

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19105308
)
S. SIMMONS AND)
K. SIMMONS)
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)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: S. Simmons and K. Simmons

For Respondent: Eric R. Brown, Tax Counsel III

S. RIDENOUR, Administrative Law Judge: On May 14, 2020, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) for the 2014 tax year. S. Simmons and K. Simmons (appellants) then filed a petition for rehearing (PFR) pursuant to Revenue and Taxation Code section 19048. Upon consideration of the PFR, we conclude that the grounds discussed in the petition do not constitute grounds for a new hearing.

A new hearing may be granted where one of the following grounds exists, and the substantial rights of the filing party are materially affected: (a) an irregularity in the appeal proceedings which occurred prior to 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 party could not have reasonably discovered and provided prior to 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; *Appeal of Do*, 2018-OTA-002P.)

In their PFR, appellants argue that OTA should grant a rehearing based on newly discovered evidence. Appellants contend the new evidence demonstrates error in FTB's assessment, which is based on federal adjustments. In support of their PFR, appellants provide a

copy of a Delinquent Tax Notification (collection notice), dated April 10, 2020, from a private collection agency notifying S. Simmons that the agency is collecting S. Simmons's outstanding 2014 federal balance on behalf of the Internal Revenue Service (IRS). Appellants argue that the account summary portion of the collection notice, which has a "Tax Assessed" amount of \$4,727, demonstrates that the IRS reduced its assessment. While we find it understandable for appellants to read the collection notice as indicating that the IRS "assessed" tax of \$4,727, appellants are nevertheless mistaken.

After appellants filed their 2014 federal return, the IRS examined the return and made federal adjustments. Based on the adjustments, the IRS increased appellants' taxable income, assessed additional tax of \$12,224, and imposed an accuracy-related penalty.¹ According to appellants' 2014 federal Account Transcript (Account Transcript), dated June 30, 2020, the IRS examined appellants' 2014 federal return, assessed additional tax, imposed a penalty, and closed its examination of appellants' return, on August 7, 2017. The Account Transcript does not show that the IRS subsequently cancelled or reduced its assessment.

The Account Transcript does show, however, two payments, totaling \$7,497, made towards appellants' 2014 outstanding liability: (1) a credit transfer of \$4,694 from appellants' 2017 tax year, made on April 15, 2018; and (2) a payment of \$2,803, made on December 9, 2019. These two payments, totaling \$7,497, were credited towards appellants' assessed tax of \$12,224, for a remaining balance of \$4,727 (i.e., \$12,224 - \$7,497), which is the tax amount listed on the collection notice. As such, while the collection notice shows a \$4,727 "Tax Assessed" amount, the \$4,727 amount is actually appellants' outstanding balance due on their tax liability, *after* payment and credits were applied. The federal assessment, upon which FTB's determination is based, assessed additional tax of \$12,224. As noted above, federal information does not show that the IRS cancelled or reduced its assessment. While appellants believe the collection notice shows that the IRS reduced its assessment, the collection notice reaffirms that the IRS closed its examination and did not subsequently cancel or reduce its assessment. As such, the new evidence does not support the granting of a rehearing.

¹ The IRS imposed a federal accuracy-related penalty of \$2,444.80, and it does not appear from the record that the IRS subsequently imposed additional penalties. However, we note that the collection notice lists a penalty amount of \$4,655.88.

Accordingly, we find that appellants failed to establish a ground for a rehearing, and the PFR is hereby denied.

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

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Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Richard Tay
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Richard Tay
Administrative Law Judge

Date Issued: 11/24/2020