OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 18012328
LAURA WYNHOLDS	Date Issued: September 4, 2019

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Laura Wynholds

For Respondent: Donna L. Webb, Staff Operation Specialist

D. CHO, Administrative Law Judge: On April 5, 2019, the Office of Tax Appeals (OTA) issued an opinion finding that appellant is liable for the tax and interest determined by respondent Franchise Tax Board (FTB) for the 2011 taxable year. Appellant filed a timely petition for rehearing pursuant to Revenue and Taxation Code (R&TC) section 19048 and California Code of Regulations, title 18, sections (Regulation) 30601 et seq. Upon consideration of appellant's petition for rehearing, we conclude that the grounds set forth therein do not meet the requirements under Regulation 30604.

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

In her petition for rehearing, appellant claims that she has "new accessible, relevant evidence which [appellant] could not provide at the time of the decision . . . ." Appellant

explains that she was "juggling a number of competing deadlines, health limitations, and financial priorities related to completing [her] PhD in Los Angeles while managing an ongoing disability that affects [her] mobility." With her petition for rehearing, appellant submitted receipts and other documentation to demonstrate that she incurred "non-taxable, tax creditable and/or tax-deductible expenses directly related to [her] education and research." Accordingly, appellant requested a rehearing of OTA's decision.

While it is unclear whether appellant could have discovered and provided this evidence prior to the issuance of our written opinion, our examination of the new evidence indicates that our opinion would not have changed even if this evidence was in the record for this appeal. As appellant asserts, the new evidence is related to expenses associated with education and research. Although Internal Revenue Code section 222(b) allows for a federal deduction for these expenses, California does not conform to this federal provision and does not allow a corresponding deduction for California income tax purposes. (See R&TC, § 17204.7.) As a result, even if appellant had provided this evidence prior to the issuance of our written opinion, appellant's California tax liability would not have changed. Therefore, appellant failed to establish that the new evidence materially affected her rights, and we do not need to address whether this evidence constitutes newly discovered evidence that appellant could have obtained prior to the issuance of our written opinion.

Based on the foregoing, appellant's petition for rehearing is denied.

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Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

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Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge