

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18124062  
 )  
**B. GALLO AND** )  
**J. GALLO** )  
 \_\_\_\_\_ )

**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants: B. Gallo  
J. Gallo

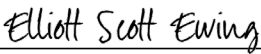
For Respondent: Brian Werking, Tax Counsel III

E. S. EWING, Administrative Law Judge: On December 29, 2020, the Office of Tax Appeals (OTA) issued an Opinion sustaining Franchise Tax Board’s denial of B. Gallo and J. Gallo’s (appellants) claim for refund in the amount of \$5,603.75 for the 2013 tax year. Appellants then timely filed a petition for rehearing (PFR) in this matter. Upon consideration of appellants’ PFR, we conclude no basis for a new hearing exists.

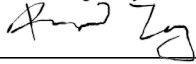
OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings which occurred prior to issuance of the Opinion and prevented the fair consideration of the appeal; (2) an accident 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.)

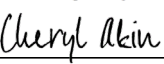
Appellants state in their PFR that they “petition their appeal for rehearing pursuant to [Cal. Code Regs., tit. 18, section] 30604 (d) and (e).”<sup>1</sup> That is, the regulatory grounds upon which appellants base their PFR are that there is insufficient evidence to justify the Opinion, the Opinion is contrary to law, or there was an error in law. In support of their PFR, appellants specifically contend that the Office of Tax Appeals “ignored and failed to address the central issue in this case” – i.e., that “[t]he application of R&TC § 19133 by the Franchise Tax Board in this case should be invalidated because its inclusion in the Code presents an irreconcilable conflict with R&TC § 19131.”

We understand appellant’s argument in the PFR. However, this is the same argument appellants made on appeal, and which OTA has already addressed and rejected in the Opinion. 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.) Consequently, we deny appellants’ PFR.<sup>2</sup>

DocuSigned by:  
  
Elliott Scott Ewing  
Administrative Law Judge

We concur:

DocuSigned by:  
  
Richard Fay  
Administrative Law Judge

DocuSigned by:  
  
Cheryl L. Akin  
Administrative Law Judge

Date Issued: 9/22/2021

<sup>1</sup> Appellants cite to sections 30604(d) and (e); however, effective March 1, 2021, section 30604(d) was renumbered to 30604(a)(4) and (5) and section 30604(e) was renumbered to 30604(a)(6).

<sup>2</sup> Analysis under the other grounds in California Code of Regulations, title 18, section 30604(a) would also result in the denial of appellants’ PFR.