

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 21088516
P. VAN DER ZEE)	
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Thomas Michel, TAAP Student Representative
For Respondent:	Nancy E. Parker, Attorney

V. LONG, Administrative Law Judge: On May 7, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining actions of respondent Franchise Tax Board (FTB) denying appellant's claims for refund for the 2015 and 2017 tax years. In the Opinion, OTA held that appellant's claims for refund were barred by the statute of limitations.

In the appeal, appellant contended that although his 2015 and 2017 returns were untimely under the general statute of limitations, his remittances should be considered refundable overpayments, FTB should have considered his net operating losses in estimating his tax liability, and appellant was financially disabled such that the statute of limitations should be tolled for his claims for refund. The Opinion evaluated and rejected each contention.

First, the Opinion concluded that voluntary payments and amounts collected pursuant to a valid assessment do not constitute overcollections that are not subject to the refund statute of limitations. (See *Appeal of Cornbleth*, 2019-OTA-408P.) Second, the Opinion noted that a taxpayer's failure to timely file a claim for refund bars a refund even where the tax was erroneously, illegally, or wrongfully collected. (*Appeal of Benemi Partners*, 2020-OTA-144P.) Finally, the Opinion considered appellant's financial disability contention for purposes of suspending the refund statute of limitations. Appellant contended that he was financially disabled from 2012 through 2020, and although he filed taxes jointly with his spouse, she was not authorized to prepare the couple's 2015 and 2017 joint California income tax returns. The Opinion disagreed and cited Revenue and Taxation Code (R&TC) section 19316(b)(2), which provides that a taxpayer shall *not* be considered financially disabled for any period during which

that taxpayer's spouse or any other person is legally authorized to act on that individual's behalf in financial matters. The Opinion observed that appellant bears the burden of establishing his claim for refund by a preponderance of evidence and that unsupported assertions are insufficient to meet this burden. (*Appeal of Gillespie*, 2018-OTA-052P; *Appeal of Mauritzson*, 2021-OTA-198P.) The Opinion determined that taxpayers filing as married filing jointly are jointly and severally liable for the contents of a return, and that appellant had not provided evidence establishing that his spouse was unable to act on his behalf. Based on this, the Opinion held that appellant had not established entitlement to suspension of the statute of limitations for financial disability.

On May 29, 2025, appellant timely filed a petition for rehearing (petition) with OTA under R&TC section 19334 on the basis that there was an irregularity in the appeal proceedings, there was an accident or surprise in the appeal proceedings, there was insufficient evidence to justify the Opinion, and the Opinion was contrary to law. Upon consideration of appellant's 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 (here, appellant) 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.)

Irregularity in the Proceedings

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, appellant) have been materially affected. (*Appeal of Graham and Smith*, 2018-OTA-154P; see also *Jacoby v. Feldman* (1978) 81 Cal.App.3d 432, 446.)¹ Indeed, courts have found that an irregularity in the proceeding is "any act that

¹ 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.

(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’” (*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. (See *O’Callaghan v. Bode* (1890) 84 Cal. 489, 495; see also *Pratt v. Pratt* (1903) 141 Cal. 247, 252.) The granting or denial of a rehearing on such basis “is largely in the discretion of the” presiding officer. (*Loggie v. Interstate Transit Co.* (1930) 108 Cal.App. 165, 171.)

Appellant contends that an irregularity in the proceedings occurred because the Opinion did not thoroughly discuss appellant’s argument that appellant’s spouse lacked authority to file the couple’s joint return. Appellant contends that it submitted four briefs on the issue, which were not thoroughly discussed in the Opinion. Appellant’s contention does not constitute an irregularity in the proceeding because it fails to establish a departure by OTA from the due and orderly method of conducting appeal proceedings. As appellant’s multiple briefs demonstrate, appellant was provided with ample opportunity to present its argument on the issue. OTA reviewed the parties’ briefs and determined that appellant had not met his burden of proof. Accordingly, OTA concludes that appellant’s appeal did not suffer from an irregularity in the appeal proceedings that prevented fair consideration of his appeal.

Accident or Surprise

A rehearing is permitted when an accident or surprise occurs during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented. (Cal. Code Regs., tit. 18, § 30604(a)(2).) Interpreting section 657 of the Code of Civil Procedure, the California Supreme Court held that the terms “accident” and “surprise” have substantially the same meaning. (*Kauffman v. De Mutiis* (1948) 31 Cal.2d 429, 432.) To constitute an accident or surprise, a party must be unexpectedly placed in a detrimental condition or situation without any negligence on the part of that party. (*Ibid.*) A new hearing is only appropriate if the accident or surprise materially affected the substantial rights of the party seeking the rehearing. (Code Civ. Proc., § 657; *Appeal of Wilson Development* (94-SBE-007) 1994 WL 580654.)

Appellant contends that an accident or surprise occurred because OTA did not sufficiently discuss appellant's contention that appellant's spouse lacked authority to file the couple's joint tax returns. As discussed above, OTA evaluated the parties' briefs and evidence presented and determined that appellant had not met his burden of proof. The fact that appellant is dissatisfied with the outcome of his appeal is not grounds for rehearing. (*Appeal of Le Beau*, 2018-OTA-061P.) OTA finds that appellant has not established an accident or surprise occurred in this appeal which ordinary caution could not have prevented. Thus, OTA cannot grant a rehearing based on this ground.

Insufficient Evidence to Justify the Opinion

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 conclusion. (Code Civ. Proc., § 657; *Bray v. Rosen* (1959) 167 Cal.App.2d 680, 684.)

Appellant contends that the Opinion's conclusion contained no evidentiary support and appellant's November 26, 2024 brief contained multiple exhibits offering evidentiary support that appellant's spouse lacked authorization to file the couple's joint tax returns.

A review of appellant's November 26, 2024 brief shows appellant submitted the following evidence: a February 14, 2023 affidavit from appellant's spouse; appellant's 2016-2018 Schedule C, Profit or Loss from Business; legal judgments, liens, mortgage payments, and loans addressed to appellant; and a June 10, 2014 letter from the Humboldt County District Attorney's Office.

In the February 14, 2023 affidavit, appellant's spouse states that she did not take over the couple's tax filings for the 2012 through 2019 tax years because the couple's tax returns were beyond her understanding and she was unfamiliar with appellant's tax accountant. However, FTB submitted as evidence the couple's jointly filed 2014 tax return. The 2014 return was executed solely by appellant's spouse and prepared by appellant's tax accountant. Thus, the evidence supported that appellant's spouse was able to file the couple's joint returns, because she had in fact done so for the prior year return.

Appellant's Schedule C Forms and various financial documents addressed to appellant are not relevant in determining whether appellant's spouse was authorized to file the couple's joint returns. This is particularly true in light of the fact that appellant's 2014 joint return, which was executed solely by appellant's spouse, included such a Schedule C.

Finally, the June 10, 2014 letter from the Humboldt District Attorney's Office advised appellant's spouse that the District Attorney filed criminal charges against appellant. It is unclear how this letter is relevant to a determination of whether appellant's spouse was authorized to execute the couple's joint tax returns, but regardless, appellant's spouse did in fact solely execute the couple's 2014 joint return on January 8, 2019, after the issuance of the District Attorney's letter.

The Opinion noted that appellant has the burden of establishing entitlement to his claims for refund, and that unsupported assertions are insufficient to meet this burden. (*Appeal of Gillespie, supra*; *Appeal of Mauritzson, supra*.) As appellant provided no credible, competent, or relevant evidence showing error in FTB's denial of appellant's claims for refund, FTB's denial was upheld. OTA finds that there was sufficient evidence to justify the Opinion; therefore, OTA cannot grant a rehearing based on this ground.

Contrary to Law

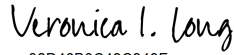
Finally, to find that the Opinion is against (or contrary to) law, OTA must determine whether the Opinion is "unsupported by any substantial evidence." (*Appeal of Graham and Smith, supra*, citing *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*)). This requires a review of the Opinion to indulge "in all legitimate and reasonable inferences" to uphold the Opinion. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.) 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. (*Appeal of Swat-Fame Inc., et al.*, 2020-OTA-045P.) OTA reviews the Opinion in the light most favorable to the prevailing party (here, FTB).

Appellant contends that the Opinion is contrary to law because it held that appellant had not established that his spouse lacked authority to file the couple's returns even though appellant presented evidence in support of his contention. Appellant also contends that R&TC section 19316 requires a spouse to be legally authorized.

As stated above, the Opinion cited to R&TC section 19316(b)(2), which provides that a taxpayer shall not be considered financially disabled for any period during which that taxpayer's spouse or any other person is legally authorized to act on that individual's behalf in financial matters. The Opinion also evaluated the briefs and evidence submitted in the case and determined that appellant had not met his burden of proof that his spouse was not authorized to file the couple's joint tax returns. The fact that appellant is dissatisfied with the outcome of his

appeal is not grounds for rehearing. (*Appeal of Le Beau, supra.*) Accordingly, appellant has not established that the Opinion was contrary to law. Therefore, appellant's petition is denied.

Signed by:



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Veronica I. Long
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

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Kenneth Gast
Administrative Law Judge

Date Issued: 10/8/2025