

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

In the Matter of the Appeal of:	)	OTA Case No. 231214964
<b>E. HAMBLIN</b>	)	
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:	E. Hamblin
For Respondent:	Ariana Macedo, Graduate Legal Assistant

L. KATAGIHARA, Administrative Law Judge: On July 31, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining respondent Franchise Tax Board's (FTB's) denial of appellant's claim for refund for the 2017 tax year. In the Opinion, OTA held that appellant is not entitled to a credit or refund of her overpayment for the 2017 tax year because the claim for refund is barred by the statute of limitations.

On August 29, 2024, appellant timely filed a petition for rehearing (petition) with OTA requesting an oral hearing on the basis that she does not remember waiving her right to an oral hearing. Upon consideration of appellant's petition, OTA concludes that appellant has not established a basis for rehearing.

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.)

Appellant fails to specify the grounds upon which she is seeking a rehearing. However, because appellant states that she does not recall waiving her right to an oral hearing and is now requesting the opportunity to appear at an oral hearing, OTA interprets appellant's petition as asserting that there was an irregularity in the appeals proceedings.

A rehearing will be granted when an irregularity in the appeal proceedings occurred prior to issuance of the Opinion and prevented fair consideration of the appeal. (Cal. Code Regs., tit. 18, § 30604(a)(1).) Such an "irregularity" would generally include any departure by OTA from the due and orderly method of conducting appeal proceedings by which the substantial rights of a party (here, appellant) have been materially affected. (*Appeal of Shanahan, supra*.)

OTA's Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 30000 et seq.) govern this appeal. Per these rules, appellant must request an oral hearing in writing prior to the completion of briefing, unless otherwise permitted by OTA. (Cal. Code Regs., tit. 18, § 30401(b).) OTA is also required to provide appellant with a form to request an oral hearing. (*Ibid.*)

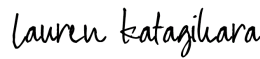
Here, appellant filed an appeal requesting that OTA review FTB's denial of her claim for refund. Appellant's appeal did not, however, include a request for an oral hearing. On February 28, 2024, after FTB filed its opening brief, OTA sent a form letter to appellant (February correspondence). OTA's February correspondence requested, partially in bold, that appellant inform OTA, by checking the appropriate box, whether she wanted to proceed with or without an oral hearing. OTA provided appellant with a deadline of March 29, 2024, to respond to the February correspondence and to file a response to FTB's opening brief. Appellant did neither. Consequently, on April 8, 2024, OTA sent a letter to appellant informing her that briefing for the appeal was complete, and that the appeal would be submitted for an opinion on the basis of the written record and without an oral hearing. Appellant did not communicate with OTA until she filed her petition (i.e., after OTA issued its Opinion). In the petition, appellant, for the first time, untimely requests an oral hearing. Appellant also admits in her petition that OTA previously informed her that she had waived her right to an oral hearing.

Based on the foregoing, OTA complied with the requirements outlined in California Code of Regulations, title 18, section 30401(b), but appellant did not timely request an oral hearing. Therefore, OTA's issuance of the Opinion on the basis of the written record was not a departure from the due and orderly method of conducting appeal proceedings.

Nor is there any indication that the lack of an oral hearing materially affected the substantial rights of appellant or prevented the fair consideration of her appeal. Appellant submitted her arguments with her appeal to OTA, and in her petition, reiterated those same

arguments. Appellant's arguments were considered and addressed in the Opinion, and appellant's dissatisfaction with the outcome of the appeal and attempt to reargue the same issues are not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, appellant's request for rehearing is denied.

Signed by:



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Lauren Katagihara  
Administrative Law Judge

We concur:

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For

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Sheriene Anne Ridenour  
Administrative Law Judge

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Asaf Kletter  
Administrative Law Judge

Date Issued: 12/11/2024