

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011311
)
MAHNAZ DANESH AND)
IMAD MAZBOUDI)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	Farrokh Komaili, MBA, EA
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For Respondent:	Peter Kwok, Tax Counsel IV
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For Office of Tax Appeals:	Andrew Jacobson, Tax Counsel III
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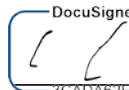
A. KWEE, Administrative Law Judge: On January 24, 2019, the Office of Tax Appeals (OTA) held an oral hearing in this matter in Van Nuys, California. OTA thereafter issued a written opinion dated April 2, 2019, sustaining an action of respondent Franchise Tax Board (FTB). FTB's action denied appellants' claim for refund in the amount of \$79,707 for the 2012 tax year. OTA's opinion concluded that appellants are not entitled to an \$829,527 reduction to taxable income because the transaction at issue did not qualify for nonrecognition of gain under Internal Revenue Code (IRC) section 1031. Appellants timely petitioned for a rehearing pursuant to Revenue and Taxation Code (R&TC) section 19048. For the reasons set forth below, appellants' petition is denied.

OTA may grant a rehearing where one of the following grounds exists, and the substantial rights of the party seeking a rehearing (here, appellants) are materially affected: (1) an irregularity in the proceedings that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the filing 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 that occurred during the proceedings. (Cal. Code Regs, tit. 18, § (Regulation) 30604; *Appeal of Do*, 2018-OTA-002P.) A

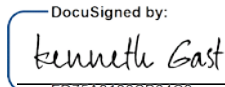
ground for a rehearing is material if it is likely to produce a different result. (See *Santillan et al. v. The Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708; *Hill et al. v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764; *Trovato v. Beckman Coulter, Inc., et al.* (2011) 192 Cal.App.4th 319.)

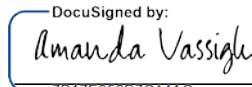
Appellants do not contend that any of the required grounds set forth in Regulation 30604 have been met. Instead, appellants submitted a one-page letter restating the testimony provided at the oral hearing: (1) although the transaction was structured to make it appear like appellants received a cash payment, the funds had to be used to pay off a loan and therefore appellants did not actually gain any money from this transaction; (2) appellant-wife did not receive any income during the pendency of her lawsuit against her business partner (brother); (3) appellant-husband had just returned from a deployment with the United States Army and did not have any income; (4) appellants were forced to settle the lawsuit because they lacked other sources of income; (5) appellant-wife's brother intentionally structured the settlement so that appellants would be responsible for the taxes; (6) appellant-wife's brother violated the settlement agreement and did not provide appellants with documents that would have allowed them to accurately file their taxes; and (7) appellants need the money claimed in their refund claim to pay for medical bills and other financial debts.

As set forth in our written opinion, we have already considered these contentions and concluded that appellants failed to establish a basis for further reducing their 2012 taxable income. For the reasons explained in our written opinion, we sustained FTB's action because, as a matter of law, a sale of stock does not qualify for deferred recognition of gain under IRC section 1031. (IRC, § 1031(a)(2)(A).) Appellants do not dispute that the transaction was structured in this manner, and concede that appellant-wife's "brother maliciously opted to give me a check to use against the loan." In other words, even if we accept all of appellant's contentions summarized above as true, our decision would remain unchanged because none of these contentions change the fact that the elements required to qualify for deferred recognition of gain were not met. Thus, appellants' above contentions, even if true, do not establish a material basis for granting a rehearing. Appellants do not otherwise allege any other ground for granting a rehearing. We find that appellants: (1) have not shown any of the grounds required under Regulation 30604 to grant a new hearing have been met, and (2) appellants' contentions are not material to the outcome of this appeal. For the foregoing reasons, the petition is denied.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Kenneth Gast
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge

Date Issued: 1/13/2020