



OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Shanahan*, 2024-OTA-040P.)

Appellant argues that a rehearing should be granted because the Opinion is contrary to law and there is insufficient evidence to justify the Opinion. To find that the Opinion is contrary to law, OTA must determine whether the Opinion is unsupported by any substantial evidence. (*Appeal of Shanahan, supra.*) To find that there is insufficient 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. (*Ibid.*)

As noted in the Opinion, appellant did not file a return. FTB received information indicating that appellant received income from an LLC registered and located in California, as reported on Form 1099-MISC as nonemployee compensation. Appellant self-reported this income on Schedule C, Profit or Loss From Business (Sole Proprietorship) on his 2017 federal income tax return. FTB issued a Request for Tax Return, but appellant did not respond. Therefore, FTB estimated appellant's taxable income based on a Form 1099-MISC and issued a proposed assessment. OTA found that FTB met its initial burden to show its proposed assessment was reasonable and rational, shifting the burden to appellant to prove the proposed assessment was incorrect.

In the petition, appellant continues to make the same or similar arguments that were considered and rejected in the Opinion, namely, that he was an employee of the LLC, that he did not operate a sole proprietorship, and that the burden should not be placed on him to prove otherwise. However, OTA continues to find these arguments unpersuasive. Appellant's repeated arguments, which were already considered and rejected in the Opinion, do not constitute grounds for rehearing. (*Appeal of Shanahan, supra.*)

Therefore, appellant’s petition for rehearing is denied.

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Administrative Law Judge

We concur:

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