

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

M. SOBEL) OTA Case No. 21078157
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)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:

M. Sobel

For Respondent:


Alisa L. Pinarbasi, Tax Counsel

T. LEUNG, Administrative Law Judge: On March 9, 2022, the Office of Tax Appeals issued an Opinion sustaining the action of respondent Franchise Tax Board (respondent) with respect to the proposed assessment of additional tax of \$856, a late filing penalty of \$214, and applicable interest for the 2017 taxable year. In the Opinion, it was held that since appellant failed to show that he filed 2017 federal and California income tax returns reflecting a zero tax liability or substantiate any deductible expenses, he did not show error in respondent's proposed assessment for the 2017 taxable year. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code section 19048. Upon consideration of the petition, it is concluded that appellant has not established a basis for rehearing.


A rehearing may be granted 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 that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred, 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 written opinion; (4) insufficient evidence to justify the written 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.)


Appellant argues that “The petition for the rehearing refers to . . . relevant evidence that was not provided prior to the issuance of the opinion.” To support his petition, appellant submitted an unsigned copy of his 2017 California personal income tax return (Form 540) which reflected total expenses in excess of his income. However, in order to prevail, appellant needed to show that both the 2017 Form 540 and these expenses, which are neither itemized nor substantiated, were “newly discovered.” Since the claimed expenditures would have been realized and known to appellant in 2017, as well as being available for him to prepare a timely 2017 Form 540, more than three years before the Opinion in this appeal was issued, they do not qualify as “newly discovered.” Moreover, the fact that the submitted Form 540 is not signed minimizes the persuasiveness of this evidence.

Accordingly, the petition is denied.

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Tommy Leung
Administrative Law Judge

We concur:

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Suzanne B. Brown
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 8/11/2022