

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18063364
J. BYERLY)
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OPINION ON PETITION FOR REHEARING


Representing the Parties:

For Appellant: J. Byerly
For Respondent: Marguerite Mosnier, Tax Counsel IV

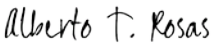
J. ANGEJA, Administrative Law Judge: On September 25, 2019, this panel issued an opinion that in relevant part deleted the Franchise Tax Board’s (FTB) imposition of a notice and demand penalty in the amount of \$1,615.75. FTB then filed a petition for rehearing (PFR) pursuant to Revenue and Taxation Code (R&TC) section 19048, in which FTB asserts that the demand penalty should be upheld, on the basis that our opinion is contrary to law. Upon consideration of the PFR, we conclude that the grounds set forth therein do not meet the requirements of California Code of Regulations, title 18, (Regulation) section 30604. (See also *Appeal of Do*, 2018-OTA-002P.)


A rehearing may be granted where one of the following five grounds exists, and the substantial rights of the complaining party are materially affected: (a) an irregularity in the appeal proceedings that occurred prior to the issuance of the written Opinion and prevented fair consideration of the appeal; (b) an accident or surprise that occurred during the appeal proceedings and prior to the issuance of the written Opinion, which ordinary caution could not have prevented; (c) newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to the issuance of the written Opinion; (d) insufficient evidence to justify the written Opinion or the Opinion is contrary to law; or (e) an error in law. (Cal. Code Regs., tit. 18, § 30604(a)-(e); *Appeal of Do, supra.*)

FTB asserts in its PFR that our opinion is contrary to law.¹ In support of its PFR, FTB asserts that we erred in concluding that the language of Regulation 19133 is unambiguous, and that we erred in declining to follow the illustration provided in Regulation 19133(d). Our opinion thoroughly addressed both of these issues, and for the reasons expressed therein, we continue to reject FTB’s arguments. Accordingly, we deny the PFR.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge

Date Issued: 3/2/2020

¹ FTB’s brief asserts that the holding in our opinion “is based on an error of law,” citing California Code of Regulation 30604(e). However, since the alleged error does not relate to an event that occurred during the proceedings of this appeal, we understand FTB to be arguing the fourth ground for a rehearing (i.e., that our opinion is contrary to law), pursuant to Regulation 30604(d).