

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 221212187
A. HINDE AND)	
R. HINDE)	
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	A. Hinde
For Respondent:	Christopher M. Cook, Attorney

E. LAM, Administrative Law Judge: On May 9, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$1,600 for the 2021 tax year. In the Opinion, OTA held appellants have not established reasonable cause to abate the mandatory electronic payment (e-pay) penalty for the 2021 tax year. On July 5, 2024, Appellants timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19334. Upon consideration of appellants' petition, OTA concludes that appellants have not provided a basis for granting a new hearing.

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.)

Here, appellants do not state any specific grounds for rehearing, rather they present several of the same arguments previously made from the underlying appeal. Specifically, appellants assert that: (1) they relied on the advice of their CPA for all applicable compliance requirements; (2) while conceding that the statute is unambiguous, appellant relied on their CPA to manage tax payments under the assumption that the advice was in full compliance with current laws; and (3) there was no willful neglect on their part, as their intent was to fully comply with tax laws.

In the underlying Opinion, OTA has already explained that a taxpayers' reliance on a tax professional may constitute reasonable cause if it involves substantive tax advice concerning the existence of a tax liability. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250-252.) In the underlying Opinion, it is explained that a tax professional's instructions on how to remit payment do not constitute substantive tax advice and cannot serve as a substitute for compliance with an unambiguous statute. OTA found that appellants did not establish any steps they took to ensure compliance with the mandatory e-pay requirements, but were otherwise prevented from complying. Here, appellants' dissatisfaction with the outcome of the appeal, and the repeated arguments in this petition (which were considered and rejected in the underlying Opinion), do not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, OTA denies appellants' petition.

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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Natasha Ralston
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge

Date Issued: 1/28/2025