

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011900
RAY J. PONEK AND) CDTFA Account No. 84-102025
MARY ELLEN PONEK) CDTFA Case ID 818449
)
)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: John Raymond Panek, Jr.

For Respondent: Kevin B. Smith, Tax Counsel III

N. DANG, Administrative Law Judge: On September 10, 2019, we issued an opinion sustaining the California Department of Tax and Fee Administration’s (CDTFA’s) decision to deny appellants’ claim for refund. Thereafter, appellants filed a timely petition for rehearing (Petition) of this matter pursuant to California Code of Regulations, title 18, section 30505(a).

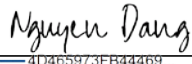
A rehearing may be granted where at least one of the following five grounds exists, and the substantial rights of the complaining party are materially affected: (1) an irregularity in the appeal proceedings which occurred prior to the issuance of the written opinion and prevented fair consideration of 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 the 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. (Cal. Code Regs., tit. 18, § 30604(a)-(e).)

In their Petition, appellants fail to raise any of the above-stated grounds upon which a rehearing may be granted.¹ Instead, appellants reiterate many of the same (or similar) contentions relating to the propriety of CDTFA’s levy and the purchase price of the vessel at

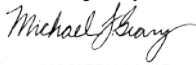
¹ Appellants also contend that the opinion “mentioned” evidence that was not made available to them. However, appellants did not explain what, specifically, this alleged evidence was or how they were materially prejudiced by our reliance upon it. This contention therefore does not merit further discussion.


issue, which were previously addressed and rejected in the opinion. Appellants’ dissatisfaction with the opinion and their attempt to reargue the same issues is not proper grounds for a rehearing. (*Appeal of Smith*, 2018-OTA-154P.)

Accordingly, we deny appellants’ Petition.

DocuSigned by:

4D465973FB44469...
Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:

1A9B52EF88AC4C7
Michael J. Geary
Administrative Law Judge

DocuSigned by:

0CC6C6ACCC6A44D
Teresa A. Stanley
Administrative Law Judge

Date Issued: 1/27/2020