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2025-OTA-399
Nonprecedential

**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

| In the Matter of the Consolidated Appeals of: **K. WILLIAMS** | ) ) ) ) ) ) | OTA Case Nos. 22029644, 220510484, and 221011637 |
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: K. Williams

For Respondent: Eric R. Brown, Attorney

T. LEUNG, Administrative Law Judge: On December 6, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the actions of the Franchise Tax Board's (respondent) proposed assessments of tax and penalties for the 2017, 2018, 2019, and 2020 taxable years. In the Opinion, the panel held that respondent's proposed assessments of tax and penalties were not erroneous, that K. Williams (appellant) did not establish reasonable cause for waiving the late filing and demand penalties, that OTA did not have jurisdiction over the frivolous return or submission penalties, and that a $250 frivolous appeal penalty would be imposed by OTA.

On January 4, 2025, Appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 based on newly discovered evidence, that there is insufficient evidence to support the Opinion, and that the Opinion is contrary to law. Upon consideration of appellant's petition, this panel concludes that the grounds set forth in this petition do not constitute a basis for granting a new hearing.

As provided in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a new hearing. In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (*See Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728*; Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764, 779.)

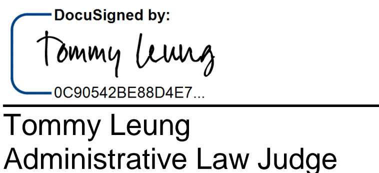
With her petition, appellant submits a 2021 "zero return" filed by a taxpayer who makes frivolous arguments similar to those made by appellant during the appeal. At her hearing, appellant presented testimony and documentation from a witness who also made such frivolous claims. While the 2021 tax return submitted by appellant with the petition is "new" in that it post-dates the hearing, its relevance and impact is like that of the witness's testimony – i.e., not persuasive and therefore not likely to alter the outcome of this appeal.

Next, to rule that there is an insufficiency of evidence to justify the opinion, this panel must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the Opinion clearly should have reached a different conclusion. (Code Civ. Proc. § 657; *Bray v. Rosen*, 167 Cal.App.2d 680, 684; *Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) In her petition, appellant disputes the Opinion's determination that there were inconsistencies between her and her witness's evidence and that her witness's refund was based, at least partially, on a math error. However, the inconsistency and math error were examples of the weaknesses in, and not sufficiency of, appellant's evidence. Indeed, appellant's witness did little to substantiate her assertion that she did not receive any "Federal and State connected wages" or any wages as defined in Internal Revenue Code sections 3121(a) and 3401(a) to prompt a filing requirement. Thus, appellant's insufficiency of evidence argument is not persuasive.

Finally, the question of whether a decision is contrary to law is not one that involves a weighing of the evidence, but instead requires a finding that the decision is "unsupported by any substantial evidence." (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907.) The fact that appellant is dissatisfied with the outcome of her appeal is not grounds for a rehearing. (*Appeal of Le Beau*, 2018-OTA-61P.) For this purpose, appellant refers to a 2024 United States Supreme Court decision named "Moore" that she contends would support an argument that respondent's determination that she has income, and the Opinion's sustaining such action, are unlawful. As respondent points out, there were 2 *Moore* Court tax decisions in 2024,[1] neither of which are applicable to this appeal. Since appellant has the burden of proving that respondent's proposed assessments were erroneous, her reference to *Moore* does not help her cause. Moreover, appellant's assertion highlights her dissatisfaction with the Opinion, and is couched in the nature of a constitutional argument over which OTA has no jurisdiction. (See Cal. Code Regs., tit. 18, § 30104.)

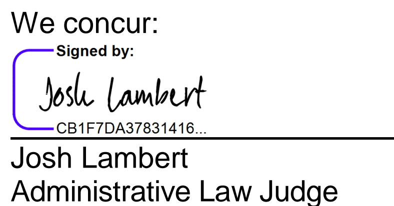
[1] *Moore v. United States* (2024) 602 U.S. 572; *Moore v. United States* (2024)__ U.S. __ [2024 WL 5112310].

Accordingly, appellant's petition is denied.



Tommy Leung
Administrative Law Judge

We concur:



Josh Lambert
Administrative Law Judge

Michael F. Geary
Administrative Law Judge

Date Issued: 5/15/2025