

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010816
SKY J. WOLF)
) Date Issued: August 12, 2019
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Edward I. Kaplan, Green Radovsky
Maloney Share & Hennigh LLP

For Respondent: Parviz T. Iranpour, Tax Counsel

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


A. ROSAS, Administrative Law Judge: On February 20, 2019, this panel issued an Opinion sustaining the Franchise Tax Board’s proposed assessment of \$4,232 in additional tax, plus applicable interest, for the 2010 tax year. Appellant Sky J. Wolf (Wolf) then filed a petition for rehearing pursuant to Revenue and Taxation Code (R&TC) section 19048. Upon consideration of the petition for rehearing, we conclude that the grounds discussed in the petition do not constitute good cause for a new hearing. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Sjofinar Masri Do*, 2018-OTA-002P; *Appeal of Wilson Development, Inc.*, (94-SBE-007) 1994 WL 580654.)

Good cause for a new hearing may be shown where one of the following grounds exists, and the rights of the complaining party are materially affected: 1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; 2) accident or surprise, which ordinary prudence could not have guarded against; 3) newly discovered evidence, material for the party making the petition for rehearing, which the party could not, with reasonable diligence, have discovered and produced prior to the decision of the appeal; 4) insufficiency of the evidence to justify the decision, or the decision is against law; or 5) error in law. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Sjofinar Masri Do*, *supra*.)


As noted in our February 20, 2019 Opinion, gross income generally means all income from whatever source derived. (Internal Revenue Code (IRC), § 61; R&TC, § 24271(a).) We further noted, however, that any amount received as a (1) qualified scholarship by an individual taxpayer who is (2) a candidate for a degree at (3) a qualifying educational organization is excluded from gross income. (IRC, § 117(a); R&TC, § 17131.) We found that Wolf failed to establish that she met the three above-listed requirements for an exclusion.

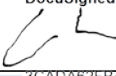
In her petition for rehearing, Wolf argues that our February 20, 2019 Opinion fails to consider the context and legislative history of Chapter 105, Title 10 of the United States Code (“Chapter 105”), which Wolf contends governs the program under which she received financial assistance, namely the Armed Forces Health Professions Scholarship and Financial Assistance Program (the “Armed Forces Scholarship Program”). We disagree. Our February 20, 2019 Opinion did take these matters into consideration.

Thus, Wolf’s petition for rehearing does not establish good cause for a new hearing. Her petition does not establish the existence of any of the five grounds enumerated above. Instead, her petition merely repeats much of the same arguments she raised previously. Accordingly, we hereby deny Wolf’s petition for rehearing, and we affirm our February 20, 2019 Opinion.

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Alberto T. Rosas
Administrative Law Judge

We concur:

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Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge