

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. ALVARADO AND
T. MENDOZA) OTA Case No. 18073493
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)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants:

J. Alvarado

For Respondent:

Bradley J. Coutinho, Tax Counsel

K. LONG, Administrative Law Judge: On February 24, 2020, we issued a written Opinion sustaining an action by respondent Franchise Tax Board (FTB) denying appellants' protest of a proposed assessment for the 2013 tax year. Thereafter, appellants 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. (Cal. Code Regs., tit. 18, § 30604(a)-(e).)

Appellants' petition for rehearing fails to identify any of these grounds for rehearing. Instead, appellants assert that a rehearing is warranted because the underlying federal

determination is still under appeal.¹ Appellants assert for the first time that they are entitled to claimed dependent exemption credits for their shared child and for T. Mendoza's child.² Appellants also continue to assert that they are entitled to claimed dependent exemption credits for J. Alvarado's daughters. To support this contention, appellants provided additional documentation including a custody and visitation order, social security card application receipts, and school enrollment information.

In our Opinion, we found that appellants failed to show that the IRS changed or reduced the federal determination. Additionally, we noted that on July 23, 2019, the IRS rejected appellants' request for reconsideration of the federal determination. Moreover, appellants' 2013 federal account transcript shows that their federal tax liability was paid in full on March 15, 2018, and that the tax balance is zero. There is no indication on appellants' federal account transcript that appellants have an appeal pending with the IRS. Appellants have not provided any evidence that the federal adjustment is under review. As such, we find that the federal determination is final.

Even if evidence to the contrary existed, an ongoing federal appeal is not one of the grounds for a rehearing enumerated under California Code of Regulations, title 18, section 30604. Appellants' dissatisfaction with the Opinion and attempt to reargue the same issue are not proper grounds for reconsideration. (*Appeal of Smith*, 2018-OTA-154P.) Similarly, appellants' new contention that they are entitled to disallowed credits for their shared child and for T. Mendoza's child is not one of the enumerated grounds for rehearing.


To the extent that appellants provided new evidence, we note that a rehearing may be granted if there is 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. (Cal. Code Regs., tit. 18, § 30604(c).) However, that does not appear to be the case here. Specifically, we note that appellants provided a custody and visitation order that was issued on April 19, 2011; social security card application receipts that were issued on February 20, 2013;

¹ As discussed in our February 24, 2020 written Opinion, FTB's proposed assessment is based on a federal action in which the Internal Revenue Service (IRS) disallowed six claimed dependent exemption credits for the 2013 taxable year.


² Appellants did not provide any evidence that they are entitled to claim a dependent exemption credit for either their shared child or T. Mendoza's child at any point during this appeal.

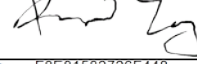
and medical care records that were issued on February 14, 2018. Appellants also provided high school enrollment information, which is undated, but applies to the 2013 school year.³ Similarly, appellants provided Medi-Cal eligibility information, which is undated and applies to the period January 1, 2013, through December 31, 2013. Therefore, we find that the evidence was available prior to this appeal based on the dates contained within the documents or the years to which the documents apply. Indeed, the record shows that appellants previously provided much of this same evidence to the IRS on March 19, 2013. Consequently, we find there are no grounds for a rehearing.

Accordingly, we deny appellants' petition for rehearing.

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Keith T. Long
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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Richard I. Tay
Administrative Law Judge

Date Issued: 10/28/2020

³ Appellants also provided undated elementary school information. The document does not state to which year it applies. However, there is an indication that appellants' address was verified in 2015, which is after the year at issue in this appeal. As such, we find that this document does not provide relevant information. Additionally, we reject this evidence (as we do appellants' other evidence) on the basis that it must have existed prior to this appeal based on the dates contained therein.