

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 230312890
R. LEMUS AND)	
K. ZEPEDA)	
_____)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	R. Lemus
For Respondent:	Tristen Thalhuber, Attorney

M. GEARY, Administrative Law Judge: On February 21, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the Franchise Tax Board’s (respondent’s) denial of appellants’ claim for refund for the 2021 tax year on the grounds that appellants were not entitled to abatement of a late-payment penalty and interest. Appellants timely filed a petition for rehearing (petition). Upon consideration of appellants’ petition, OTA concludes they have not established grounds for a rehearing.


OTA may grant a rehearing where any of the following grounds is established and materially affects the substantial rights of the filing party: (1) an irregularity in the appeal proceedings, which occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) accident or surprise, which occurred during the appeal proceedings and prior to the issuance of the Opinion, and which ordinary caution could not have prevented; (3) newly discovered, material evidence, 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 that occurred during the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6).)

Appellants do not base their petition on any of the grounds stated above. Rather, appellants argue that R. Lemus’s grief from the death of his younger brother was so pervasive

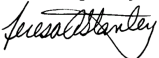
and persistent that it not only prevented appellants from paying the taxes when due, it substantially interfered with appellant’s ability to effectively pursue their protest and their appeal to OTA. Appellants state that they have a “new sense of clarity and determination” that will enable them to give their appeal the attention it deserves if OTA would grant them a new hearing.


Appellants do not point to any particular failure of their prior presentation, which led to OTA’s Opinion sustaining respondent’s action. They do not identify any new or different argument or evidence upon which they intend to rely. OTA has reviewed the Opinion, which is supported by the written record and consistent with the law. OTA finds nothing in the written record to even suggest that there was an irregularity, an accident, or a surprise in the appeal proceedings. Appellants do not argue otherwise. In essence, appellants argue that grief from the death of R. Lemus’s brother on November 12, 2021, prevented appellants from adequately representing their interests, and they want another opportunity to persuade OTA that respondent should have granted their claim for refund. Dissatisfaction with the outcome of an appeal is not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) This is true regardless of the requesting party’s sincere belief that they will do better the second time around.

Accordingly, OTA finds that appellants have not established grounds for a rehearing; and on that basis, the petition is denied.

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Michael F. Geary
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge

Date Issued: 7/24/2024