

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

Y. LAM) OTA Case No. 20015745
)
)
)
)
)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:

H. Lam

For Respondent:

Joel Smith, Tax Counsel III

C. AKIN, Administrative Law Judge: On October 22, 2020, the Office of Tax Appeals (OTA) issued an Opinion which held appellant had not established error in Franchise Tax Board's (FTB) proposed assessment of additional tax or that the late-filing penalty should be abated for the 2017 tax year. Y. Lam (appellant) filed a timely petition for rehearing under Revenue and Tax Code section 19048. Upon consideration of appellant's petition, we conclude that the grounds set forth therein do not establish a basis for granting a rehearing.

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: (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.)

Appellant contends that a rehearing should be granted in order to allow appellant to submit additional evidence to show that he did not have a California filing requirement for the 2017 tax year. Appellant asserts that he did not receive a letter informing him that he needed to

provide documents such as bank statements to show that the mortgage interest payments made on a property located in Arcadia, California (Arcadia property) during the 2017 tax year were paid by appellant's adult child, rather than appellant.¹

However, appellant has not established that the evidence he is now seeking to submit was newly discovered and that he could not have reasonably discovered and provided this evidence prior to the issuance of the Opinion. It is appellant's burden to present his case which includes submitting all relevant evidence to support his position.² To the extent appellant suggests he was unaware of what evidence he needed to provide, we note that the documentation appellant is now seeking to submit was specifically requested from appellant by FTB in its opening brief as being necessary to establish appellant's assertions regarding the payment of the mortgage interest in question. FTB's opening brief was short and straightforward in asking for this documentation from appellant and in explaining why the evidence appellant previously submitted failed to substantiate appellant's assertions.³

As noted by the California Board of Equalization in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, “[W]e prefer a record which contains all the evidence the parties believe is relevant. However, when evidence could have been submitted before our decision, but was not, the goal of reaching the correct result must usually fall to the need to efficiently resolve matters before this board.” As such, if a party attempts to submit evidence after an Opinion has been issued, they must show that the proffered evidence is material and could not have been produced prior to the issuance of the Opinion in order for us to consider the evidence when deciding whether or not to grant the petition for rehearing. (*Ibid.*) Because appellant has not demonstrated that the evidence he is now seeking to submit could not have been reasonably discovered and provided prior to the issuance of the Opinion, we cannot grant a rehearing on the basis of the newly offered evidence.

¹ Appellant did not file a California tax return for the 2017 tax year and FTB used the mortgage interest payments reflected on the federal Form 1098 for the Arcadia property to estimate appellant's income for 2017. Appellant was listed as the sole “Payer/Borrower” of the Arcadia property on the federal Form 1098.

² FTB's determinations are generally presumed correct, and the taxpayer bears the burden of proving otherwise. (*Appeal of Vardell*, 2020-OTA-190P.) Unsupported assertions cannot satisfy a taxpayer's burden of proof. (*Ibid.*)

³ While appellant asserts that he did not receive a letter informing him that he needed to provide these documents, FTB's opening brief was sent to appellant at the address appellant used throughout the appeal and in this petition for rehearing.

Additionally, based on the record we had before us at the time the Opinion was issued, appellant had not substantiated his assertions. As such, the Opinion was valid. It is not contrary to law, nor was there an insufficiency of evidence to justify the Opinion. Appellant does not allege an irregularity in the appeal proceedings, any accident or surprise, or any other grounds for rehearing.

For the foregoing reasons, we find that appellant has not established grounds for a rehearing. Consequently, the petition for rehearing is denied.

DocuSigned by:
Cheryl Akin
1A8C8E38740B4D5...
Cheryl L. Akin
Administrative Law Judge

We concur:

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D...
Daniel K. Cho
Administrative Law Judge

DocuSigned by:
John O Johnson
873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

Date issued: 3/3/2021