

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230112313
V. BURNS)
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Ernest Dubnicoff, EA

For Respondent: Lawrence Xiao, Attorney

A. KLETTER, Administrative Law Judge: On October 9, 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 claim for refund of \$16,364.91 for the 2017 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 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: (1) an irregularity in the proceedings which occurred prior to issuance of the Opinion and prevented the fair consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings and prior to issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, 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 OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.)

Appellant’s petition is based on the ground of insufficient evidence to justify the Opinion. Appellant reasserts the difficult personal circumstances, including the impacts of the

COVID-19 pandemic, and financial disability. Appellant includes new evidence which she did not provide in her appeal, of personal difficulties she underwent between 2018 and 2022, and of her financial disability. Finally, appellant encloses FTB Notice 2020-02. Pursuant to R&TC section 18572, FTB Notice 2020-02 postponed the statute of limitations to file a timely claim for refund to July 15, 2020, for claims that would otherwise expire between March 12, 2020, through July 15, 2020 (postponement period).

To find that there is insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the panel clearly should have reached a different opinion. (*Appeal of Swat-Fame Inc., et. al.*, 2020-OTA-045P, Code Civ. Proc. § 657.)¹ Preliminarily, appellant has not shown that evidence she now provides was newly discovered and material to the appeal, and that appellant, the filing party, could not have reasonably discovered and provided it prior to issuance of the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(3).) When the evidence could have been submitted before our decision, but was not, OTA will not consider the evidence in deciding whether to grant the petition for rehearing. (*Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.)


In the petition, appellant fails to show that the panel clearly should have reached a different opinion. The Opinion describes financial disability and states that when an appellant alleges financial disability to suspend and thus extend the limitations period to file a timely claim for refund, a physician's affidavit must be provided that identifies the disability period when appellant was unable to manage his or her financial affairs. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Appellant failed to provide an affidavit to establish the disability period, and there is no basis to find that appellant was financially disabled. Additionally, as noted in the Opinion, the language of the statute of limitations is explicit and must be strictly construed, and there is no reasonable cause or equitable basis for suspending the statute of limitations. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) OTA has no authority to grant relief except where the law specifically allows. (*Appeal of Estate of Gillespie, supra.*) Thus, the Opinion properly concluded that appellant's personal circumstances, while unfortunate, are not legally sufficient to toll the statute of limitations. (*Ibid; Appeal of Benemi Partners, L.P., supra.*) Appellant's

¹ As provided in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a new hearing.

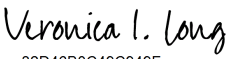
dissatisfaction with the outcome of her appeal, and the attempt to reargue the same issues a second time, is not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.)

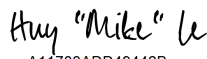
Appellant also claims that Notice 2020-02 should apply to her. However, as described in the Opinion, under R&TC section 19306(a), appellant’s claim for refund was due by April 15, 2022, under the applicable four-year statute of limitations, or within one year of any overpayment. The record shows that FTB’s earliest wage garnishment was December 30, 2020. Therefore, the earliest one-year statute of limitations expired on December 30, 2021, one year later. Notice 2020-02 postpones the statute of limitations to July 15, 2020, for claims that would otherwise expire during the postponement period. Appellants’ claims under the applicable four-year and earliest one-year statutes of limitation expired on April 15, 2022, and December 30 2021, respectively, long after the postponement period. Thus, Notice 2020-02 is inapplicable to her.

Based on the foregoing, appellant has not shown that there was insufficient evidence to justify the Opinion. Accordingly, appellant has not shown grounds exist for a new hearing, and appellant’s petition is hereby denied.

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Asaf Kletter
Administrative Law Judge

We concur:

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Veronica I. Long
Administrative Law Judge

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Administrative Law Judge

Date Issued: 2/22/2024