

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
T. GILBERT) OTA Case No. 21088441
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: T. Gilbert
For Respondent: Topher Tuttle, Attorney

J. JOHNSON, Administrative Law Judge: On October 13, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board proposing additional tax of \$2,455 and applicable interest for the 2015 tax year. In the Opinion, OTA held that appellant did not meet his burden of showing error in respondent’s proposed assessment, which is based on federal adjustments.

On November 10, 2022, Appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 on the basis that there is insufficient evidence to support OTA’s written opinion. In particular, appellant contends that respondent has not provided documents or proof supporting the proposed assessment. 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 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 appeal proceedings which occurred prior to the issuance of the Opinion and prevented the 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 Do*, 2018-OTA-002P.)

To find 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. (Code Civ. Proc., § 657; *Appeals of Swat-Fame, et al.*, 2020-OTA-045P.)

Appellant argues on petition that respondent has not provided any paperwork of its own showing that additional tax is owed for the 2015 tax year and respondent relies upon the IRS determinations. Appellant asserts that he does not concede that the IRS's assessment is correct,¹ and contends that, like respondent, the IRS has been unable to provide appellant any information supporting its findings.

Respondent's proposed assessment based on a federal audit report is presumptively correct, and appellant bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Here, the federal determination is final and has not been revised or canceled. Appellant had an opportunity to provide documentation showing error in respondent's proposed assessment, or the IRS's adjustments upon which it is based, but appellant did not provide any evidence showing such error. Conversely, respondent provided the federal statement of income tax changes detailing the adjustments behind the proposed assessment, and the accompanying IRS memo explaining the adjustments in detail.

¹ Appellant's petition states that the Opinion alleges he conceded to the federal assessment being "final and correct," while the Opinion itself reflected that appellant conceded that the federal assessment was "final" (as stated in his reply brief on appeal) and in that same sentence noted, however, that appellant contended he had "receipts and other documents to support his position."

Accordingly, appellant has not shown grounds exist for a new hearing, and appellant's petition is hereby denied.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Signed by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

Date Issued: 10/18/2024