

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220811193
R. TORRES)
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: R. Torres
For Respondent: Topher Tuttle, Attorney

L. KATAGIHARA, Administrative Law Judge: On March 26, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax, a late filing penalty, and interest for the 2017 tax year.

In the Opinion, OTA held that appellant had not established (1) error in FTB’s proposed assessment, (2) reasonable cause to abate the late filing penalty, or (3) a basis upon which interest could be abated. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19048. Upon consideration of appellant’s petition, OTA concludes appellant has not established a basis for rehearing.

As relevant here, OTA will grant a rehearing where an irregularity in the appeal proceedings occurred prior to issuance of the Opinion and prevented fair consideration of the appeal, and which materially affects the substantial rights of the party seeking a rehearing. (Cal. Code Regs., tit. 18, § 30604(a)(1); *Appeal of Shanahan*, 2024-OTA-040P.) A departure by OTA from the due and orderly method of conducting appeal proceedings by which the substantial rights of a party have been materially affected generally constitutes an irregularity in the appeals proceedings. (*Appeal of Shanahan*, *supra*.)

OTA’s Rules for Tax Appeals govern this appeal. California Code of Regulations, title 18, section (Regulation) 30403 provides that “[a]n appellant who wishes to have an oral hearing must provide OTA with a signed and completed response to the notice of oral hearing no

later than 15 days from the date the notice of hearing was mailed.” If the appellant fails to respond to the notice of oral hearing by the deadline, the appeal is decided based on the written record. (Cal. Code Regs., tit. 18, § 30404(a).) OTA has the discretion to return an appeal to the oral hearing calendar upon a showing of good cause, if an opinion is not yet issued. (Cal. Code Regs., tit. 18, § 30404(d).)

At the conclusion of the briefing period, OTA scheduled an oral hearing for this appeal. On May 4, 2023, OTA sent appellant, to his address of record, a Notice of Oral Hearing informing appellant that an oral hearing for his appeal was scheduled for July 11, 2023 (First Notice). The First Notice instructed appellant to respond by May 19, 2023 (i.e., 15 days from the date of the notice) because a failure to do so would result in the oral hearing being cancelled and the appeal being decided on the basis of the written record. Appellant did not timely respond, so OTA e-mailed appellant and gave him another opportunity to respond. Appellant responded to OTA’s e-mail by requesting “the maximum continuance allowable by law” and showing good cause to return the appeal to the oral hearing calendar.¹ As such, OTA granted appellant’s request.

On February 1, 2024, OTA issued another Notice of Oral Hearing to appellant, at his address of record, informing him that his oral hearing was scheduled for April 11, 2024 (Second Notice). Similar to the First Notice, the Second Notice informed appellant that pursuant to Regulation 30404(a), if he did not submit a response by February 16, 2024 (within 15 days), the appeal would be submitted for decision without an oral hearing and would be decided on the basis of the written record. Appellant failed to submit a timely response to the Second Notice, and thus waived his right to an oral hearing. (See Cal. Code Regs., tit. 18, § 30404(a).)

On February 23, 2024, OTA mailed a letter to appellant confirming that his appeal would proceed without an oral hearing. In response to OTA’s February 23, 2024 letter, appellant alleged that his failure to respond to the Second Notice was due to the United States Postal Service (USPS) placing the Second Notice in the wrong post office box (PO Box). Notably, appellant did not specifically request, at that time, that the oral hearing be rescheduled; appellant only inquired into whether he could appeal the forthcoming opinion (i.e., file a petition), to which OTA responded in the affirmative.

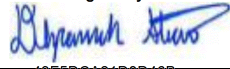
¹ Appellant indicated he was dealing with a “family law matter” outside of California.

On March 26, 2024, OTA issued its Opinion based on the written record. Thereafter, appellant filed his petition. In his petition, appellant contends that an irregularity in the appeal proceedings occurred because he did not receive the Second Notice until after the deadline to respond to it had passed. Appellant further argues that because OTA issued the Opinion without an oral hearing, the Opinion is prejudicial and violates appellant's right to due process.

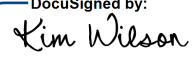
Appellant's petition did not include any evidence that USPS placed the Second Notice in the wrong PO Box. Indeed, appellant does not argue, and the record does not show, that OTA mailed the Second Notice to the wrong address. Instead, appellant submits a letter FTB issued to another taxpayer but inadvertently sent to appellant. Appellant offers this letter as an example of a taxpayer that may not have received proper notice from a tax agency. However, FTB's letter is irrelevant to any of OTA's actions described herein and does not prove that USPS delivered the Second Notice to the wrong PO Box. Appellant has therefore failed to establish that OTA departed from the due and orderly method of conducting appeal proceedings.

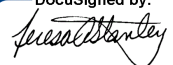
Furthermore, appellant provides no legal basis or evidence to support his allegation that OTA violated his due process rights or that the Opinion is prejudicial. Regulation 30404(a) clearly provides that if the party who requested the oral hearing fails to timely respond to OTA's notice of oral hearing, the hearing would be cancelled. Given appellant's experience with the First Notice, appellant was fully aware at the time he received the Second Notice, not only of the deadlines associated with notices of oral hearing, but also that he could have requested the appeal be returned to the oral hearing calendar before the Opinion was issued. (See Cal. Code Regs., tit. 18, § 30404(d); see also Cal. Code Regs., tit. 18, § 30220(c) [OTA will not postpone or defer proceedings if it will result in unreasonable delay or is otherwise not in the interests of fair and efficient tax administration].) However, appellant failed to make such a request until after the Opinion was issued. In addition, appellant meaningfully participated in the briefing process pursuant to Regulation 30303 and has not shown how the lack of a hearing materially affected his substantial rights. Consequently, OTA's issuance of the Opinion without an oral hearing did not result in a violation of appellant's due process rights, and though the outcome of the Opinion was adverse to appellant, it was not prejudicial.

Based on the foregoing, OTA’s issuance of the Opinion without an oral hearing was not an irregularity in the appeals proceeding. Accordingly, appellant’s petition is denied.

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For
Lauren Katagihara
Administrative Law Judge

We concur:

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Kim Wilson
Hearing Officer

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/31/2024