OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **S. HISKAIL AND** **J. HISKAIL**	OTA Case No. 240817280

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	S. Hiskail J. Hiskail E. Hiskail
For Respondent:	Rosemary Villasenor, Senior Legal Typist

V. LONG, Administrative Law Judge: On March 12, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying S. and J. Hiskail's (appellants) claim for refund of $10,922 for the 2015 tax year. In the Opinion, OTA held that the statute of limitations barred appellants' claim for refund.

On April 9, 2025, appellants timely filed a petition for rehearing (petition) with OTA on the basis that there was an irregularity in the appeal proceedings which occurred prior to the issuance of the Opinion and prevented fair consideration of the appeal, and on the basis of newly discovered evidence material to the appeal. Upon consideration of appellants' petition, OTA concludes that the grounds set forth in the 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).)

Although appellants' petition states that their petition is submitted on the basis of an irregularity in the appeal proceedings and newly discovered evidence, appellants' actual assertions are less clear. The petition states that the irregularity in the appeal proceedings was that appellants filed their 2015 tax return, but that their bookkeeper mistakenly did not claim the withholding credits. The petition states that the newly discovered evidence is appellants' 2015 tax return. Appellants' original and amended 2015 California income tax returns were submitted as evidence by FTB during the appeal proceedings and are part of the written record.

An irregularity in the proceedings warranting a rehearing would generally include any departure by OTA from the due and orderly method of conducting appeal proceedings by which the substantial rights of a party (here, appellants) have been materially affected. (*Appeal of Shanahan*, 2024-OTA-040P.) Courts have found that an irregularity in the proceeding is "any act that (1) violates the right of a party to a fair trial and (2) which a party 'cannot fully present by exceptions taken during the progress of the trial . . . .' [citation]." (*Montoya v. Barragan* (2013) 220 Cal.App.4th 1215, 1230.) Included in the classification of irregularities is an "overt act of the trial court . . . or adverse party, violative of the right to a fair and impartial trial . . . ." (*Russell v. Dopp* (1995) 36 Cal.App.4th 765, 780.) Examples of irregularities include the absence of a judge from the courtroom during a portion of the trial, and a judge threatening to prejudge testimony unless a witness is withdrawn. (*Appeal of Shanahan*, *supra*.)

The irregularity alleged by appellants does not constitute a departure from the due and orderly method of conducting appeal proceedings. Instead, appellants' contention restates their argument on appeal. In addition, the alleged irregularity of filing an income tax return in 2016 and failing to claim withholding credits did not take place "in the appeals proceedings," as required by California Code of Regulations, title 18, (Regulation) section 30604. The alleged irregularity preceded the appeals proceedings by almost ten years. Based on this, appellants have not established that there was an irregularity in the appeal proceedings within the meaning of Regulation section 30604.

In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (*Appeal of Shanahan*, *supra*.)

Appellants resubmit their original 2015 tax return, which was submitted, along with appellants' amended 2015 tax return, as evidence by FTB during the appeal and is part of the written record. Thus, appellants' 2015 tax return and amended 2015 tax return are not new evidence, and appellants have not presented newly discovered evidence.

Accordingly, OTA finds that appellants have not presented a basis for granting anew hearing.

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

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Andrew Wong
Administrative Law Judge

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

Date Issued: 9/11/2025