

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	) OTA Case No. 18042751
<b>CONRAD E. DANDRIDGE</b>	)
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:	Conrad E. Dandridge
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For Respondent:	David Kowalczyk, Tax Counsel
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For Office of Tax Appeals:	William J. Stafford, Tax Counsel III
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A. VASSIGH, Administrative Law Judge: On May 9, 2019, we issued an opinion sustaining the proposed assessment of the Franchise Tax Board (FTB) in the amount of \$490 in additional tax, plus applicable interest, for the 2012 tax year. Appellant Conrad E. Dandridge, then filed a petition for rehearing pursuant to Revenue and Taxation Code (R&TC) section 19048. Upon consideration of the petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Do* 2018-OTA-002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.)

Good cause for a new hearing may be shown where one of the following grounds exists, and the rights of the complaining party are materially affected: 1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; 2) accident or surprise, which ordinary prudence could not have guarded against; 3) newly discovered evidence, material for the party making the petition for rehearing, which the party could not, with reasonable diligence, have discovered and produced prior to the decision of the appeal; 4) insufficiency of the evidence to justify the decision, or the decision is against law; or 5) error in law.<sup>1</sup> (Cal. Code Regs., tit. 18, § 30604; *Appeal of Do, supra.*)

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<sup>1</sup> Appellant's arguments touch on the first four grounds for a rehearing.

### Our Prior Opinion

As we noted in our opinion, when California adopted R&TC section 17225 to indicate that California would not conform to the federal allowance of a deduction for mortgage insurance premiums for qualified mortgage insurance, the definition of qualified mortgage insurance included mortgage insurance provided by the Federal Housing Administration (FHA). As such, we found that there is no California deduction available for appellant's FHA mortgage insurance expenses.

### Analysis

In his petition for rehearing, appellant argues that FTB's Summary of Federal Income Tax Changes for 2013 (Summary) is relevant to the issue at hand for the 2012 tax year and that our opinion failed to consider the Summary and appellant's testimony at the oral hearing. We shall address appellant's specific arguments below.

#### 1. Irregularity in the Proceeding

An irregularity in the proceedings is defined as "any departure by the [Office of Tax Appeals] from the due and orderly method of disposition of any action by which the substantial rights of a party have been materially affected." (*Appeal of Graham and Smith*, 2018-OTA-154P.)

Appellant argues that there was an irregularity in the proceedings because we failed to consider the Summary and appellant's testimony at the oral hearing when we issued our opinion.

We note, however, that we considered all of appellant's arguments and evidence when we issued our opinion, including the Summary and appellant's testimony. Further, we are not required to set forth all of the factual statements made at the hearing in our opinion. In summary, appellant has not established that there was an irregularity in the proceeding.

#### 2. Accident or Surprise

A new hearing may be appropriate if an accident or surprise materially affected the substantial rights of the party seeking the rehearing. (*Appeal of Wilson Development, Inc.*, *supra*.) Appellant argues that there was an accident or surprise because a copy of the Summary may not have been provided to us at the hearing.

As discussed above, we considered all of appellant's arguments and evidence when we issued our opinion, including the Summary and appellant's testimony. Accordingly, appellant has not established that there was an accident or surprise.

### 3. New Evidence

A new hearing may be appropriate if a taxpayer can produce newly discovered material evidence, which the taxpayer could not, with reasonable diligence, have discovered and produced prior to the decision. (*Appeal of Do, supra.*)

R&TC section 19522 provides that on or before the 10th of January of each year, FTB shall submit to the Legislature a report on all changes to the Internal Revenue Code enacted in the prior year. Appellant contends that he was not aware of the substance of R&TC section 19522 at the time of the oral hearing. Appellant further contends that because FTB had a duty to prepare and submit the Summary to the Legislature, the Summary constitutes an "official, legal and formal document" that is an "authoritative source of law." In addition, appellant asserts that FTB's Summaries of Federal Income Tax Changes for tax years 2014 and 2015 also support his arguments on appeal.

As we discussed in our opinion, the relevant law at issue is R&TC section 17225, which expressly prohibits appellant's deduction. Appellant's arguments regarding R&TC section 19522 and the FTB's Summaries of Federal Income Tax Changes for tax years 2013, 2014 and 2015 do not alter our opinion. Further, appellant has not demonstrated that such evidence (or argument) could not have been provided prior to the date we issued our opinion.

### 4. Insufficiency of the Evidence or the Decision is Against Law

Appellant failed to demonstrate that there was insufficient evidence to justify the decision or that the decision is against law. The question of whether a decision is against 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, 907.) The fact that appellant is dissatisfied with the outcome of his appeal is not grounds for a rehearing. As indicated above, we considered all of the evidence provided in the record, along with appellant's and FTB's arguments. Accordingly, we find that our opinion is supported by substantial evidence. In addition, we find that appellant has not demonstrated that


we clearly should have reached a different determination after weighing the evidence in the record.

5. Error in Law


Finally, a new hearing may be appropriate if a taxpayer can show that a decision contains an error in law. (*Appeal of Do, supra.*) Appellant argues that there was an error in law because the Summary is a source of authoritative law that overrides R&TC section 17225.


As we discussed in our opinion, the relevant law at issue is R&TC section 17225, which expressly prohibits appellant's deduction. Appellant has failed to demonstrate that our opinion contains an error in law.

For the foregoing reasons, appellant's petition for rehearing is hereby denied and our opinion of May 9, 2019, is affirmed.

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Amanda Vassigh  
Administrative Law Judge

We concur:

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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
  
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Jeffrey G. Angeja  
Administrative Law Judge

Date Issued 2/14/2020