

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 19105348
<b>R. ALVAREZ</b>	)	
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	)	
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: R. Alvarez

For Respondent: Brian Werking, Attorney

A. WONG, Administrative Law Judge: On August 14, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the actions of respondent Franchise Tax Board (FTB) proposing the following two assessments: (1) for the 2012 tax year, additional tax of \$46,323, an accuracy-related penalty of \$9,264.60, and applicable interest; and (2) for the 2013 tax year, additional tax of \$6,902, an accuracy-related penalty of \$1,374.80, and applicable interest. In the Opinion, OTA held that appellant failed to demonstrate either error in FTB's proposed assessments, which were based on federal adjustments, or that the proposed accuracy-related penalties should be abated.

On September 5, 2024, appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 on the basis that the IRS improperly assessed taxes against income that appellant did not actually receive, either from his self-employment or from real property sales. Appellant also contends that he recently filed a corrected tax return for the 2012 tax year with FTB, and that he has suffered other personal difficulties over the past 10 years or so. Upon consideration of appellant's 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.)

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 from that evidence, OTA clearly should have reached a different opinion. (*Appeal of Riedel*, 2024-OTA-004P.) To find that the Opinion is contrary law, OTA must determine whether the Opinion is unsupported by any substantial evidence. (*Ibid.*) 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.*)

In his petition for rehearing, appellant offers the same arguments and evidence previously considered and dismissed by OTA's Opinion. These arguments and evidence do not satisfy any of the grounds for rehearing described above. Appellant's dissatisfaction with the Opinion and attempt to reargue the same issues does not constitute a valid basis for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) And to the extent that appellant may be contending there was insufficient evidence to support OTA's Opinion and/or the Opinion was contrary to law, OTA has reviewed both the record and the Opinion and finds sufficient evidence to justify the Opinion, and concludes that it was not contrary to law. Accordingly, appellant's petition is denied.

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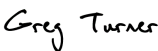


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Andrew Wong  
Administrative Law Judge

We concur:

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Greg Turner  
Administrative Law Judge

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Michael F. Geary  
Administrative Law Judge

Date Issued: 2/20/2025