OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221212202
T. KIM AND	Ś
A. KIM)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Dongik Park, EA

For Respondent: Christopher Davis, Attorney

N. RALSTON, Administrative Law Judge: On August 3, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of the Franchise Tax Board's (respondent) proposed assessment of tax of \$2,682 and applicable interest for the 2017 tax year. In the Opinion, OTA held that (1) appellants were not entitled to exclude their share of S Corporation income from their California adjusted gross income (AGI) and (2) appellants improperly excluded employer contributions to appellants' Health Savings Account from their California AGI. Appellants timely filed a petition for rehearing (petition) under Revenue and Taxation Code section 19048. Upon consideration of appellants' petition, OTA concludes they have 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, appellants) seeking a rehearing: (1) an irregularity in the appeal 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 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.)

Appellants' petition fails to identify any of these grounds for a rehearing. Instead, the petition reiterates appellants' assertions from appellants' initial appeal letter that "profits and losses of S Corporations are not reflected in taxation." OTA reviewed these assertions in the initial appeal and sustained respondent's action. Appellants have not provided any arguments or evidence that would support a rehearing. Appellants' dissatisfaction with the Opinion does not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, appellants have not established grounds for a new hearing, and their petition is denied.

DocuSigned by:

Natasha Ralston

Administrative Law Judge

We concur:

Eddy U. H. Lav

Eddy Y.H. Lam

DocuSigned by:

Administrative Law Judge

Date Issued: 4/5/2024

DocuSigned by:

Teresa A. Stanley

Administrative Law Judge