## OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 231114798
A. CROUCH JR. AND W. CROUCH	)
	)

## **OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: Chelsea Monk, EA

For Respondent: Ariana Macedo, Graduate Legal Assistant

J. LAMBERT, Administrative Law Judge: On July 26, 2024, the Office of Tax Appeals (OTA) issued an Opinion in the matter of the appeal of A. Crouch Jr. and W. Crouch (appellants), which sustained respondent Franchise Tax Board's (FTB's) actions denying appellants' claim for refund of a late filing penalty for the 2021 tax year. Appellants timely filed a petition for rehearing. Upon consideration of appellants' petition for rehearing, OTA concludes appellants have not established a basis for rehearing.

A rehearing will be granted 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).)

Appellants contend that a rehearing should be granted because the Opinion is contrary to law. To find that the Opinion is contrary to law, OTA must determine whether the Opinion is unsupported by any substantial evidence. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can or cannot be valid according to the law. (*Ibid.*)

Appellants assert that they could not file a return because their tax preparer failed to respond to their attempts at communication. Reasonable cause may exist when taxpayers reasonably rely on a tax professional for substantive tax advice. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) In this case, appellants' tax preparer failed to respond to appellants, but did not give any tax advice. Therefore, appellants have not shown reasonable cause based on reliance on substantive tax advice.

Appellants contend that, due to a reduction in accounting graduates, it is generally more difficult to find a tax preparer. However, appellants have a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) In this case, appellants do not provide evidence of their attempts to find a tax preparer or other attempts to timely file their return after their tax preparer failed to respond to their inquiries.

Appellants contend that their tax return was complex because of their ownership of multiple rental real estate properties. As stated in the Opinion, appellants do not specifically explain or provide evidence establishing the complexities of their tax preparation process, and it is well settled that general difficulties in making computations or determining taxable income with exactitude does not constitute reasonable cause for filing late. (*Appeal of Xie*, 2018-OTA-076P.)

Citing Appeal of Xie, supra, the Opinion stated that taxpayers have an obligation to timely file returns with the best available information and then subsequently file an amended return if necessary. Appellants contend that knowingly filing an incomplete or inaccurate return contradicts federal law under Internal Revenue Code section 7206 and R&TC sections 19705(a)(1) and 19706. However, those statutes relate to the intentional filing of a fraudulent return, which is distinct from filing a return with the best available information.

In conclusion, appellants have not established that the Opinion is contrary to law or that any ground exists to warrant a rehearing. Therefore, appellants' petition for rehearing is denied.

— Signed by:

ASU. Lamber

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Signed by:

Seth Elsom

Seth Elson

**Hearing Officer** 

Josh Lambert Administrative Law Judge

We concur:

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Suzanne B. Brown

Suzanne B. Brown

Administrative Law Judge

Date Issued: <u>1/2</u>4/2025