OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18103867
J. LIU AND	)
N. MUKAE	)
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: J. Liu

For Respondent: Brian Werking, Tax Counsel III

E. S. EWING, Administrative Law Judge: On May 13, 2021, the Office of Tax Appeals (OTA) issued an Opinion sustaining Franchise Tax Board's proposed assessment of additional tax of $2,407, plus applicable interest, 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 contend in their PFR that there is "insufficient evidence to justify the opinion." When analyzing whether a PFR should be granted based on an insufficiency of evidence to justify the opinion, "we must find that, after weighing the evidence in the record,

including reasonable inferences based on that evidence, the panel clearly should have reached a different position." (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.)

In support of their PFR, appellants specifically contend that OTA failed to address what appellants believe is a discrepancy in the way that the evidence is being interpreted – i.e., that the IRS adjustments to appellants' federal tax return for the 2013 tax year do not support respondent's proposed assessment of additional tax, plus applicable interest. In their PFR, appellants cite back to the same evidence that we considered in making our determination in the original Opinion. Further, in their PFR, appellants are essentially reasserting the same substantive argument made on appeal – i.e., that the IRS did not, in fact, increase appellants' income by disallowing unreimbursed employee expenses.

We understand appellants' arguments. However, OTA considered the evidence provided by appellants and for the reasons previously articulated in the Opinion found it insufficient to establish error in respondent's proposed assessment or substantiate appellants' contention that the IRS did not actually disallow appellants' claimed expense deductions. While they approach it in the form of an evidentiary argument, appellants are effectively making the same arguments they made on appeal. Appellants' dissatisfaction with the Opinion and attempt to reargue the same issue does not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Consequently, we deny appellants' PFR.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

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John O Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

Date Issued: 12/2/2021