

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

In the Matter of the Appeal of:	)	OTA Case No. 22039841
<b>L. POLLACK</b>	)	
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: Richard A. Patterson, CPA

For Respondent: Natasha S. Page, Tax Counsel IV

S. HOSEY, Administrative Law Judge: On October 24, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposed assessment of tax of \$8,919.00, a late-filing penalty of \$2,229.75, and applicable interest for the 2018 tax year.

In the Opinion, the panel held that appellant had not provided sufficient evidence to show that FTB's income estimate and proposed assessment were incorrect. 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 he has not established sufficient grounds for rehearing under R&TC section 19048.

OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred, 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 written Opinion; (4) insufficient evidence to justify the written Opinion; (5) the Opinion is contrary to law; or (6) an error in law that occurred during the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.)

Appellant argues that a new hearing should be granted on the grounds that new evidence not available at the time of the proceeding is now available and that there is insufficient evidence to support OTA's Opinion. Appellant provided several pages of bank statements in support of his argument.

California Code of Regulations, title 18, section 30604(a)(3) only permits a rehearing for newly discovered, relevant evidence, which the filing party (here, appellant) could not have reasonably discovered and provided prior to issuance of the Opinion. As noted in *Appeal of Wilson Development, Inc.*, (94-SBE-007) 1994 WL 580654, the trier of fact “prefer[s] a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before [the Opinion], but was not, the goal of reaching the correct result must usually fall to the need to efficiently resolve matters.” As such, if a party attempts to submit evidence after the Opinion has been issued, the party must show that the proffered evidence is material and could not have been produced prior to the issuance of the Opinion in order for OTA to grant the petition. (*Ibid.*) All of the documents appellant submitted with his petition relate to the 2018 tax year. As such, appellant has not established that the 50 pages of documents he now seeks to submit were not available to appellant and could not have reasonably been provided to OTA prior to the issuance of the Opinion on October 24, 2022. Thus, OTA cannot grant a rehearing on the basis of these documents.

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 opinion. (*Appeals of Swat Fame Inc., et al.*, 2020-OTA-045P.) OTA must determine whether the Opinion is “unsupported by any substantial evidence.” (*Appeal of Graham and Smith*, 2018-OTA-154P.) This requires a review of the Opinion to indulge “in all legitimate and reasonable inferences” to uphold the Opinion. (*Appeals of Swat-Fame Inc., et al., supra.*) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can or cannot be valid according to law. (*Ibid.*)

Appellant provides arguments which are the same or similar to the arguments that he provided during the original appeal to support his argument that the Opinion was not justified, such that an estimate of income is not justified and that he could not provide documentation to support his position. OTA explained FTB's estimation of income was reasonable and rational

under federal and California state law. (See *Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935). The taxpayer then has the burden of proving the proposed assessment is incorrect. (*Appeal of Bindley*, 2019-OTA-179P). OTA addressed the complete lack of financial information from appellant, such as witnesses, affidavits, bank statements, canceled checks, household budgets or financial records of any kind – and unsupported assertions of the taxpayer are not sufficient. As appellant provided no credible, competent, or relevant evidence showing error in FTB’s proposed assessment, FTB’s determination was upheld. As to appellant’s repeated arguments which were considered and rejected in the original Opinion, they do not constitute grounds for rehearing. (*Appeal of Graham and Smith, supra.*) Appellant’s dissatisfaction with the outcome of his appeal is not grounds for a rehearing. (*Ibid.*)

Thus, appellant has not demonstrated that OTA clearly should have reached a different determination or that the Opinion is “unsupported by any substantial evidence.” (See *Appeals of Swat-Fame, et al., supra.*) In summary, appellant has not shown that grounds exist for a rehearing.<sup>1</sup> Appellant’s petition is hereby denied.

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*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Teresa A. Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

Date Issued: 3/30/2023

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<sup>1</sup> Appellant does not allege any additional grounds for a rehearing (i.e., an irregularity in the proceedings that prevented the fair consideration of the appeal; an accident or surprise that occurred, which ordinary caution could not have prevented; or an error in law that occurred during the appeals hearing or proceeding), and OTA does not find any of these other grounds for a rehearing to be applicable here.