

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042865
JOSIE R. MACADANGDANG)
) Date Issued: September 23, 2019
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Josie R. Macadangdang (Appellant)
George Clifton, Representative

For Respondent: Bradley J. Coutinho, Tax Counsel
Marguerite Mosnier, Tax Counsel

D. Bramhall, Administrative Law Judge: On April 10, 2019, the Office of Tax Appeals (OTA) issued a decision in which it sustained the Franchise Tax Board’s (FTB’s) proposed assessment of tax in the amount of \$436, plus applicable interest for 2014. Appellant then filed a petition for rehearing pursuant to section 19048 of the Revenue and Taxation Code (R&TC). Upon consideration of the petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing, as required by *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 and *Appeal of Do*, 2018-OTA-002P, Mar. 22, 2018.

Among the grounds listed for granting a new hearing, the Board of Equalization (BOE) in *Wilson Development, supra*, determined that good cause for a new hearing may be shown where the rights of the complaining party are materially affected, and there exists an insufficiency of the evidence to justify the decision or the decision is against law, or an irregularity in the proceedings by which the party was prevented from having a fair consideration of its case. (See also Cal. Code Regs., tit. 18, § 30602(c)(5).) In the instant petition for rehearing, appellant argues that the OTA decision was against law and was based on misunderstandings of fact that created an irregularity in the proceedings that prevented a fair consideration of the appeal. The following discussion addresses the specific contentions set forth by appellant in the petition for rehearing.

The OTA opinion decided that appellant was not entitled to file a 2014 California return using the head of household filing status. Appellant's principal argument was that the 2014 federal return claimed head of household filing status and the California Form 540 filing instructions advised taxpayers to use the same filing status as used for federal purposes. Therefore, FTB was bound to allow appellant the claimed filing status as its instructions were followed. OTA's decision found that appellant did not support a "qualified person" and thus did not qualify for head of household filing status for either federal or California purposes.


Appellant contends that OTA's opinion contains "a lie" in its finding that appellant used an incorrect filing status for federal tax purposes. Citing only partial language from the federal instructions, appellant concludes the instructions support the filing position that a fiancée is a qualified person. Omitted from that analysis is language that specifically excludes a person who qualifies as a dependent "only because he or she lived with [the taxpayer] for all of 2014." Appellant, having failed to apply the complete federal instructions, then relies on language addressing a dependent qualification that includes qualifying relative status. Appellant's analysis is in error and OTA's finding was neither "a lie" nor inconsistent with the law.

Appellant further contends that OTA's opinion did not follow the law, cites inapplicable authorities, including equitable principles and civil law provisions, and argues against the application of cited authority without demonstrating any support for the positions advanced.

The question of whether a decision is contrary to law is not one that involves a weighing of the evidence, but instead requires a finding that the decision is "unsupported by any substantial evidence." (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906.) In appellant's petition, appellant sets forth arguments and facts that were previously made to the OTA. These arguments, discussed above, were already considered at length and resolved in a written decision. The decision gave appropriate consideration to the evidence and arguments presented by appellant in reaching its conclusion. Appellant's dissatisfaction with the outcome of the appeal and attempted re-argument of the same issues a second time, is not grounds for a rehearing. As OTA found in its decision, appellant's contentions fail to show error in FTB's position, and they do not show that the decision created an "injustice based on a mistake of law." (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976 [discussing *In re Jessup*])


(1889) 81 Cal. 408, 471-472].) Appellant has not demonstrated that the OTA's decision is contrary to law.

For the foregoing reasons, appellant's petition is hereby denied.

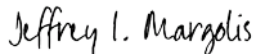
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Douglas Bramhall
Administrative Law Judge

We concur:

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Linda C. Cheng
Administrative Law Judge

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Jeffrey I. Margolis
Administrative Law Judge