

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19125642
)
L. MIAO AND)
K. MURAKI)
)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Diane M. Lichtenstein

For Respondent: Eric A. Yadao, Tax Counsel III

H. LE, Administrative Law Judge: On September 22, 2020, the Office of Tax Appeals (OTA) issued an Opinion sustaining Franchise Tax Board’s denial of L. Miao and K. Muraki (appellants) claim for refund of a \$21,787.75 late-filing penalty imposed for the 2017 tax year. Appellants then timely filed a petition for rehearing (PFR) on this matter. Upon consideration of appellants’ PFR, we conclude no basis for a new hearing exists.

OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings which occurred prior to issuance of the Opinion and prevented the fair consideration of the appeal; (2) an accident or surprise which occurred during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to issuance of the Opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.)

Although appellants do not set forth specific grounds for a new hearing in their PFR, their petition appears to argue that the Opinion is contrary to law. The question of whether the opinion is contrary to law does not involve a weighing of the evidence but instead requires a

finding that the opinion is “unsupported by any substantial evidence.” (*Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) The question before us on a PFR does not involve examining the quality or nature of the reasoning behind OTA’s opinion, but whether that opinion is valid according to the law. (*Ibid.*)

Here, appellants repeat the same arguments presented to OTA during the initial appeal (i.e., they assert that they relied on their accountant, who incorrectly advised them that their return had been filed). However, OTA has already addressed and rejected these arguments. Appellants’ dissatisfaction with the Opinion and attempt to reargue the same issue does not constitute grounds for a rehearing. (*Appeal of Smith*, 2018-OTA-154P.) Appellants also disagree that an ordinarily intelligent and prudent businessperson would have viewed the e-file history and acknowledgment records to confirm whether the return had been timely transmitted and accepted. However, the Opinion cites to and relies upon OTA’s precedential opinion in *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P. Accordingly, we believe the Opinion is valid according to the law and not contrary to it. For the foregoing reasons, we deny appellants’ PFR.¹

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Huy Mike Le
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 4/21/2021

¹ Analysis under the other grounds in California Code of Regulations, title 18, section 30604(a) would also result in the denial of appellants’ PFR.