

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230412999  
E. HASSO AND )  
M. MIKHAHEEL )  
\_\_\_\_\_ )

**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: E. Hasso  
M. Mikhaeel

For Respondent: Andrea Watkins, Attorney

E. LAM, Administrative Law Judge: On November 11, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposed assessment of tax. In the Opinion, OTA held appellants have not demonstrated error in FTB’s proposed assessment. Appellants timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) 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 six grounds exists and materially affects the substantial rights of the party seeking a rehearing (here, appellants): (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).)

Appellants do not explicitly state upon which grounds they file the instant petition. However, it appears that appellants assert that a rehearing should be granted because of newly

discovered, relevant evidence. Appellants' petition is based on a newly submitted document outlining the exclusion of In-Home Supportive Services (IHSS) income for tax purposes. (See Cal. Code Regs., tit. 18, § 30602(a)(3).)

A party seeking a rehearing under the grounds of newly discovered evidence must show that: (1) the evidence is newly discovered; (2) the party exercised reasonable diligence in discovering and producing it; and (3) the evidence materially affects the substantial rights of the party. (*Doe v. United Air Lines, Inc.* (2008) 160 Cal.App.4th 1500, 1506.)<sup>1</sup> On the first requirement, implicit in the term “newly discovered” is the concept that the evidence existed, but remained undiscovered, prior to issuance of the Opinion. (*Aron v. WIB Holdings* (2018) 21 Cal.App.5th 1069, 1079; see also Cal. Code Regs., tit. 18, § 30604.) On the second requirement, a petition will be denied when: (a) the newly discovered evidence could have been produced by the exercise of reasonable diligence, (b) the party seeking rehearing has not shown due diligence in discovering and producing the newly discovered evidence, or (c) no reason is shown for why the newly discovered evidence could not have been discovered and produced with reasonable diligence prior to issuance of the Opinion. (*Mitchell v. Preston* (1950) 101 Cal.App.2d 205, 207-208.) Lastly, on the third requirement, newly discovered evidence is “material” to appellant’s case if it is likely to produce a different result. (*In re Marriage of Smyklo* (1986) 180 Cal.App.3d 1095, 1101.)

In this petition, appellants submit a new document outlining the exclusion of IHSS income for tax purposes. Here, appellants state that they forgot to send this new document during their appeal. However, appellants have not demonstrated that this document is newly discovered where the evidence existed, but remained undiscovered prior to issuance of the Opinion. Appellants also have not shown they exercised any reasonable diligence in discovering and producing information on this matter prior to the issuance of the Opinion. Lastly, appellants have not demonstrated that the new document is “material” because they did not explain how this new document would likely produce a different result in reversing OTA’s holding in the underlying appeal. In the underlying appeal, OTA considered and acknowledged that the \$25,208 of Social Security and Medical wages is IHSS income, as indicated in footnote one of

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<sup>1</sup> OTA’s grounds for granting a rehearing are established by regulation, based largely on regulations established by its predecessor, the State Board of Equalization. As seen in *Appeal of Wilson Development, Inc.*, (94-SBE-007) 1994 WL 580654, the grounds were originally based on relevant causes provided for in Code of Civil Procedure (CCP) section 657. As such, case law analyzing the relevant causes in CCP section 657, such as *Doe v. United Airlines*, *supra*, 160 Cal.App.4th at 1506, provide guidance for the analysis here.

the Opinion. Furthermore, as addressed in the Opinion, appellants have not demonstrated error in FTB’s proposed assessment because that IHSS income was never included in appellants’ federal adjusted gross income (AGI), as indicated on appellants’ California tax return. Therefore, appellants have not proven their ability to exclude income that was never part of their federal AGI to begin with. As such, the new document that outlines the exclusion of IHSS income for tax purposes in this petition does not demonstrate the likelihood of a different outcome. Accordingly, appellants’ petition is denied.

DocuSigned by:  
*Eddy Y. H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

We concur:

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*Keith T. Long*  
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Keith T. Long  
Administrative Law Judge

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 6/19/2024