OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18010692
	)
WILLIAM A. LLANOS	) Date Issued: October 8, 2019
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	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: David William Polk, a.k.a. David William & David Polk

For Respondent: Andrew Amara, Tax Counsel

J. MARGOLIS, Administrative Law Judge: On June 26, 2019, the Office of Tax Appeals (OTA) issued a decision sustaining Franchise Tax Board's (FTB) tax and penalty determinations with respect to appellant's 2012 tax year and imposing a $5,000 frivolous appeal penalty pursuant to Revenue and Taxation Code (R&TC) section 19714. Appellant timely filed a petition for rehearing under R&TC section 19048. Upon consideration of appellant's petition for rehearing, we conclude that the grounds set forth therein do not meet the requirements for a rehearing under California Code of Regulations, title 18, section 30604.

In his petition for rehearing, appellant claims that "the evidence on the record does not justify the Opinion," "the determinations in the Opinion are contrary to applicable law" and are "the product of a conspiracy by three despotic judges" who exhibited "personal prejudice and bias . . . that prevented a fair and impartial hearing." Appellant asserts that unless the judges promptly change their ruling, he will "pursue federal criminal charges against these judges personally for conspiracy against appellant's rights."

Appellant's arguments for a rehearing are principally based on his contention that OTA improperly and "inexplicably disregarded appellant's 540NR state return." However, that "return" was neither prepared, nor submitted to FTB, until long *after* FTB had proposed its deficiency assessment. The submission of that return did not obviate the need for appellant to

contest FTB's proposed assessment and establish that FTB erred in determining that tax and penalties were due from appellant.

Furthermore, contrary to appellant's claim, his state tax return is not evidence that the statements contained therein are true and correct. "[M]erely signing a tax return under penalty of perjury does not establish the facts contained therein . . . . [I]t is not presumed to be correct." (*Roberts v. Commissioner* (1974) 62 T.C. 834, 837, citations omitted.) "[T]he tax return itself . . . cannot be regarded as more than a statement of petitioner's original claim." (*Seaboard Commercial Corp. v. Commissioner* (1957) 28 T.C. 1034, 1051.) In short, appellant's state tax return does not establish error in FTB's determination.[1]

We explained in our opinion that appellant had the burden of proving error in FTB's determination. The mere fact that appellant submitted a return claiming he had no tax liability neither satisfied that burden nor shifted it to FTB. As the U.S. Tax Court stated in *Halle v. Commissioner* (1946) 7 T.C. 245, 247, affd. (2nd Cir. 1949) 175 F.2d 500:

> This Court can not disturb the Commissioner's determination of deficiencies merely upon testimony by the petitioner that his returns as filed were correct. To do so would mean that the Commissioner's adjustments would not be presumptively correct where the taxpayer swore to the correctness of his return.

Moreover, even if, contrary to well-established law, appellant's return was entitled to a "presumption of correctness," the evidence in this appeal would be more than sufficient to overcome that presumption. The record in this appeal reveals that appellant received wage income from his employer. Wages are taxable income. Appellant's arguments to the contrary have been rejected time and again as baseless and frivolous. His argument that he was a "nonresident alien individual" during 2012 also is unsupported by, and contrary to, the record in this case.[2]

[1] Appellant's argument that OTA gave insufficient consideration to his federal tax return and federal account transcripts is without merit for the same reason—tax returns, and transcripts of account based thereon—are not proof that the positions taken in those returns are correct.

[2] In his petition for rehearing, appellant asserts that we erred by failing to treat him as a nonresident alien individual for tax purposes. Yet he inconsistently argues that we erred in our decision by referring to appellant's nonresident alien filing status because "appellant never claimed that the geographical location where he physically lives has any bearing on this proceeding."

Finally, we reject appellant's claim that OTA's decision was attributable to the "personal irrational biases and prejudices of the judges on this panel" as being wholly without factual or legal support.

Accordingly, appellant's petition for rehearing is denied.

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Jeffrey I. Margolis
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Jeffrey I. Margolis
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

DocuSigned by:
Neil Robinson
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Neil Robinson
Administrative Law Judge