

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

In the Matter of the Appeal of: ) OTA Case No. 20076357  
M. PIRES AND )  
C. PIRES )  
\_\_\_\_\_ )

**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants: Scott B. Burkholder, Attorney  
For Respondent: Eric A. Yadao, Attorney

E. LAM, Administrative Law Judge: On December 13, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax of \$58,332, \$53,526, \$46,879, and \$47,745, and applicable interest for the 2013, 2014, 2015, and 2016 tax years, respectively. In the Opinion, OTA held: (1) appellants have not shown that FTB erroneously reduced their other state tax credit (OSTC) for taxes paid to Connecticut on wages; and (2) appellants have not shown that FTB erroneously reduced their OSTC for taxes paid to Connecticut on pass-through income sourced to California and other non-Connecticut states.

On January 12, 2025, Appellants timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 on the basis that the underlying Opinion is contrary to law, and appellants also offer a new alternative argument. Upon consideration of appellants' petition, OTA concludes that the grounds set forth in this petition do not constitute 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.)

The contrary to law standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) A holding is contrary to law “only if it was ‘unsupported by any substantial evidence, i.e., [if] the entire evidence [was] such as would justify a [holding] against the part[y] in whose favor the [holding was] returned.’” (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907 (*Sanchez-Corea*), citing *Kralyevich v. Magrini* (1959) 172 Cal.App.2d 784, 789.) This requires indulging “in all legitimate and reasonable inferences” to uphold the Opinion. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907; see also *Appeals of Swat-Fame Inc. et al., supra*.) The question does not involve “examining the quality or nature of the reasoning behind [OTA’s Opinion], but whether [the Opinion] can or cannot be valid according to the law.” (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976, at p. \*5.) A rehearing may be granted when, examining the evidence in the light most favorable to the prevailing party (here, FTB), with all legitimate inferences to uphold the Opinion, the petitioning party (here, appellant) establishes that the Opinion incorrectly stated or applied the law and, therefore, is contrary to law. (*Appeal of NASSCO Holdings, Inc., supra*.)

Appellants contend that a rehearing is warranted because OTA’s decision is contrary to law. Appellants argue that FTB has lost its presumption of correctness where it failed to adduce any evidence to refute the substantial evidence provided by appellants. Appellants argue that the following circumstances establish, by a preponderance of the evidence, that FTB’s determinations are erroneous: (1) Morse Watchmans, Inc. (MWI) is a Connecticut company and received Connecticut sourced income; (2) M. Pires (appellant-husband) managed MWI in Connecticut, but later moved to California and founded a vineyard, not working full-time for MWI; (3) travel records and credit card statements indicate that appellant-husband traveled to Connecticut approximately once a month for four to six days at a time and that he worked for MWI during these trips; and (4) documented evidence, including air travel, car rentals, lodging, restaurant expenses, and company records containing appellant-husband’s handwriting, supports the claim that he traveled to Connecticut on a monthly basis.

Here, OTA has already duly considered the above evidence and circumstances raised by appellants in this petition in the underlying Opinion. As discussed in the underlying Opinion, OTA acknowledged that appellants submitted evidence (e.g., credit card statements) to purportedly show that appellant-husband worked in Connecticut at least one week per month and claimed that all MWI wage income was earned in Connecticut. OTA also noted that

appellants continue to argue that granting the OSTC “as reported” on their tax returns serves “the interest of justice.” The reported OSTC on the appellants’ tax returns reflects appellants’ contention on appeal that all wage income should be sourced to Connecticut. To reiterate from the underlying Opinion, tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeals of Swat-Fame Inc. et al., supra.*) Although travel invoices confirm that the appellant-husband was in Connecticut and may suggest there could be some work that was performed, they do not, by a preponderance of the evidence, establish that the appellant-husband more likely than not exclusively performed personal services in Connecticut for MWI. If appellants, in fact, worked exclusively in Connecticut, such evidence would be available, and presumably appellants would have provided it. A taxpayer’s failure to produce evidence that is within the taxpayer’s control gives rise to a presumption that such evidence is unfavorable to the taxpayer’s case. (*Appeal of Kwon, et. al., 2021-OTA-296P.*) The absence of such evidence weighs against appellants’ position. Here, appellants’ dissatisfaction with the outcome and attempt to reargue the same issues a second time is not grounds for a rehearing. (*Appeal of Graham and Smith, 2018-OTA-154P.*) Appellants in this petition provide the same or similar arguments that were considered and rejected in the underlying Opinion, and which OTA continues to find to be unpersuasive. (*Ibid.*) Appellants have not established that the underlying Opinion incorrectly stated or applied the law. (*Appeal of NASSCO Holdings, Inc., supra.*) Therefore, a rehearing cannot be granted based on appellants’ contention that it is contrary to law.

Appellants also offer a new alternative argument, which is to allow allocation of their wages based on working days in California versus working days in Connecticut. (See *Appeal of Stabile, 2020-OTA-198P.*) Here, this argument is not only a new argument appellants raise for the first time, but it is also contrary to their original position that all MWI wage income earned by appellant-husband was earned exclusively in Connecticut. Nonetheless, there is no provision that would permit a new hearing to consider an argument appellants failed to raise and provide prior to the issuance of the Opinion.

Accordingly, OTA finds appellants are not entitled to a rehearing, and as such, denies appellants' petition.

DocuSigned by:

*Eddy Y. H. Lam*

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Eddy Y.H. Lam  
Administrative Law Judge

We concur:

Signed by:

*Seth Elsom*

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Seth Elsom  
Hearing Officer

DocuSigned by:

*Steven Kim*

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Steven Kim  
Administrative Law Judge

Date Issued: 3/14/2025