

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 240415998
	)	
L. CHOW AND	)	
J. CHAN	)	
	)	
	)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	Fred R. Langer, CPA
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For Respondent:	Vivian Ho, Attorney
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V. LONG, Administrative Law Judge: On January 8, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,714.45, attributable to the imposition of a late-payment penalty. In the Opinion, OTA held that appellants had not established that the failure to timely pay was due to reasonable cause and not willful neglect.

On March 20, 2025, appellants timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19334 on the basis that there is insufficient evidence to justify the Opinion, the Opinion is contrary to law, and that appellants had new evidence. Upon consideration of appellants' petition, OTA concludes that the grounds set forth in this 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); *Appeal of Shanahan*, 2024-OTA-040P.)

Insufficient Evidence

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, FTB). (*Appeals of Swat-Fame Inc., et al.*, *supra*.)

Appellants contend that there is insufficient evidence to support a finding that they lacked reasonable cause. The Opinion stated that appellants have the burden of proof in establishing that their failure to timely pay occurred despite appellants' exercise of ordinary business care and prudence. To meet this burden, appellants must show what efforts they took, if any, to estimate their California tax liability. (*Appeal of Moren*, 2019-OTA-176P.) Appellants contend that they provided their draft Schedule K-1 to their accountant and that this action satisfies their burden. However, the Opinion found that providing the draft Schedule K-1 to their accountant was insufficient to show that appellants exercised ordinary business care and prudence because using amounts computed for federal income tax purposes without considering California tax consequences is not a reasonable or accurate method of computing the California tax due, as plainly demonstrated by the substantial difference in income reported on appellants' return.

Appellants contend that the difference between the draft and final Schedule K-1's was "attributable to California's non-conformity to federal law on the write-off of leasehold improvements [. . .]. The write-off was a last-minute change based on the CARES Act correction of the Tax Cuts and Jobs Act." While appellants have not provided the exact statutes referenced, California's non-conformity to a last-minute statutory revision of the Internal Revenue Code (IRC) should have the result that appellants' California tax liability be more predictable and thus easier to estimate and timely pay, not less.¹

Finally, even if appellants' use of the draft Schedule K-1 was considered reasonable cause for the late payment, it is undisputed that appellants received their final Schedule K-1 in July of 2021, approximately two months after the postponed payment due date of May 17, 2021, but did not pay the balance due until October of 2021, and thus, appellants' continued nonpayment would lack reasonable cause. OTA finds that there was sufficient evidence to justify the Opinion; therefore, OTA cannot grant a rehearing based on this ground.

¹ For the 2020 tax year, R&TC section 17024.5(a)(1) provides that for Personal Income Tax Law purposes, California conforms to the IRC as effective January 1, 2015. Thus, references to the IRC are to the IRC as effective January 1, 2015.

Contrary to Law

The contrary to law standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) A holding is contrary to law “only if it was ‘unsupported by any substantial evidence, i.e., [if] the entire evidence [was] such as would justify a [holding] against the part[y] in whose favor the [holding was] returned.’” (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907 (*Sanchez-Corea*), citing *Kralyevich v. Magrini* (1959) 172 Cal.App.2d 784, 789.) This requires indulging “in all legitimate and reasonable inferences” to uphold the Opinion. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907; see also *Appeals of Swat-Fame Inc. et al., supra*.) The question does not involve “examining the quality or nature of the reasoning behind [OTA’s Opinion], but whether [the Opinion] can or cannot be valid according to the law.” (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976, at p. *5.) A rehearing may be granted when, examining the evidence in the light most favorable to the prevailing party (here, FTB), with all legitimate inferences to uphold the Opinion, the petitioning party (here, appellants) establishes that the Opinion incorrectly stated or applied the law and, therefore, is contrary to law. (*Ibid.*)

Appellants contend that the Opinion is contrary to law because appellant L. Chan’s business partner received penalty abatement because FTB withdrew its assessment. As support, appellants provide a copy of a letter from the business partner’s appeal, wherein FTB withdrew its assessment. However, OTA does not have the authority to cause FTB to withdraw assessments, and the reason for FTB’s withdrawal is not included in the record. As stated in the Opinion, appellants have not established a basis to abate the late payment penalty. Appellants’ arguments do not establish that the Opinion was contrary to law. Thus, OTA cannot grant a rehearing on this ground.

New Evidence

Regulation section 30604(a)(3) only permits a rehearing for newly discovered evidence material to the appeal, which the filing party (here, appellants) could not have reasonably discovered and provided prior to issuance of the Opinion. In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (*Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728.) As noted in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 at p. *2, the trier of fact “prefer[s] a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before [the Opinion], but was not, the goal of reaching the correct result must usually fall to the need to efficiently resolve matters.” As

such, 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. (Cal. Code Regs., tit. 18, § 30604(a)(3); *Appeal of Wilson Development, Inc.*, *supra*.)

In their petition, appellants provide financial information from appellant L. Chan's partnership. The financial information contains the partnership's 2021 taxable year projected income and expenses. Appellants assert this financial information supports that the partnership's estimates are generally close to the actual tax amount due and thus, it was reasonable for appellants to rely on the partnership's estimates in computing appellants' 2020 tax year liability. However, appellants have not shown that this 2021 financial information could not have been produced before the Opinion, which was issued on January 8, 2025. For this reason, OTA cannot grant a rehearing on this ground.

Conclusion

For the aforementioned reasons, OTA finds that appellants have not established that a ground exists for a rehearing pursuant to Regulation section 30604(a). Furthermore, as to appellants' repeated arguments which were considered and rejected in the Opinion, they do not constitute grounds for rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Likewise, appellants' dissatisfaction with the outcome of their appeal is not grounds for a rehearing. (*Ibid.*) Accordingly, appellants' petition is denied.

Signed by:



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Veronica I. Long
Administrative Law Judge

We concur:

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Seth Elsom
Hearing Officer

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 6/29/2026