Docusign Envelope ID: C46327CA-BF23-4E71-AFE0-C653ADCBFCD4

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **S. LEE**	OTA Case No. 221011572

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Gary Slavett, Attorney

For Respondent: Topher Tuttle, Attorney

V. LONG, Administrative Law Judge: On June 14, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax of $15,444, a late-filing penalty of $3,861, and applicable interest for the 2019 tax year. In the Opinion, OTA held that FTB met its initial burden of showing that the proposed assessment, which was based on an estimate of income from a mortgage statement issued to S. Lee (appellant), was reasonable and rational. The Opinion held appellant had not met her burden of proof to show error in FTB's assessment.

On July 15, 2024, appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048. While appellant's petition does not state specific grounds for rehearing, it does provide additional evidence that was not provided by appellant during the original appeal. Appellant contends that this evidence supports that the mortgage property at issue was not owned by her, but by her single member LLC, Aspire Holdings, which borrowed funds from another entity, Mad Atom, LLC, to make mortgage payments on the property. Accordingly, it appears that appellant's petition for rehearing is based on newly discovered evidence. Upon consideration of appellant's petition, OTA concludes that the ground set forth in this petition does not constitute a basis for granting a new hearing.

OTA will grant a rehearing where one of the following grounds for a rehearing 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 fair

consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings 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.)

In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (*Appeal of Shanahan*, *supra*.) The trier of fact "prefer[s] a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before [the Opinion], but was not, the goal of reaching the correct result must usually fall to the need to efficiently resolve matters." (*Ibid.*, citing *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, p. *2.) As such, if a party attempts to submit evidence after the Opinion has been issued, the party must show that the proffered evidence is material and could not have been produced prior to the issuance of the Opinion in order for OTA to grant the petition. (Cal. Code Regs., tit. 18, § 30604(a)(3); *Appeal of Shanahan*, *supra*; *Appeal of Wilson Development, Inc.*, *supra*.)

Appellant's petition provides evidence purporting to show error in FTB's assessment, including: an Investment and Joint Venture Agreement between appellant, Aspire Holding LLC, and Mad Atom, LLC effective November 2017; a Closing Statement for the mortgaged property at issue in Studio City, California that was purchased by Aspire Holding LLC on November 8, 2017; bank statements for May through October, and December 2019 for Mad Atom, LLC; an unsigned 2019 tax return for Aspire Holding LLC dated September 11, 2020; a May 23, 2021 title report for the mortgaged property at issue in Studio City, California listing the owner as Aspire Holding LLC; a June 2024 bank statement for Aspire Holding LLC; and appellant's personal federal transcript for 2019. Appellant contends that this evidence establishes the mortgaged property that was the basis of the mortgage interest statement upon which FTB based its assessment was owned and paid for by Aspire Holding LLC, using funds borrowed from Mad Atom, LLC.

Of this evidence, it is clear that the following items could have been submitted before the Opinion: the November 2017 Investment and Joint Venture Agreement; the November 2017 Closing Statement; the 2019 bank statements from Mad Atom, LLC; the unsigned 2019 tax return for Aspire Holding LLC dated September 11, 2020; and the May 23, 2021 title report.

Appellant has not shown that this evidence could not have been produced prior to the issuance of the Opinion. Accordingly, the petition cannot be granted on the basis of this evidence.[1]

The following items of evidence were not available prior to issuance of the Opinion: the June 2024 bank statement for Aspire Holding LLC; and appellant's personal federal transcript for 2019. The petition states that the June 2024 bank statement was provided for purposes of cross referencing the account number. Appellant does not assert that her account number is new or material evidence which could not have been provided prior to issuance of the Opinion. Accordingly, it cannot constitute grounds for granting a new hearing.

As to appellant's 2019 federal transcript, a copy was provided by FTB during the appeal, which showed that appellant had not filed a federal return as of the date of that transcript, August 8, 2023. The updated transcript provided by appellant is dated July 15, 2024, and shows that appellant filed a federal tax return on September 4, 2023. Appellant's decision to late file her federal return does not constitute grounds for rehearing. A tax return itself is not evidence that the statements contained therein are correct.[2] It does not appear that appellant's return has been audited by the IRS, but even if it was, OTA is not bound to follow a federal determination where its own analysis reaches a different conclusion. (*Appeal of Der Wienerschnitzel International, Inc.* (76-SBE-063) 1979 WL 4104.)

[1] In addition, appellant does not assert that the newly provided evidence is material.

[2] See *Roberts v. Commissioner* (1974) 62 T.C. 834, 837; *Seaboard Commercial Corp. v. Commissioner* (1957) 28 T.C. 1034, 1051).

Accordingly, OTA finds that appellant has not satisfied the requirements for granting a rehearing and, as such, the petition is denied.

Signed by:
Veronica I. Long
32D46B0C49C949F...

Veronica I. Long
Administrative Law Judge

We concur:

DocuSigned by:
Steven Kim
5DD7EE644397430...

Steven Kim
Administrative Law Judge

Signed by:
Kim Wilson
4E8E740EDB984CD...

Kim Wilson
Hearing Officer

Date Issued: 12/4/2024