

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

B. DONAHUE) OTA Case No. 18011785
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)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:

B. Donahue

For Respondent:

Greg W. Heninger, Program Specialist III

D. CHO, Administrative Law Judge: On March 16, 2020, we issued an opinion sustaining respondent Franchise Tax Board's (FTB) action proposing additional tax of \$651, a late-filing penalty of \$162.75, and applicable interest, for the 2015 taxable year. By letter dated April 1, 2020, appellant filed a timely petition for rehearing of this matter.

Upon consideration of the petition for rehearing, we conclude that the grounds set forth therein do not meet the requirements for a rehearing under *Appeal of Do*, 2018-OTA-002P, and California Code of Regulations, title 18, section 30604.

A rehearing may be granted where one of the following grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing: (a) irregularity in the appeal proceedings which occurred prior to the issuance of the written opinion and prevented fair consideration of the appeal; (b) accident or surprise that occurred during the 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, with reasonable diligence, have discovered and produced 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. (*Appeal of Do, supra*; Cal. Code Regs., tit. 18, § 30604(a)-(e).)

Although appellant's petition for rehearing states that the grounds for rehearing are insufficient evidence to justify the written opinion or the opinion is contrary to law and that there

was an error in law, appellant is primarily repeating her arguments on appeal. Specifically, appellant continues to assert that she was not a California resident during the taxable year at issue and believes that a Los Angeles Superior Court judge made such a finding. We have addressed these arguments in our opinion, and we need not repeat our conclusions again. Furthermore, appellant’s dissatisfaction with the opinion, and her attempt to reargue the same issue, is not a proper ground for reconsideration. (*Appeal of Smith*, 2018-OTA-154P.)

Appellant also argues that she is being taxed twice on the same income; however, there is no evidence in the record that appellant paid state income taxes to any other state on the income at issue in this appeal. Therefore, we find this argument unpersuasive.

Lastly, appellant raised a new argument in her reply brief during the petition for rehearing briefing process. Specifically, appellant argues that she is entitled to certain deductions that would reduce her taxable income for the 2015 taxable year. While California Code of Regulations, title 18, section 30604(c) provides for a rehearing for newly discovered evidence that appellant could not have discovered and produced prior to the written opinion, appellant has not explained why she could not have reasonably discovered and produced this evidence prior to March 16, 2020, the date of the opinion. Furthermore, appellant’s attempt to bring forth a new argument through a petition for rehearing is not proper, and there is no provision that would warrant a new hearing based on a new legal theory or argument that a taxpayer failed to argue prior to the issuance of the written opinion.

Based on the foregoing, we deny appellant’s petition for rehearing.

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Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Richard Tay
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Richard Tay
Administrative Law Judge

Date Issued: 7/16/2020