OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18010947
	)	
DAVID STONE AND	)	Date Issued: June 26, 2019
CHRISTINE GERMAINE STONE	)	
	)	
	)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	Santo Chiarelli, CPA Nicole Stewart, CPA
For Respondent:	David Kowalczyk, Tax Counsel
For the Office of Tax Appeals:	Sarah Fassett, Tax Counsel

K. GAST, Administrative Law Judge: On December 11, 2018, the Office of Tax Appeals issued a decision, based on the written record, in which it sustained respondent Franchise Tax Board's (FTB) denial of appellants' claim for refund because they did not establish reasonable cause to abate the late-filing penalty imposed under California Revenue and Taxation Code (R&TC) section 19131. Appellants timely filed a petition for rehearing under R&TC 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.

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

In their petition, appellants again contend that once they discovered the non-filing for 2012—the first year they had a filing requirement due to appellant-husband's receipt of California source income reported on a Schedule K-1 from his S corporation—they immediately filed their return and paid the taxes, penalties, and interest due. They reargue they relied on the "advice" of their prior accountant that they did not have to file a 2012 California nonresident return. As support, they resubmitted with their petition the same letter from the accountant, dated August 29, 2018, that was submitted in their initial appeal.

In our detailed opinion, we had already reviewed and rejected these and other arguments, as well as the evidence presented. Simply stated, appellants' prior accountant did not provide substantive tax advice that a filing obligation did not exist under applicable legal authorities. Rather, in his letter dated August 29, 2018, the accountant admitted his firm "erroneously" did not prepare a return, which he "overlooked" when preparing their other state returns. Accordingly, none of the five grounds exists for a rehearing, and the August 29, 2018 letter does not constitute newly discovered, relevant evidence that appellant could not have reasonably discovered and provided prior to the issuance of our opinion.

For the foregoing reasons, appellants' 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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John O Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge