OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of: G. DAVIS OTA Case No. 19125576

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:

G. Davis

For Respondent:

Desiree Macedo, Tax Counsel

H. LE, Administrative Law Judge: On July 14, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining an action by the Franchise Tax Board (respondent) denying appellant's claims for refund for the 2011 and 2012 tax years. In the Opinion, OTA held it does not have jurisdiction to hear and decide the appeal for the 2012 tax year, and appellant was a domiciliary and resident of California in 2011. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19334. Upon consideration of appellant's petition, OTA concludes appellant has 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, 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 that any of these grounds support granting his petition. Rather, he attempts to reargue the merits of his underlying appeal in stating that

respondent determined he was a resident of Florida for later tax years and that the same facts from those later tax years apply to the 2011 tax year. However, OTA has already addressed this argument by stating in the Opinion that appellant has not submitted any documents to support his argument that respondent determined that he was a Florida resident in the 2014 tax year. The Opinion also stated that "based on the record, the facts from the 2014 tax year differ from the 2011 tax year." Appellant's dissatisfaction with the Opinion and attempt to reargue the same issues do not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.)

Appellant also argues that various factual findings are incorrect. However, as noted in the Opinion, appellant has submitted no evidence to contest the facts in this appeal even though OTA granted numerous extensions—spanning over a year—for appellant to reply to respondent's brief.¹

¹ Appellant's reply brief was originally due on March 25, 2020, but OTA granted an extension to April 30, 2021, based on three extensions at appellant's request, an extension due to COVID-19, and an extension due to settlement considerations.

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.² Appellant's attempt to reargue the same issues and contest facts without submitting evidence do not constitute grounds for a rehearing. Consequently, OTA denies appellant's petition.

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Huy "Mike" Le Administrative Law Judge

We concur:

—DocuSigned by: Kenneth Gast

Date Issued: $\frac{3/15/2023}{-}$

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Natasha Ralston Administrative Law Judge

² 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].