

OFFICE OF TAX APPEALS
STATE OF CALIFORNIAIn the Matter of the Appeal of:
G. HOBBS) OTA Case No. 220911320
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)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:

G. Hobbs

For Respondent:

Eric R. Brown, Attorney

E. LAM, Administrative Law Judge: On June 7, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining the actions of respondent Franchise Tax Board (FTB) proposing additional tax, a late filing penalty, and applicable interest for the 2019 tax year. In the Opinion, OTA held: (1) appellant has not shown any error in the proposed assessment, (2) appellant has not demonstrated reasonable cause to abate the late filing penalty, and (3) OTA imposes the frivolous appeal penalty in the amount of \$2,500. 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 rehearing.

OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party (here, appellant) seeking a rehearing: (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, 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 in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.)

Appellant sets forth various meritless arguments, including: (1) “there are no facts established in the record;” and (2) the determination rendered by OTA “is defective and of no legal effect.”¹ It appears appellant asserts that a rehearing is warranted because there was insufficient evidence to justify the Opinion or the Opinion was contrary to law.

To find that there is an insufficiency of evidence to justify the Opinion, this panel must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the Opinion should have reached a different conclusion. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P (*Swat-Fame*), citing Code Civ. Proc., § 657; *Bray v. Rosen* (1959) 167 Cal.App.2d 680, 683-684.) Here, instead of showing that there is insufficient evidence to justify the Opinion, appellant asserts various meritless arguments in the petition, such as that OTA relied on “unverified documents,” and that “the actions of any government agent without delegated authority is [void].” However, when FTB proposes a tax assessment based on an estimate of income, FTB’s initial burden is to show that the proposed assessment was reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) As explained in the Opinion, FTB met its initial burden by presenting evidence that appellant received income from the sale of real property, as indicated on Form 1099-S issued by Fidelity National Title Company. Furthermore, appellant has not presented any evidence to overturn FTB’s proposed assessment on appeal. Appellant’s various arguments in this petition, after weighing evidence in the record, including reasonable inferences based on that evidence, does not reveal the Opinion should have reached a different conclusion. (See *Swat-Fame, supra*.)

The “‘contrary to law’ standard of review shall involve a review of the Opinion for consistency with the law.” (Cal. Code Regs., tit. 18, § 30604(b).) To find that the Opinion is against (or contrary to) law, OTA must determine whether the Opinion is “unsupported by any substantial evidence.” (*Appeal of Graham and Smith*, 2018-OTA-154P, citing *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*)). This requires a review of the Opinion to indulge “in all legitimate and reasonable inferences” to uphold the Opinion. (*Swat-Fame, supra* citing *Sanchez-Corea, supra*, 38 Cal.3d at p. 907.) 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 the law. (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001)

¹ OTA has considered all of appellant’s various arguments and concluded that there is no need to address each of them individually because they are irrelevant and meritless.

2010 WL 5626976.) OTA considers the evidence in the light most favorable to the prevailing party (here, FTB). (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907; *Swat-Fame, supra*.)

Here, appellant has not demonstrated that the Opinion is “unsupported by any substantial evidence.” (*Appeal of Graham and Smith, supra*.) In fact, appellant has not presented any evidence to overturn FTB’s proposed assessment as discussed in the Opinion. As appellant provided no credible, competent, or relevant evidence showing error in FTB’s proposed assessment, FTB’s determination was properly upheld. (See *Appeal of Bindley, supra*.) 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, supra*.) Therefore, a rehearing on the grounds that the Opinion is contrary to law is not warranted.

Appellant also contends that the Opinion’s imposition of the frivolous appeal penalty pursuant to R&TC section 19714 is illegal. Appellant supports this contention by stating that OTA cannot impose a penalty on him for exercising his constitutional right to appeal. However, OTA is precluded from deciding constitutional arguments by both longstanding precedent and constitutional mandate. (Cal. Const., art. III, § 3.5; *Appeal of Acosta and Castro*, 2022-OTA-235P.) Therefore, after considering all the arguments and evidence in the record, it is determined that appellant has not established any grounds to set aside the appeal penalty and OTA declines to discuss further.

Based on the foregoing, appellant has not satisfied the requirements for granting a rehearing and, as such, this petition is denied.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Richard Tay
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Richard Tay
Administrative Law Judge

DocuSigned by:
Andrew J. Kwee
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Andrew J. Kwee
Administrative Law Judge

Date Issued: 11/9/2023