

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240516126
A. SCHOMBS)	
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)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: A. Schombs

For Respondent: Eric R. Brown, Attorney

S. BROWN, Administrative Law Judge: On April 10, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax of \$5,509.60, a late filing penalty of \$1,377.40, a failure to file upon demand penalty (demand penalty) of \$1,401.75, and applicable interest for the 2020 tax year.

In the Opinion, OTA held that A. Schombs (appellant) had not demonstrated error in FTB's proposed assessment of tax, appellant's arguments with respect to his income tax liability were frivolous, and appellant did not establish reasonable cause to abate either the demand penalty or the late filing penalty. On April 30, 2025, appellant timely filed a petition for rehearing (PFR) with OTA under Revenue and Taxation Code (R&TC) section 19048, asserting that the Opinion is contrary to law. Upon consideration of appellant's PFR, OTA concludes that the grounds set forth in the PFR 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 a review of the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) The question of whether the Opinion is contrary to law is not one which involves a weighing of the evidence, but instead, requires a finding that the Opinion is “unsupported by any substantial evidence”; that is, the record would justify a directed verdict against the prevailing party. (*Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) This requires a review of the Opinion in a manner most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the Opinion if possible. (*Ibid.*) The question before OTA on a PFR does not involve examining the quality or nature of the reasoning behind OTA’s Opinion, but whether that Opinion can be valid according to the law. (*Ibid.*)

Appellant raises various frivolous arguments in the PFR, including repeating arguments that OTA addressed in the Opinion, such as that appellant’s income is not taxable because a state may not tax “Federal Reserve Notes.” In the Opinion, OTA rejected those arguments as frivolous and without merit. (See *Appeal of Balch*, 2018-OTA-159P.) The PFR argues that the Opinion’s findings constituted violations of federal statutes, the U.S. Constitution, and the California Constitution. OTA is generally precluded from considering constitutional arguments and has no jurisdiction to provide a remedy for an agency’s actual or alleged violation of any substantive or procedural right to due process under the law.¹ (Cal. Code Regs., tit. 18, § 30104; see Cal. Const., art. III, § 3.5.) OTA finds that nothing in the PFR establishes that the Opinion was contrary to law.

¹ There are limited exceptions to OTA’s jurisdiction to review alleged due process violations; however, none are applicable in this matter. (Cal. Code Regs., tit. 18, § 30104(d).)

Accordingly, there are no grounds to grant a rehearing. Consequently, the PFR is denied.

Signed by:

Suzanne B. Brown

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Suzanne B. Brown
Administrative Law Judge

We concur:

Signed by:

Kim Wilson

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Kim Wilson
Hearing Officer

Signed by:

Greg Turner

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Greg Turner
Administrative Law Judge

Date Issued: 10/9/2025