

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20116888
T. KALILI)
)
)
)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Thomas D. Carter, CPA
Robert E. Young, Attorney

For Respondent: Joel M. Smith, Attorney

O. AKOPCHIKYAN, Administrative Law Judge: On September 18, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board’s (FTB’s) deemed denial of appellant’s claim for refund for the 2007 through 2009 tax years. In the Opinion, OTA held that, under Revenue and Taxation Code (R&TC) section 19722(c), it did not have jurisdiction to decide whether appellant is entitled to a refund of restitution payments made to FTB pursuant to a criminal plea agreement, which rendered the severed issue—whether appellant has established that he is entitled to a refund of restitution payments—moot. Appellant timely filed a petition for rehearing (petition) under R&TC section 19334. Upon consideration of appellant’s petition, OTA concludes appellant has not established a basis for a rehearing.

A rehearing will be granted where one of the following six grounds exists and the substantial rights of the party seeking a rehearing (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, 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).)

Appellant does not specifically argue any of these grounds support granting his petition, but rather contends OTA committed five errors pertaining to whether he is entitled to a refund of restitution payments made to FTB. However, under R&TC section 19722(c), OTA cannot consider the merits of appellant’s position because, as concluded in the underlying Opinion, it lacks jurisdiction to decide whether he is entitled to a refund of court-ordered restitution payments made to FTB. Appellant’s dissatisfaction with the Opinion and attempt to reargue the same issue do not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Consequently, OTA denies appellant’s petition.

DocuSigned by:
Ovsep Akopchikyan
88E35E2A835348D
Ovsep Akopchikyan
Administrative Law Judge

We concur:

DocuSigned by:
Eddy Y.H. Lam
1EAB8BDA3324477
Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:
Teresa A. Stanley
0CC6C6ACC6A44D...
Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/7/2024