OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19014149
J. POLK	ý
)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: J. Polk

For Respondent: David Muradyan, Tax Counsel III

T. STANLEY, Administrative Law Judge: On February 26, 2020, the Office of Tax Appeals (OTA) issued an opinion regarding appellant J. Polk sustaining FTB's actions and assessing a frivolous appeal penalty of \$5,000. J. Polk filed a timely petition for rehearing, in accordance with California Revenue and Taxation Code (R&TC) section 19048, disputing the proposed assessment and the imposition of the frivolous appeal penalty. Upon consideration of the petition, we conclude that the grounds set forth therein do not constitute good cause for a new hearing, in accordance with the OTA Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 30604) and *Appeal of Do*, 2018-OTA-002P.

A rehearing may be granted where, as appellant contends, there was insufficient evidence to justify the written opinion or the opinion is contrary to law and the rights of the filing party are materially affected. (Cal. Code Regs., tit. 18, § 30604(e); see also *Appeal of Do, supra*.)

Appellant alleges that the evidence was insufficient to support the opinion, or the opinion was contrary to law. To find that there is insufficient evidence to justify the written opinion, we must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different determination. (Code Civ. Proc., § 657.)

To find that the opinion is against (or contrary) to law, we must determine whether the opinion is

¹ Appellant did not specifically dispute OTA's sustaining other penalties, fees, and interest, and we therefore do not address them.

"unsupported by any substantial evidence." (*Appeal of Graham and Smith*, 2018-OTA-154P, citing *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*).) This requires a review of the opinion to indulge "in all legitimate and reasonable inferences" to uphold the opinion. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.) The relevant question is not over the quality or nature of the reasoning behind the opinion, but whether the opinion can or cannot be valid according to the law. (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976.) In our review, we consider the evidence in the light most favorable to the prevailing party (here, FTB). (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.)

In the petition for rehearing, appellant rehashes arguments OTA already addressed. Appellant has raised nothing new to support her position that OTA's opinion was not based on law. Substantial evidence in the record supported OTA's conclusion that appellant earned wage income that was subject to taxation in California, where appellant resides.

Appellant alleges misstatements in the findings of fact and in the discussion sections of our opinion. We do not believe the facts were misstated, but even if they were, no misstatement materially affected appellant's rights and as such would not change the outcome. To the extent that appellant has raised other arguments, they are frivolous and are rejected as well.

For the foregoing reasons, appellant's petition for rehearing is denied.

Teresa A. Stanley

DocuSigned by:

Administrative Law Judge

We concur:

- DocuSigned by:

Elliott Scott Ewing

Elliott Scott Ewing

Administrative Law Judge

AZ T

Richard I. Tay

Administrative Law Judge

Date Issued: <u>7/8/2020</u>

² The opinion incorrectly cited to R&TC section 30354.7, with respect to the Collection Costs Recovery Fee. The proper citation is to R&TC section 19254, which contains no provision to abate the fee based on reasonable cause.