

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
M. SCANLAN) OTA Case No. 230814172
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: M. Scanlan
For Respondent: Eric R. Brown, Attorney

S. HOSEY, Administrative Law Judge: On July 18, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax of \$4,728, a late-filing penalty of \$1,182, and applicable interest for the 2020 tax year. In the Opinion, OTA held appellant had not shown error in FTB’s proposed assessment and imposed a frivolous appeal penalty of \$500.

On August 20, 2024, appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 on the basis that there was an error in the law in the appeals hearing or proceeding, claiming OTA’s proceedings were not compliant with federal rules of civil procedure, R&TC section 19180, and California Code of Regulations, title 18, section 30201(b)(1). Upon consideration of appellant’s petition, OTA concludes that the grounds set forth in this petition do not constitute a basis for granting a new hearing.

OTA will grant a rehearing where one of the following grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing: (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); *Appeal of Shanahan*, 2024-OTA-040P.)

First, appellant’s argument that OTA’s proceedings were not compliant with federal rules of civil procedure does not constitute an error in law, as federal rules of civil procedure have no application in OTA proceedings. In fact, no federal law was cited or used in the Opinion. Second, appellant’s claim that OTA was not in compliance with R&TC section 19180(a) is unfounded. R&TC section 19180(a) fixes the burden of proof of frivolousness on FTB in proceedings that involve penalties imposed under R&TC sections 19177, 19178, or 19179, which were not at issue in appellant’s appeal. Lastly, appellant’s argument that OTA was in violation of California Code of Regulations, title 18, section 30201(b)(1), requiring appellant’s social security number, does not invalidate the Opinion, as it was appellant’s own failure to include his social security number in his appeal. Appellant’s other arguments mirror his frivolous position from the appeal, essentially outlining his misinformed belief that he is not a person subject to tax and his earnings are not subject to income tax.

As described above, appellant does not establish or provide evidence to show error in OTA’s determinations. Appellant’s dissatisfaction with the outcome of the appeal, and the attempt to reargue the same issues a second time, is not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, OTA finds that appellant has not shown that grounds exist for a new hearing, and appellant’s petition is hereby denied.

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

Date Issued: 11/8/2024