

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**In the Matter of the Appeal of:
A. SRIROCHANAKUL) OTA Case No. 21088461
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)
)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: A. Srirochanakul

For Respondent: Leoangelo C. Cristobal, Tax Counsel

A. KLETTER, Administrative Law Judge: On April 5, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellant's claim for refund.

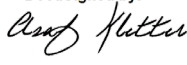
In the Opinion, OTA held that appellant did not show reasonable cause for the late filing of appellant's 2018 California tax return, and that appellant was not entitled to interest abatement. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19048. Appellant's petition fails to identify any grounds for a rehearing. Rather, appellant's petition focuses on the unfairness of the result. Upon consideration of appellant's petition, OTA concludes appellant has not established a basis for 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: (1) an irregularity in the appeal proceedings that occurred prior to the issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise that 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 that occurred during the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.)


In the Opinion, OTA carefully considered appellant’s contentions, but found that they were unsupported. OTA provided examples of types of evidence, such as a postmarked envelope, a postmarked registered or certified mailing receipt, or a confirmation of electronic filing, that could show that appellant’s return was timely filed. OTA also explained that the IRS has a first-time abatement policy for late-filing penalties, but California did not enact similar legislation or policy applicable to the tax year at issue.¹

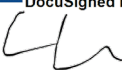
In appellant’s petition, he offers no new evidence to substantiate his claim that he timely mailed his 2018 California tax return. He acknowledges that the IRS abated his penalty under the first-time abatement program and due to his good compliance history. He states that FTB cannot offer a first-time abatement because it has no such program. However, appellant requests abatement based on his good compliance history and his unsupported allegation that the postal service lost his 2018 California tax return, which OTA already considered and rejected in its Opinion.

Based on the foregoing, appellant has not shown grounds exist for a new hearing as required by the authorities referenced above, and appellant’s petition is hereby denied.

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Asaf Kletter
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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Andrew Kwee
Administrative Law Judge

Date Issued: 7/19/2022

¹ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2018 tax year is at issue here, this newly-enacted provision is inapplicable.