

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 221111958  
C. ALLEN (DEC'D) AND )  
A. ALLEN )  
\_\_\_\_\_ )

**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants: Doris Mason, Representative

For Respondent: Christopher T. Tuttle, Attorney

S. ELSOM, Hearing Officer: On July 22, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of the Franchise Tax Board (respondent) proposing additional tax of \$7,578, an accuracy related penalty of \$1,515.60, and applicable interest, for the 2011 tax year. In the Opinion, OTA held that appellants had not established error in respondent’s proposed assessment, which was based on a federal determination to disallow a passive activity loss (PAL) incurred from rental activity and schedule C expense deductions reported by appellants.

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);<sup>1</sup> *Appeal of Shanahan*, 2024-OTA-040P.)

On August 22, 2025, appellants timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048. In the petition, appellants argue that a rehearing should be granted based upon insufficient evidence to justify the Opinion. Additionally, because appellants' petition includes new evidence that was not provided during the appeal, appellants appear to request a rehearing on the ground of newly discovered evidence. 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.

### **Insufficient Evidence to Justify the Opinion**

To find that there is insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different opinion. (Code Civ. Proc., § 657; *Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.) OTA considers the evidence in the light most favorable to the prevailing party (here, respondent). (*Ibid.*)

In the Opinion, OTA explained that appellants have the burden to prove error in respondent's determination. Respondent's proposed assessment based upon a final federal determination is presumed to be correct, and a taxpayer bears the burden of proving that respondent's determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances the taxpayer asserts are more likely than not to be correct. (*Appeal of Black*, 2023-OTA-023P.) During the appeal, appellants provided only general IRS correspondence for the federal examination but did not provide any information to substantiate the expense items and PAL deductions they reported. Accordingly, because appellants provided no credible, competent, or relevant evidence showing error in respondent's proposed assessment, respondent's determination was upheld.

Based upon the foregoing, OTA finds that there was sufficient evidence to justify the Opinion; therefore, OTA cannot grant a rehearing based on this ground.

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<sup>1</sup> As provided in *Appeal of Martinez Steel Corp.*, 2020-OTA-074P, California Code of Regulations, title 18, section 30604 is based upon the provisions of California Code of Civil Procedure (CCP) section 657; therefore, it is appropriate for OTA to look to CCP section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a rehearing.

### **Newly Discovered Evidence**

California Code of Regulations, Title 18, section 30604(a)(3) permits a rehearing for newly discovered evidence, material to the appeal, which the filing party (here, appellant) could not have reasonably discovered and provided prior to issuance of the Opinion. If a party attempts to submit evidence after the Opinion has been issued, the party must show that the proffered evidence is material and could not have been produced prior to the issuance of the Opinion in order for OTA to grant the petition. (*Appeal of Shanahan, supra.*) In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (*Ibid.*)

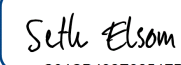
Here, appellants provide general ledger detail for costs incurred by appellant C. Allen during the operation of his electrician business, cancelled checks to prove some of the costs, and a sales escrow statement for what appears to be a rental property. Appellants appear to argue that this information is likely to produce a different result if considered by OTA. During the oral hearing, appellants testified that they possessed this information, and OTA subsequently reopened the record to allow them to provide it. However, appellants did not provide this information prior to OTA's issuance of the Opinion, and they do not explain or provide any information here to show why they were prevented from doing so. Because appellants have failed to establish that this information could not have been provided prior to the issuance of the Opinion, OTA cannot grant a rehearing based on this ground. (Cal. Code Regs., tit. 18, § 30604(a)(3); *Appeal of Shanahan, supra.*)

Finally, appellants request that OTA review respondent's treatment of tax withholdings from a prior tax year.<sup>2</sup> Appellants' withholdings relate to the 2009 tax year and were not considered in this appeal. Therefore, appellants' request cannot serve as a basis to be considered under any of the applicable grounds for rehearing

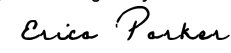
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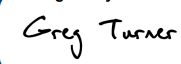
<sup>2</sup> In the petition, appellants provide a sales escrow statement which lists withholdings of \$6,666 and a closing date of December 4, 2009. With respect to the withholdings, appellants provide the following as a ground for rehearing: "Insufficient determination of [withholdings] undistributed and/or remains in the possession of [respondent]. The disposition and release of said funds on behalf [appellants] would serve to mitigate the deficiencies . . .".

Accordingly, OTA finds that appellants have not satisfied the requirements for granting a rehearing and, as such, the petition is denied.

Signed by:  
  
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Seth Elsom  
Hearing Officer

We concur:

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Erica Parker  
Hearing Officer

Signed by:  
  
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Greg Turner  
Administrative Law Judge

Date Issued: 2/26/2026