

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Consolidated Appeals of:) OTA Case No. 18010039¹
CENTURY WEST PARTNERSHIP XXVIII,)
ET AL.)

)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Timothy Thompson

For Respondent: Marguerite Mosnier, Tax Counsel V

N. DANG, Administrative Law Judge: On May 10, 2019, we² issued an opinion sustaining respondent Franchise Tax Board's (FTB) denial of appellants' refund claims for the 2013 tax year. On June 10, 2019, appellants filed a timely petition for rehearing (Petition) seeking reconsideration of this opinion.

A rehearing may be granted where one of the following grounds exists, and the substantial rights of the filing party (here, appellants) are materially affected: (a) an irregularity in the appeal proceedings which occurred prior to the issuance of the written opinion and prevented fair consideration of the appeal; (b) 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; (c) newly discovered, relevant evidence, which the filing 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 of Regs., tit. 18, § 30604(a)-(e); see also *Appeal of Do*, 2018-OTA-

¹ Case No. 18010039 is the lead appeal. It is consolidated with 27 other appeals identified with case numbers 18010028 through 18010038 and 18010040 through 18010055.

² Judge Kenneth Gast replaced Judge Grant Thompson, who originally heard this matter but is no longer an administrative law judge with the Office of Tax Appeals.

002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 [explaining that these grounds for rehearing are based on Code of Civil Procedure section 657].)

Citing *U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*), we found in the opinion that appellants' reliance on an agent to electronically file their returns did not constitute reasonable cause warranting abatement of the late-filing penalty.

In their Petition, appellants take issue with our reliance on *Boyle* for the proposition that taxpayers have a non-delegable duty to timely file their returns, and more specifically, the application of this rule to appellants' particular situation involving electronically-filed returns. Appellants attempt to factually distinguish *Boyle* from the instant appeal.

However, these arguments are similar to those which were previously addressed and rejected in the opinion. Appellants' dissatisfaction with the opinion and their attempt to reargue the same issue are not proper grounds for reconsideration. (*Appeal of Smith*, 2018-OTA-154P.)

Appellants also assert that we erred in failing to exclude FTB's reply brief from consideration in this matter. Appellants contend that FTB's brief should have been "disallowed" because it contained numerous errors and was filed outside the original deadline (but within an extended deadline) set by our predecessor the State Board of Equalization. We understand this to mean that appellants believe a rehearing is warranted due to an irregularity in the proceedings. An irregularity in the proceedings warranting a rehearing is one where the Office of Tax Appeals has committed an error during the appeals process that materially prejudiced the filing party. (See Code Civ. Proc., § 657.)

There are no provisions for excluding a brief on the grounds argued by appellants. It is also clear that our consideration of FTB's brief did not materially affect the disposition of appellants' appeals. The sole determinative issue in appellants' appeals was the application of *Boyle* to electronically-filed returns. In reaching the conclusion stated in the opinion, it was not necessary for us as tax law experts to rely upon the arguments contained within FTB's brief, nor would its exclusion have prevented us from considering those same arguments which were made by FTB during oral hearing. We found no authority to support the merits of appellants' position, and, after due consideration, appellants' arguments were simply unconvincing. In other words,

appellants had the burden of persuading us that *Boyle* was inapplicable here,³ and even without FTB's brief, we would have reached the same conclusion.

Accordingly, we deny the Petition.

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Nguyen Dang
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Kenneth Gast
Administrative Law Judge

Date Issued: 7/3/2020

³ Taxpayers bear the burden of establishing reasonable cause for abating the late-filing penalty. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831.)