OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011268
HOMER H. HUMMEL, JR., AND MARGARET A. HUMMEL	) Date Issued: August 22, 2019

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Homer H. Hummel, Jr.

For Respondent: Bradley J. Coutinho, Tax Counsel
Natasha S. Page, Tax Counsel IV

T. STANLEY, Administrative Law Judge: On April 22, 2019, the Office of Tax Appeals issued an Opinion in which it sustained respondent Franchise Tax Board's (FTB) denial of appellants' claim for refund for the 2016 taxable year because they did not establish that they were entitled to the senior head of household credit under California Revenue and Taxation Code (R&TC) section 17054.7. Upon consideration of appellants' timely petition for rehearing, we conclude the grounds set forth therein do not meet the requirements under California Code of Regulations, title 18, section 30604.

Appellants' petition appears to assert that their rights were materially affected based on (1) newly discovered, relevant evidence, which they could not have reasonably discovered and provided prior to the issuance of the written opinion; or (2) insufficient evidence to justify the written opinion or the opinion is contrary to law. (See Cal. Code Regs., tit. 18, § 30604(c)-(d); see also *Appeal of Do* (2018-OTA-002P).)

Appellants first seem to claim that the Opinion is contrary to law, alleging that it modified the terms of R&TC section 17042 (which dictates the requirements for claiming head of household filing status) to add the words "by law." Appellants' primary argument at the hearing was that the words "except as otherwise provided" in that section allows appellants to follow the express wording in FTB's 2016 Personal Income Tax Booklet (instructions), and thus that they qualified for the disputed credit. The Opinion stated that the language in R&TC section

17042 referred only to exceptions created in the law. The statement is accurate, and thus the Opinion is not contrary to law.

Appellants' additional assertions contradict each other; namely, that the Opinion discounted the relevancy of the instructions, while at the same time the Opinion presented new evidence not available at the hearing by referring to a statement in the instructions booklet. In the first instance, appellants appear to claim there was insufficient evidence to justify the outcome. However, a rehearing may not be granted on the grounds of insufficiency of the evidence unless, after weighing the evidence, we are convinced from the entire record that a different Opinion should have been reached. (Cal. Code Civ. Proc., § 657.) The evidence presented at the hearing shows that while appellants qualified for the senior household credit in several respects, appellants conceded that they were married. Thus, appellants did not meet the requirement that a head of household must be an unmarried individual. Thus, the Opinion is not based on insufficient evidence.

With respect to appellants' final argument that there was "new evidence" presented, we note that the instructions were presented at the hearing and entered into evidence. The standard for determining whether newly discovered evidence warrants a rehearing is that it must be relevant evidence, which the party could not have reasonably discovered and provided prior to the issuance of the written opinion. (*Appeal of Do, supra.*) Appellants could have, and did, discover the instructions prior to the hearing. The instructions are therefore not new evidence, and the use of that evidence in the Opinion does not warrant a rehearing.

For the foregoing reasons, appellants' petition is hereby denied.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Kenneth Gast
Administrative Law Judge

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Nguyen Dang
Administrative Law Judge