

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

In the Matter of the Appeal of: ) OTA Case No. 230513197  
K. SMITH JR. )  
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: K. Smith Jr.  
For Respondent: Noel Garcia-Rosenblum, Attorney

K. LONG, Administrative Law Judge: On May 17, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB), which denied appellant’s claim for refund of a penalty for the failure to file upon notice and demand (demand penalty) in the amount of \$1,601.34 for the 2017 tax year.

In the Opinion, OTA held that appellant failed to show reasonable cause existed for appellant’s failure to timely respond to a Demand for Tax Return notice (Demand). Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19334, asserting that there is insufficient evidence to justify the written opinion. Upon consideration of appellant’s petition, OTA concludes that appellant has not established a basis for rehearing.

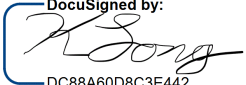
OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred, which ordinary caution 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 written Opinion; (4) insufficient evidence to justify the written Opinion; (5) the Opinion is contrary to law; or (6) an error in law that occurred during the appeals hearing or

proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.) To find that there is an insufficiency of evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.)

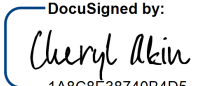
In the petition for rehearing, appellant reiterates assertions made during the oral hearing that he did not receive the Demand notice from FTB. Appellant argues that he cannot prove whether he received the Demand. However, appellant asserts that FTB also failed to provide evidence that the Demand was issued. In addition, appellant also asserts that FTB did not act as an ordinarily intelligent and prudent businessperson by not sending the Demand via certified or otherwise trackable mailing.

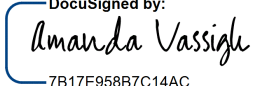
Despite appellant's contentions that he did not receive the Demand, the evidence shows that it was issued to appellant at the correct address. This is supported by appellant's testimony that the address on the Demand is correct. Additionally, the address included on the Demand matches the address that appellant reported on his California income tax return for that year. R&TC section 18416(b) provides that any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address. There is no requirement that FTB use certified, registered, or other tracked or signature required mailing. Rather, it is well established that notices sent by FTB to a taxpayer's last known address are sufficient even if not received by the taxpayer. (*Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.)

Accordingly, OTA finds that there was sufficient evidence to support a finding that appellant failed to show reasonable cause for his failure to respond to FTB’s Demand. Accordingly, appellant’s petition for rehearing is denied.

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Keith T. Long  
Administrative Law Judge

We concur:

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Administrative Law Judge

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Amanda Vassigh  
Administrative Law Judge

Date Issued: 10/10/2024