

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
D. GLENN

) OTA Case No. 22029705
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:

D. Glenn

For Respondent:

Andrea Watkins, Tax Counsel

K. GAST, Administrative Law Judge: On October 24, 2022, Office of Tax Appeals (OTA) issued an Opinion sustaining respondent Franchise Tax Board’s (FTB’s) proposed assessment of additional tax, plus applicable interest, for the 2017 tax year. 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 filing 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, but he appears to believe either there was insufficient evidence to justify the Opinion or the Opinion is contrary to law. To find there is insufficient 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. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) To find 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. (*Ibid.*; see Cal. Code Regs., tit. 18, § 30604(b) [the contrary to law standard of review shall involve a review of the Opinion for consistency with the law].)


In its Opinion, OTA concluded appellant improperly subtracted taxable wages of \$118,702 from his California adjusted gross income (AGI) on his 2017 California tax return. Contrary to his assertion in his petition, appellant has not shown those wages were in fact included in his California AGI. Appellant also asserts the IRS never contacted him about this issue and does not understand why FTB contacted him. But FTB is a separate taxing agency from the IRS and can independently examine a taxpayer’s return and determine if additional taxes are due, even if the IRS does not. (See R&TC, § 19031 et seq.) Lastly, appellant suggests his tax preparation software is to blame for his improperly subtracted wages, but that is not a reason to overturn FTB’s proposed assessment because appellant must show with supporting evidence either his wages were already included in, or were legally excludible from, his California AGI, which he has not done. In short, appellant’s 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, OTA denies appellant’s petition.

We concur:

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Richard Tay
Administrative Law Judge

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Kenneth Gast
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 2/1/2023