

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

In the Matter of the Appeal of:	)	OTA Case No. 20076396
<b>S. BENJAMIN</b>	)	
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:	S. Benjamin
For Respondent:	Gi Jung Nam, Tax Counsel

J. LAMBERT, Administrative Law Judge: On April 8, 2022, the Office of Tax Appeals (OTA) issued an Opinion which sustained the action of respondent Franchise Tax Board (FTB) in proposing an assessment of additional tax of \$4,127, plus applicable interest, for the 2015 tax year.<sup>1</sup> S. Benjamin (appellant) filed a timely petition for rehearing (PFR) under Revenue and Taxation Code (R&TC) section 19048.<sup>2</sup>

A rehearing may be granted where one of the following six grounds exists, and the substantial rights of the filing party are materially affected: (1) an irregularity in the appeal proceedings, that occurred prior to 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

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<sup>1</sup> The Opinion held that: (1) appellant has not established that he was a nonresident of California during 2015; (2) appellant has not shown error in FTB's disallowance of the claimed charitable contribution carryover deduction; (3) appellant has not shown error in FTB's disallowance of the claimed theft loss deduction; (4) appellant has not shown error in FTB's disallowance of the claimed energy equipment exclusion; (5) appellant has not shown error in FTB's disallowance of California adjustments of \$28,000; and (6) appellant has not shown that he may claim an additional dependent exemption credit.

<sup>2</sup> The discussion in this Opinion as to the 2015 tax return are in consideration of the joint filing of appellant and his spouse. However, appellant's spouse did not join this appeal, and this Opinion will refer only to S. Benjamin as appellant.

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.)

In his PFR, appellant provides the same or similar arguments as provided prior to issuance of the Opinion and does not specifically argue any of the grounds to support granting his petition. Appellant argues that the residency determination is incorrect; however, appellant's citations are related to whether a taxpayer is entitled to deduct moving expenses, not whether a taxpayer is a resident of California. As to charitable contributions, appellant argues that he is entitled to deduct certain contributions because they were not previously deducted. However, as stated in the Opinion, appellant did not provide evidence to show whether he has already been allowed charitable contribution deductions in the prior year when these contributions were made, which would determine the amount of accumulated carryovers potentially available for deduction in 2015.<sup>3</sup> In addition, the Opinion states that appellant has not provided a statement showing the excess charitable contributions made to 50 percent or 30 percent limited organizations in any taxable year. (See Internal Revenue Code (IRC), § 170(b)(1)(B); Treas. Reg. § 1.170A-10(e).)<sup>4</sup>

Appellant contends that that theft loss deduction should be allowed because he provided his federal Form 4684, his federal tax return, and supporting schedules, which appellant contends complies with federal requirements for the deduction. However, appellant provided his federal filings, including the Form 4684, during the original briefing, and it was considered by OTA in making its determination. The Opinion noted the type of evidence that could be provided to support the claimed theft loss deduction, including a police report or other documentation proving that a theft occurred and evidence of the property's fair market value or adjusted basis at the time of the theft. (See IRC, § 165; Treas. Reg. § 1.165-7(b)(1).)<sup>5</sup>

As to the issue of the disallowed claimed energy equipment exclusion, appellant provides the same evidence as previously considered during the original briefing. However, as noted in

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<sup>3</sup> OTA notes that the charitable contribution must be reported on the return for the tax year covering the contribution; however, under certain circumstances, such as when the deduction is unable to be used due to adjusted gross income limitations, it may be carried forward until used. (See Treas. Reg. § 1.170A-10(e).)

<sup>4</sup> R&TC section 17201(a) incorporates by reference IRC section 170, except as otherwise provided.

<sup>5</sup> R&TC section 17201(a) incorporates by reference IRC section 165, except as otherwise provided.

the Opinion, appellant has not provided evidence establishing entitlement to the exclusion, such as that he received a qualifying rebate, voucher, other incentive for the purchase and/or installation of qualifying equipment that was improperly included in reported California taxable income. (See R&TC, §§ 17138, 17138.1, 17138.2.) Concerning the issue of the disallowed California adjustments of \$28,000, appellant refers to the same evidence as previously considered during the original briefing. As noted in the Opinion, appellant has not provided any evidence or argument showing that this reduction to California gross income is warranted or that these items were included in the reported federal gross income and needed to be removed and excluded from California gross income through a California subtraction.

As to the disallowed dependent exemption credit, appellant asserts that the information on his tax return claiming a sibling as a dependent is private information and that OTA is not permitted access to such information. However, here it was appellant who submitted to OTA an unredacted copy of his California income tax return, containing information on all his claimed dependents, including his brother. Furthermore, the submission of an appeal constitutes a waiver of the right to confidentiality with regard to all of the briefing and other information provided to OTA by either the party or a tax agency, including FTB. (Cal. Code Regs., tit. 18, § 30430(a).) The waiver does not apply to any individual's personal information, such as an individual's address, telephone number, or social security number.<sup>6</sup> (Cal. Code Regs., tit. 18, § 30430(b).) OTA is not prohibited from referring to information described in submitted briefs or otherwise use the information in a manner that will not disclose the personal information of an individual at a hearing. (Cal. Code Regs., tit. 18, § 30430(c).) In addition, there is no right to confidentiality as to relevant information that OTA includes in an Opinion that is required to be published pursuant to Government Code section 15675. (Cal. Code Regs., tit. 18, § 30430(d).)


In this case, the fact that appellant claimed his brother as a dependent on his return is relevant to whether appellant could receive a dependent exemption credit for his brother. OTA had the authority to rely on this information and to apply it in the Opinion, as it is relevant to the

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<sup>6</sup> Appellant contends that OTA released his social security number to the public. However, appellant provides no evidence to support this contention. Furthermore, an internal review found no evidence to support his claim that his social security number was released by OTA to any third party. It does appear, however, that appellant forwarded an unredacted copy of his California income tax return to at least nine email addresses, including general informational addresses, and only one of those email addresses belongs to OTA. In addition, personal information of an individual will not be provided to the public in response to a request made pursuant to the California Public Records Act (Government Code sections 6250 et seq.). (Cal. Code Regs., tit. 18, § 30430(b).) Moreover, these unsupported contentions are not relevant to whether he is entitled to a rehearing.

determination. In addition, appellant waived confidentiality of such information and, apart from his brother's address, telephone number, or social security number, such information does not qualify as personal information that would be excluded from the waiver.

Appellant asserts that OTA did not consider the complete record; however, OTA considered all of appellant's documents and arguments in making its determination. To the extent appellant submits new evidence, appellant has not shown that the evidence was not known or accessible to him prior to the issuance of the Opinion. (See *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.) Appellant provides arguments which are the same or similar to the arguments that he provided during the original appeal. These repeated arguments which were considered and rejected in the original Opinion do not constitute grounds for rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Consequently, the petition for rehearing is denied.

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Josh Lambert  
Administrative Law Judge

We concur:

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Asaf Kletter  
Administrative Law Judge

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Andrew J. Kwee  
Administrative Law Judge

Date Issued: 9/26/2022