentions and determined that appellant’s arguments were frivolous and groundless, and that appellant had failed to show error in FTB’s proposed assessment of additional taxes. We also found that appellant failed to establish reasonable cause to abate the penalties.


Appellant has not demonstrated with his repeated arguments that there was any irregularity in the initial appeal proceedings. Appellant’s petition for rehearing has not offered any new evidence, nor has appellant asserted that the evidence was insufficient to justify the opinion in his appeal. Furthermore, appellant has not demonstrated any error in law. Accordingly, we find appellant has not shown good cause for a new hearing as is required by the authorities referenced above.


DISPOSITION

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

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Linda C. Cheng
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Michael F. Geary
Administrative Law Judge