

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
B. ROTHSCHILD

) OTA Case No. 21088530
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: B. Rothschild

For Respondent: Christopher M. Cook, Tax Counsel III

K. GAST, Administrative Law Judge: On June 2, 2022, Office of Tax Appeals (OTA) issued an Opinion sustaining respondent Franchise Tax Board’s (FTB) denial of appellant’s claim for refund for the 2019 tax year. OTA found appellant had not (1) established reasonable cause to abate the late-payment penalty, or (2) established a basis to abate the estimated tax penalty. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19048. Upon consideration of appellant’s petition, OTA concludes appellant has not established a basis for a rehearing.

A rehearing may be granted where one of the following six grounds exists, and the substantial rights of the complaining party (here, appellant) are materially affected: (1) an irregularity in the appeal proceedings which occurred prior to issuance of the Opinion and prevented 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).)

Appellant does not specifically argue any of these grounds support granting his petition. Rather, he attempts to reargue the merits of his underlying appeal and resubmits the same

evidentiary support. For example, he asserts he had “a medical problem” that led to the imposition of the penalties at issue. Appellant asserts he is “89 years old and [] had memory problems before 2015,” “which made it more difficult to conduct [his] business.” As support, appellant attaches to his petition copies of his medical visit summaries from 2018, 2019, and 2021, showing he had memory problems during the relevant time period his taxes became due for the 2019 tax year.

In its Opinion, OTA already considered the information provided in appellant’s petition and the attached evidentiary support when it determined appellant had not shown he was entitled to a refund for the penalties imposed. To the extent appellant argues there was insufficient evidence to justify the Opinion or the Opinion is contrary to law, he has not made such a showing.¹ In short, appellant’s dissatisfaction with the Opinion and attempt to reargue the same issues does not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Consequently, OTA denies appellant’s petition.

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Kenneth Gast

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Kenneth Gast

Administrative Law Judge

We concur:

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Sara A. Hosey

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Sara A. Hosey

Administrative Law Judge

DocuSigned by:

Josh Lambert

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Josh Lambert

Administrative Law Judge

Date Issued: 9/9/2022

¹ See *Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P [to find that there is an insufficiency of evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different conclusion, and to find that the Opinion is contrary to law, OTA must determine whether the Opinion is unsupported by any substantial evidence, which requires a review of the Opinion to indulge in all legitimate and reasonable inferences to uphold it].