

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230212562  
R. CONDOS AND )  
G. HOLMES<sup>1</sup> )  
\_\_\_\_\_ )

**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants: James R. Goldie, CPA

For Respondent: Andrea Watkins, Attorney

K. WILSON, Hearing Officer: On November 14, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellants' claims for refund of \$17,731.25 for the 2018 tax year and \$3,003.50 for the 2019 tax year. In the Opinion, OTA held appellants had not established reasonable cause to abate the late-filing penalties and the demand penalties.

On December 5, 2024, appellants timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19334 based on several arguments. Upon consideration of appellants' petition, OTA concludes that the arguments 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

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<sup>1</sup> Although Office of Tax Appeals (OTA) correspondence only identifies R. Condos as an appellant, R. Condos and G. Holmes jointly filed their 2018 and 2019 tax year income tax returns and the Request for Appeal includes both of their signatures (with G. Holmes identified as G. Condos). Therefore, OTA finds that R. Condos and G. Holmes jointly filed the appeal and together they are appellants.

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.)

Appellants contend that there was an error in the analysis of the evidence, and that FTB has not met the conditions precedent for the imposition of the penalty under R&TC section 19133. OTA treats this as an assertion that there is insufficient evidence to justify the Opinion and the Opinion is contrary to law.

### Insufficient Evidence

To find that there is an insufficiency of evidence to justify the opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the panel clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc. et al.*, 2020-OTA-045P citing *Bray v. Rosen* (1959) 167 Cal.App.2d 680 and Code Civ. Proc. § 657.)

Appellants argue that OTA “errs in making the assumption, in its analysis, that FTB’s notice and demand took place. Nowhere in the Opinion does OTA explain how it came to this conclusion.” The Opinion sets forth the evidence in the factual findings (FF): for the 2018 tax year, FF 2, which finds that FTB issued a Demand for Return (Demand) to appellant Condos on April 12, 2022; and for the 2019 tax year, FF 10, which finds that FTB issued a Demand to appellant Condos on April 19, 2022.

Appellants also argue that the demand penalty for the 2018 and 2019 tax years was not properly imposed because the prior year Request/Demands (i.e., the 2014 Request and 2015 and 2016 Demands) were not sent to appellants’ last known address as it was sent to appellants at an address in Greenbrae. Appellants argue that they do not live in Greenbrae; they live in Kentfield. R&TC section 18416 states notice may be given by first-class mail and any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer’s last known address. The last known address shall be the address that appears on the taxpayer’s last return filed with FTB, unless the taxpayer has provided to FTB clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer. FTB used the information it received from three different income reporters that appellants’ address was in Greenbrae when sending the Request/Demands for tax years 2014, 2015, and 2016.

On March 15, 2018, FTB sent appellants, at the Greenbrae address, a Demand for the 2016 tax year. Appellants responded late to the Demand and filed their 2016 tax return on

July 23, 2018.<sup>2</sup> Comparing the 2014-2016 Request/Demands to the 2018 and 2019 Demands, the only difference in the address is the city (the number, street and zip code are identical). OTA finds that FTB properly issued the Notices of Proposed Assessment (NPAs) and Request/Demands to the address it had on record for the tax years 2014, 2015 and 2016. Since the Request/Demands were properly issued, FTB has met the criteria for imposing the demand penalties for tax years 2018 and 2019. FTB issued NPAs to appellants after appellants' failed to timely respond to a Request/Demand in the prior four-taxable-year period as required under California Code of Regulations, title 18, (Regulation) section 19133(b).

Appellants' second argument is that they could not properly respond to the NPAs since appellants were not properly noticed and that it cannot be assumed that appellants had knowledge of the NPAs. Appellants contend that they did not change their address and therefore did not inform FTB of a change in address. Again, FTB is only required to send the notice to appellants' last known address, which includes an address which FTB has reason to believe is the most current address for the taxpayer. Since FTB received consistent information from three different sources indicating appellants' address was in Greenbrae, FTB changed the address accordingly.

#### Opinion Contrary to Law

Appellants' third argument is that OTA's cite to *U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*) is not pertinent to its case. OTA treats this as an assertion that the Opinion's citation to and reliance on *Boyle* is contrary to law. 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, that it's the entire evidence was such as would justify a holding against a party in whose favor the holding was returned. (*Appeal of Shanahan, supra*, citing *Sanchez-Corea v. Bank of America* (1959) 172 Cal.App.2d 784, 907.)

Appellants contend that they reasonably relied on a tax professional to prepare their tax return and the tax preparer was contractually obligated to file their return and therefore

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<sup>2</sup> Appellant's 2016 tax return is not in the evidentiary record. Appellants contend but have not substantiated that the address used on the 2016 return indicated the Kentfield rather than Greenbrae address. As noted in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 at p. \*2, the trier of fact "prefer[s] a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before [the Opinion], but was not, the goal of reaching the correct result must usually fall to the need to efficiently resolve matters." (*Appeal of Shanahan, supra*, citing *Appeal of Wilson Development, Inc., supra*.)

appellants would not have filed their own tax return. Appellants again argue that appellant Condos was medically inhibited, and appellant Holmes was a homemaker who did not have the skills to file tax returns.

The Opinion cites *Boyle* for the legal principle that it requires no special training or effort to ascertain a deadline and make sure it is met. “It is well established that taxpayers have a personal, non-delegable obligation to ensure their returns are filed timely, and reliance on an agent to perform this act does not constitute reasonable cause.” (*Appeal of Fisher*, 2022-OTA-337P.) The law is clear: the fact that a tax preparer was expected to attend to a matter does not relieve the taxpayers of the duty to comply with the statute, and an agent’s failure to file a tax return cannot constitute reasonable cause for the taxpayers. (*Ibid.*) Thus, appellants’ argument on this point is not persuasive and does not establish grounds for a rehearing.

Appellants also argue that in their previous appeal, *Appeal of Condos and Holmes*, 2021-OTA-145 (prior Opinion), OTA ruled that the Demand was not sufficiently timely and therefore it cannot qualify as notice to appellants in the prior four-taxable-year period under R&TC section 19133. Again, OTA treats this as an assertion that the Opinion is contrary to law.

The prior Opinion was nonprecedential and was superseded by *Appeal of Jones*, 2021-OTA-144P. *Appeal of Jones, supra*, holds that the prior year NPAs must be issued during the four tax years preceding the tax year on appeal. Additionally, Regulation section 19133(b) was amended, operative October 19, 2021, to clarify that the interpretation in *Appeal of Jones, supra*, is correct. Even if OTA were to find that the 2016 Demand was not issued timely as appellants assert, the demand penalty would be found to be properly imposed for both the 2018 and 2019 tax years at issue in this appeal since both the 2014 and the 2015 Request/Demand and NPAs were also issued during the four calendar years prior to 2018 and 2019, the tax years at issue here. Therefore, the Opinion is not contrary to law as to this argument.

Appellants’ final argument is that the Opinion did not give sufficient weight to the efforts of appellants and their new accountants to comply with the filing requirements. Appellants reiterate that FTB caused them to file later than they intended due to the delay in granting access to FTB’s electronic filing system. OTA finds that this argument lacks merit since appellants filed their 2018 and 2019 tax returns over three and two years after the respective due dates. Thus, OTA cannot grant a rehearing based on this argument.

CONCLUSION

For the reasons noted above, appellants' arguments in their petition fail to establish that after weighing the evidence in the record, OTA clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc. et. al., supra.*) OTA finds that appellants have not established grounds for a rehearing pursuant to Regulation section 30604(a). Likewise, appellants' dissatisfaction with the outcome of their appeal is not grounds for a rehearing. (*Appeal of Shanahan, supra.*)

Accordingly, appellants' petition is denied.

Signed by:  
*Kim Wilson*  
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Kim Wilson  
Hearing Officer

We concur:

Signed by:  
*Suzanne B. Brown*  
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Suzanne B. Brown  
Administrative Law Judge

Signed by:  
*Greg Turner*  
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Greg Turner  
Administrative Law Judge

Date Issued: 3/27/2025