OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011278
	)
HARRY TAUB	) Date Issued: August 12, 2019
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	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Harry Taub

For Respondent: Bradley J. Coutinho, Tax Counsel

For Office of Tax Appeals: Linda Frenklak, Tax Counsel IV

J. ANGEJA, Administrative Law Judge: On February 7, 2019, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of the Franchise Tax Board (FTB) in this matter.[1] We determined that Harry Taub (appellant) had not established that he was entitled to innocent spouse relief pursuant to Revenue & Taxation Code (R&TC) section 18533(f), court-ordered relief pursuant to R&TC section 19006(b), or relief pursuant to R&TC section 19006(c), for the 1992 or 1993 tax liability. We also determined that we lacked jurisdiction to determine whether the collection statute of limitations set forth in R&TC section 19255 remains open for the 1992 tax liability.

Appellant timely filed a petition for hearing (PFR) pursuant to R&TC section 19048 and California Code of Regulations, title 18, section (Regulation) 30505 and 30602. Upon consideration of appellant's PFR, we conclude that the grounds set forth therein do not constitute good cause for a new hearing, as established in *Appeal of Do*, 2018-OTA-002P, decided by the OTA on March 22, 2018 and Regulation 30604.

Good cause for a new hearing may be shown where one of the following grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing:

[1] OTA informed the parties on February 27, 2019, that it made a correction to a typographical error concerning the first issue.

(a) an irregularity in the appeal proceedings which occurred prior to issuance of the written opinion and prevented fair consideration of the appeal;

(b) 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;

(c) newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to issuance of the written opinion;

(d) insufficient evidence to justify the written opinion or the opinion is contrary to law; or

(e) an error in law.

(*Appeal of Wilson Development, Inc*. (94-SBE-007) 1994 WL 580654; *Appeal of Do*, *supra*; Regulation 30604.)

In his PFR, appellant raises two primary arguments: 1) that a rehearing is warranted to clarify that our Opinion only applies to the 1992 tax year; and 2) that a rehearing is warranted because of various allegedly erroneous factual findings. We address each separately.

Appellant's first argument relates to FTB's undisputed concession that the statute of limitations for collection (R&TC, § 19255) for the 1993 tax year had expired. In his PFR, appellant asserts that this concession means that he has no liability for the 1993 tax year, and he urges a rehearing so that we can confirm that he has no liability for that year. But appellant misconstrues the nature of the concession, and his assertion lacks merit. The issue before us was whether appellant qualified for innocent spouse relief for the years in question, and the expiration of the statute of limitations for collection for the 1993 tax year has no bearing on whether appellant qualified for innocent spouse relief in that year. Appellant's assertion would effectively transmute the expiration of the statute of limitations for collection into a finding on the merits that appellant qualified for innocent spouse relief, and thus we reject it.

Appellant's second argument is that a rehearing is warranted to correct a variety of allegedly erroneous factual findings, including: 1) our finding that appellant failed to establish that appellant's ex-spouse, Ms. Kerry Taub (Ms. Taub), owned the corporate business "Baby Thoughts"; 2) our finding that appellant failed to establish the existence or terms of the alleged prenuptial agreement; and 3) our rejection of appellant's assertion that Ms. Taub's failure to join this appeal qualifies as her adoptive admission that appellant qualifies for innocent spouse relief

for the years at issue. In support of his PFR, appellant asserts that: substantial evidence in the record proves that Ms. Taub owned Baby Thoughts; the prenuptial agreement exists (appellant wants to subpoena witnesses to so testify); and Ms. Taub's silence is an admission that appellant is an innocent spouse.

Here, appellant disagrees with our view of the evidence, and reiterates the same arguments and allegations that he previously made on appeal, which is insufficient to establish that he is entitled to a new hearing. In our Opinion, after careful review of the evidence in the record, we concluded that appellant failed to show that the tax liability for 1992 and 1993 was attributable solely to Ms. Taub.[2] We found that appellant failed to substantiate that Baby Thoughts was Ms. Taub's separate property based on several factors, including his failure to produce a copy of his and Ms. Taub's alleged prenuptial agreement. Furthermore, we found that, even if Baby Thoughts was Ms. Taub's separate property, appellant conceded that he earned income during 1992 and 1993 and he failed to prove the correct allocation of the 1992 and 1993 tax liabilities among the various sources of income.

In sum, appellant relies on the same arguments and facts in his PFR that he previously relied upon at hearing. Our decision to sustain the FTB's action was based on appellant's failure to show that he is entitled to 1) innocent spouse relief for the 1992 or the 1993 tax liability pursuant to R&TC section 18533(f); 2) court-ordered relief pursuant to R&TC section 19006(b); or 3) relief pursuant to R&TC section 19006(c). Appellant's dissatisfaction with the outcome of his appeal is not valid grounds for a rehearing.

Based on the foregoing, appellant has failed to show good cause for a new hearing under any of the grounds required by Regulation 30604 and set forth in *Appeal of Do*, *supra*. Appellant's PFR is therefore denied.

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Jeffrey. G. Angeja
Administrative Law Judge

[2] As explained in our Opinion, income attribution related to the tax liability is a threshold requirement for granting a requesting spouse equitable innocent spouse relief pursuant to R&TC section 18533(f) and Revenue Procedure 2013-34, section 4.01.

We concur:

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Michael. F. Geary
Administrative Law Judge

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Linda C. Cheng
Administrative Law Judge