

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 19024366
M. IOANE AND)	
S. IOANE)	
_____)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	M. Ioane
For Respondent:	Eric A. Yadao, Tax Counsel IV

H. LE, Administrative Law Judge: On June 28, 2022, the Office of Tax Appeals (OTA) issued an Opinion modifying respondent Franchise Tax Board's (FTB) actions in accordance with its concessions on appeal, but otherwise sustaining its actions. In the Opinion, OTA held the proposed assessments of additional tax for the 2002 and 2003 tax years are not barred by the statute of limitations, and appellants have not established error in the proposed assessments of additional tax. OTA also held that appellants are not entitled to abatement of the accuracy-related penalties for the 2002 and 2003 tax years.

Appellants timely filed a petition for rehearing (petition) under Revenue and Taxation Code section 19048. Upon consideration of appellants' petition, OTA concludes they have not established a basis for rehearing.

A rehearing may be granted where one of the following six grounds exists, and the substantial rights of the complaining party (here, appellants) 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).)

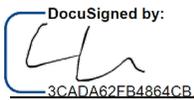
Appellants assert a rehearing is warranted based on essentially the same argument as previously presented on appeal – i.e., that FTB violated appellants’ due process rights under the Constitution by deferring FTB’s appeals process. However, as noted in the Opinion, OTA does not have jurisdiction on whether appellants are entitled to a remedy for FTB’s actual or alleged violation of any substantive or procedural right to due process under the law.¹ (Cal. Code Regs., tit. 18, § 30104(d).) Appellants’ dissatisfaction with the Opinion and attempt to reargue the same issue does not constitute a ground for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.)

OTA, therefore, finds that appellants have not established a ground for a rehearing based on FTB’s alleged or actual due process violations during FTB’s appeals process.² Appellants’ petition is denied.

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Huy “Mike” Le
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 3/13/2023

¹ No arguments were made that FTB’s actual or alleged violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal. (See Cal. Code Regs., tit. 18, § 30104(d).)

² Appellants also allege racial discrimination by FTB and OTA, based on OTA’s failure to address their due process arguments. However, OTA is not a court, but an administrative agency charged with determining the correct amount of tax. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) “We have no power to remedy any other real or imagined wrongs that taxpayers believe they may have suffered at the hands of [FTB].” (*Ibid.*)