

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. KOROCHKIN-ZORIN

) OTA Case No. 220911323
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Boris K’Zorin, Representative

For Respondent: Joel M. Smith, Attorney

L. KATAGIHARA, Administrative Law Judge: On May 15, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellant’s claim for refund. In the Opinion, OTA held that appellant’s remaining claim for refund of \$622.70 for the 2016 tax year is barred by the statute of limitations. 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 a rehearing.

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 (here, appellant): (1) an irregularity in the appeal proceedings that occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, which the 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 that occurred during the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.)

Appellant’s purported justification for a rehearing is that the Opinion was issued “outside of a courtroom” and thus constitutes an abuse of power. Appellant further contends that FTB hid facts and material evidence, specifically referring to his assertion that his 2016 income was “not taxable.” Although not specified by appellant, OTA interprets these arguments as alleging there was an irregularity in the proceedings that occurred prior to the issuance of the Opinion and prevented fair consideration of the appeal. (See Cal. Code Regs., tit. 18, § 30604(a)(1).)

As relevant here, in 2017, the legislature vested OTA with the authority to hear and decide appeals stemming from FTB’s denial of a claim for refund of tax, penalties, fees, or interest. (Gov. Code, §§ 15672, 15674; Cal. Code Regs., tit. 18, § 30103(a)(3).) The law makes clear that OTA is not a tax court and additionally mandates that OTA issue a written opinion for each appeal decided. (Gov. Code, §§ 15672(b), 15674; Cal. Code Regs., tit. 18, § 30501(a).) As such, there is no requirement that OTA’s opinions be issued “within a courtroom.”

Here, appellant filed his request for appeal before OTA on September 3, 2022, and remained an active, voluntary, and willing participant in the appeals process (despite waiving his right to an oral hearing). OTA’s issuance of the Opinion was therefore neither an abuse of power nor constitutes an irregularity in the proceedings. Moreover, to the extent appellant prefers that his appeal be heard by a court, appellant was, and continues to be, free to exercise that right. R&TC section 19382 specifically grants a taxpayer, such as appellant, the ability to bring an action against FTB in superior court if the taxpayer has both paid the tax at issue and had its claim for refund denied (subject to the statute of limitations described in R&TC section 19384). (See also Gov. Code, § 15677.)

Appellant further alleges that FTB hid facts and material exhibits. Appellant asserts that “the fact that appellant’s 2016 income was not taxable [was] intentionally hidden by FTB.” Based upon appellant’s petition, appellant seems to be alleging that FTB hid the fact that appellant *did not owe tax* for the 2016 tax year (rather than arguing that the income itself was not taxable). First and foremost, it was appellant’s burden, not FTB’s, to present the facts and evidence material to his appeal. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Second, FTB did not conceal the fact that appellant did not owe tax for the 2016 tax year. In fact, FTB agrees that appellant did not owe tax for the 2016 tax year, as the underlying Opinion found in factual

finding number six, which stated that FTB accepted appellant’s 2016 tax return reporting no tax.¹ Therefore, appellant’s allegation is without merit and does not support a finding that there was an irregularity in the proceedings that prevented fair consideration of the appeal.

In his petition, appellant includes a section titled “Factual Findings Intentionally Omitted by FTB.” Therein, appellant presents nearly the same facts and arguments that he already asserted in the underlying appeal for this matter. As such, these facts and arguments were not “hidden,” but were in fact considered when OTA issued its Opinion.² (*Appeal of Graham & Smith*, 2018-OTA-154P [dissatisfaction with the Opinion and attempt to reargue the same issue does not constitute grounds for a rehearing].)

Appellant also provides, for the first time, copies of the Intent to Record a Notice of State Tax Lien, Tax Lien Notice, and Temporary Deferral Notice that FTB issued to appellant between late 2020 and early 2021; a fax history log indicating appellant’s representative faxed a one-page document to the IRS in 2021; and a certified mail receipt showing appellant mailed a document to FTB on July 19, 2021. To the extent that appellant is offering these documents as evidence that FTB “hid” documents, OTA reiterates that appellant (who was in possession of these documents prior to the issuance of the Opinion) was responsible for providing, during the briefing period, all evidence he wished for OTA to consider.

¹ As stated in the Opinion, FTB is precluded from refunding the amount at issue in this appeal because appellant’s claim for refund (i.e., his tax return reporting no tax due) was untimely as to certain payments, and therefore barred by the statute of limitations.

² The only new argument appellant presents relates to a Temporary Deferral Notice issued by FTB in February 2021, of which appellant provided a copy. Appellant has not argued that his petition is based on the grounds of newly discovered evidence. In any case, OTA finds that the Temporary Deferral Notice is neither newly discovered nor material to the appeal because the notice was not a deferral of the statute of limitations or an extension for appellant to file his claim for refund. Instead, it was a notification that FTB would be deferring its collection action for six months. Further, appellant was refunded each payment FTB collected after the deferral period ended (by way of credit towards appellant’s liability for the 2018 tax year).

For the reasons stated above, appellant has not demonstrated any irregularity in the appeal proceedings that occurred prior to issuance of the Opinion and prevented fair consideration of the appeal. Accordingly, appellant’s petition is denied.

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:
Richard Tay
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Richard Tay
Administrative Law Judge

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

Date Issued: 10/2/2023