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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of: **BSISO ENTERPRISE LLC;** **J. BSISO AND** **N. BSISO**	OTA Case Nos. 221011701, 221011699

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Hassan Z. Ahmed, EA

For Respondent: David Hunter, Attorney

T. STANLEY, Administrative Law Judge: On February 17, 2026, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing for Bsiso Enterprise LLC (Enterprise) additional tax of $207,973, a late-filing penalty of $51,985.75, and applicable interest for the 2015 taxable year. For J. Bsiso and N. Bsiso (the Bsisos), OTA modified FTB's proposed assessment of additional tax of $141,462, an accuracy-related penalty of $28,292.40, and applicable interest for the 2016 taxable year to allow additional storage expenses of $1,990 based on FTB's concession on appeal. OTA modified FTB's action proposing additional tax of $72,641 for the Bsisos, an accuracy-related penalty of $14,528.20, and applicable interest for the 2017 taxable year to abate the accuracy-related penalty based on FTB's concession on appeal.

In the Opinion, OTA held that: (1) Enterprise must recognize pass-through income of $2,502,291 for the 2015 taxable year; (2) Enterprise is not entitled to deduct various business expenses for the 2015 taxable year; (3) Enterprise did not establish reasonable cause to abate the late-filing penalty for the 2015 taxable year; (4) the Bsisos have not shown error in FTB's determinations that J. Bsiso (Mr. Bsiso) received taxable distributions from Enterprise for the 2016 and 2017 taxable years; (5) other than storage fees of $1,990 that FTB conceded on appeal, the Bsisos are not entitled to deduct additional business expenses for Bsiso Trucking for the 2016 taxable year; and (6) the Bsisos have not established a basis to abate the accuracy-related penalty imposed for the 2016 taxable year.

On March 18, 2026, appellants timely filed a petition for rehearing (Petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 on the grounds that: (1) there was an irregularity in the appeal proceedings; (2) there is insufficient evidence upon which to base the Opinion; and (3) the Opinion is contrary to law. 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 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 appeal proceedings which occurred prior to the issuance of the Opinion and prevented fair consideration of the appeal is grounds for a rehearing. (Cal. Code Regs., tit. 18, § 30604(a)(1).) 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 have been materially affected. (*Appeal of Shanahan*, *supra*.) An irregularity in the proceeding includes any act that violates the right of a party to a fair hearing by not allowing a party to fully present their appeal due to the irregularity. (*Ibid*.) Included in the classification of irregularities is an overt act of OTA or the adverse party (here, FTB), violative of the right to a fair and impartial hearing. (*Ibid*.)

In an appeal before OTA, the grounds for a rehearing pursuant to California Code of Regulations, title 18, (Regulation) section 30604 can exist both where an oral hearing is held and where an appeal is submitted for an Opinion based upon the written record. (*Appeal of Shanahan*, *supra*.) The granting or denial of a rehearing on such basis is largely in the discretion of the presiding officer. (*Ibid.*)

Appellants assert that there was an irregularity in OTA's proceedings that materially affected appellants' rights because FTB was allowed, over appellants' objection, to file a

supplemental brief responding to new arguments and evidence raised in appellants' reply brief. Appellants also contend that OTA improperly accepted FTB's brief a day late and "relied on [FTB's] improperly expanded bank-balance-difference formula and incorrect calculations of earnings and profits."[1]

Appellants' arguments are without merit as there was no irregularity in OTA's proceedings. It is common practice for OTA to grant a party's request to file an additional brief to address newly submitted evidence or arguments or for OTA to request additional briefing when the record is incomplete in any respect. (See Cal. Code Regs., tit. 18, § 30304(a), (c).) Here, appellants provided new arguments and new evidence with both the initial reply brief and their additional brief filed on August 30, 2024. OTA's typical briefing schedule allows for an opening brief for each party, with an opportunity for an appellant to reply to the agency's opening brief. (Cal. Code Regs., tit. 18, § 30303.) However, a party may request to file an additional brief if the other party introduces new evidence, arguments, or facts. (Cal. Code Regs., tit. 18, § 30304(c).) In these consolidated appeals, FTB requested to respond to the new evidence and arguments raised in appellants' reply brief, which OTA granted in accordance with its Rules for Tax Appeals. Appellants responded to FTB's additional brief on August 30, 2024, once again raising new arguments and evidence. To complete its record and fairly decide the appeals, OTA asked FTB to respond to appellants' new evidence and arguments. (See Cal. Code Regs., tit. 18, § 30304(a).) In response to OTA's request, FTB filed its additional brief on June 9, 2025, not a day later as alleged by appellants. OTA simply acknowledged FTB's additional brief on June 10, 2025, after receiving the timely filed brief on June 9, 2025. Appellants were then given a final chance to respond to FTB's additional brief, which appellants did on June 16, 2025.

Each of the briefings submitted by the parties was part of a briefing process that allows the parties to fully develop their positions and provides OTA with a complete record upon which to decide an appeal and issue an Opinion based on the parties' evidence and arguments, as contemplated by OTA's Rules for Tax Appeals. (See Cal. Code Regs., tit. 18, § 30304.) Permitting and requesting additional briefing under the circumstances of these appeals does not constitute an irregularity. Moreover, the process allowed appellants the opportunity to respond to each of FTB's timely-filed briefs and to fully present their appeals. Therefore, appellants'

[1] Appellants also contend that OTA's acceptance of FTB's method of determining dividend income based on Enterprise's bank statements constitutes an irregularity in the proceedings. That contention is addressed below as an argument under the "contrary to law" ground for rehearing.

rights were not materially affected, and appellants' arguments do not constitute a ground for a rehearing.

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 opinion. (Code Civ. Proc. § 657; *Appeal of Shanahan*, *supra*.)

Appellants contend that FTB's "bank-balance-formula" incorrectly applies Internal Revenue Code (IRC) section 312 by using Enterprise's ending 2016 bank balance of $1,323,740 to calculate earnings and profits (E&P).[2] Appellants reiterate that they believe their calculation of E&P is more accurate than the FTB's after excluding various amounts including the amount that Mr. Bsiso incorrectly paid to the IRS for the 2016 taxable year.[3]

Appellants, however, misapply the law. IRC section 312 generally treats a corporation's distribution of property (in this case, money) to its shareholders with respect to its stock as a reduction to, and distribution of, the corporation's E&P to the extent of its E&P. (IRC, § 312(a)(1), (d)(1).) As to a shareholder, distributions are generally treated as: (1) taxable dividends to the extent of the corporation's E&P; (2) nontaxable distributions of capital to the extent of the shareholder's stock basis; and (3) gain from the sale or exchange of property to the extent the distribution, which is not a dividend, exceeds the shareholder's stock basis. (IRC, §§ 301(c)(1)-(3); 316(a)(2).) FTB calculated Enterprise's E&P using its Schedule K-1, Partners' Share of Income, Deductions, Credits, etc., allocable share of income from Six Oaks Consulting, LLC (Six Oaks), net of salary paid to corporate officers, while Enterprise's year-end bank statement was used to determine the amount of Enterprise's cash distribution to Mr. Bsiso, which is considered a taxable dividend.[4] Using this Schedule K-1 information, FTB calculated Enterprise's E&P of $2,352,291 for 2015 and $157,508 for 2016. Thus, based upon the record

[2] California law conforms to IRC sections 301-385 under R&TC section 17321.

[3] Appellants list several ways in which they believe FTB incorrectly calculated the 2016 distributions to Mr. Bsiso. To the extent they are not specifically mentioned in this Opinion on appellants' Petition, they equally fail to persuade OTA that the Opinion lacked sufficient evidence to justify its conclusion.

[4] During the taxable years at issue Enterprise owned between 10 percent and 20 percent ownership interest in Six Oaks, which was a medical diagnostic laboratory taxed as a partnership for federal income tax purposes.

here, the Opinion correctly accepted FTB's calculation of Enterprise's E&P and its application as to the distribution made to Mr. Bsiso under relevant law.

Appellants' arguments do not establish that the evidence was insufficient to support the Opinion in these consolidated appeals. On the contrary, each of those arguments and the evidence presented by the parties during the briefing process were fully considered and discussed in concluding that Mr. Bsiso received taxable distributions of $1,177,701 in 2016. As stated above, and as appellants agree, the calculation of Enterprise's E&P determines the amount of the distribution from Enterprise to its shareholder that is taxable as a dividend. (IRC, §§ 301(c)(1), 316(a).) The E&P calculation is separate and distinct from the calculation of the amount of the distribution itself, which FTB reconstructed based upon limited information in the record; i.e., Enterprise's bank statements for the relevant taxable years.

There is no merit to appellants' argument that Mr. Bsiso's income was double counted. Appellants contend that the $670,000 distributed by Six Oaks to Enterprise in 2016 was already included in Enterprise's 2015 income as reported on the Schedule K-1 issued by Six Oaks. Enterprise and Mr. Bsiso are separate and distinct taxpayers. Enterprise is a C corporation and is taxed on its income, including distributions from Six Oaks. Mr. Bsiso, as an individual shareholder in Enterprise, is also taxed on any taxable dividends made from Enterprise's E&P, pursuant to IRC sections 301(c)(1) and 316(a). The fact that Enterprise was taxed on the dividends it received from Six Oaks does not change the fact that the distributions Enterprise subsequently makes to Mr. Bsiso are also taxable to Mr. Bsiso if made from Enterprise's E&P. While the same income may be taxed at the entity and individual levels, it does not constitute double taxation to Mr. Bsiso under the law.

With respect to appellants' contention that Mr. Bsiso's taxable dividend should be reduced by the amount he paid to the IRS for Enterprise's taxes, the record reflects that the IRS refunded the overpayment of taxes that Mr. Bsiso paid for 2016 on July 20, 2018, which means that even if Mr. Bsiso did repay that amount to Enterprise, it would constitute a capital contribution for taxable year 2018 and would not impact Mr. Bsiso's taxable distributions in 2016. Moreover, the record does not support that Mr. Bsiso reported the 2015 flow-through income from Six Oaks on his 2015 individual federal or California tax returns, that he paid the corresponding tax, or made Enterprise's California estimated tax payments through distributions from Enterprise in 2016 as appellants contend.[5]

[5] For example, Mr. Bsiso reported flow-through income of $157,508 on his 2016 federal return and twice amended his 2016 California return *only* to back out income from Enterprise which he asserts was incorrectly reported as flow-through income from an S Corporation.

Appellants either failed to substantiate their claims or OTA disregarded them because payments in 2018 would have no bearing on the beginning and ending bank balances in 2016. OTA had substantial evidence supporting FTB's calculation of Mr. Bsiso's 2016 distributions from Enterprise. Appellants' rehashing of the evidence OTA already considered does not change the fact that substantial evidence supported its conclusion. Therefore, appellants failed to establish this as a ground for a rehearing.

Contrary to Law

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 Riedel*, 2024-OTA-004P.) 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. (*Appeal of Mather*, 2024-OTA-378P.) 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*.) 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. (*Appeal of Shanahan*, *supra*.)

Appellants assert that the Opinion improperly applied IRC sections 301, 312, and 316, and the Treasury Regulations thereunder. Appellants contend that OTA incorrectly failed to determine Enterprise's beginning stock basis, apply the proper ordering rules, and determine whether basis adjustments were necessary, as required by IRC section 301. However, appellants have the burden of proof with respect to basis and relevant adjustments to basis. Appellants did not provide evidence of basis and appropriate adjustments to basis other than those already rejected in the underlying Opinion.

Appellants further argue OTA misapplied IRC sections 301 and 316, which require a determination of basis followed by a determination that a distribution of property made by a corporation to a shareholder with respect to its stock that is not a dividend shall be applied against and reduce the adjusted basis of the stock. (IRC, § 301(c)(2).) In general, the portion of a distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the

stock, is treated as gain from the sale or exchange of property. (IRC, § 301(c)(3).) In the petition, appellants incorrectly reverse this order, alleging that "OTA did not: (1) determine Enterprise's stock basis; (2) apply the statutory ordering rules (return of capital > dividend > capital gain); or (3) consider whether any portion should reduce basis first." Appellants incorrectly call for a reduction to basis before applying the statutory ordering rules. OTA's Opinion correctly applied the IRC to determine appellants' dividend income based upon its E&P and under IRC § 301.

Appellants also argue OTA misapplied IRC sections 312 and 316 to incorrectly calculate E&P. However, even if appellants' adjustments are considered, Enterprise's E&P is well in excess of the calculated dividend. Any further revisions are immaterial and would not change the outcome of the Opinion.

OTA properly applied IRC sections 301, 312, and 316 based on the evidence in the record. OTA also rejected the adjustments asserted by appellants because they were either not substantiated or occurred in taxable years other than the one at issue.

Appellants further assert that OTA failed to properly consider the fact that the entity that made distributions to Enterprise, Six Oaks, was a partnership and therefore not a tax paying entity. However, the Opinion referred to information that was provided on the Schedule K-1 issued by Six Oaks to each of its partners, including Enterprise. The Opinion did not treat Six Oaks as a tax paying entity but correctly determined the pass-through income, the partners' increase or decrease in capital accounts, and other adjustments reported on the Schedule K-1 Six Oaks issued to Enterprise. The Opinion did not conclude that Six Oaks took deductions for taxes paid by Enterprise, as alleged by appellants.

Appellants also claim that Enterprise should be permitted a deduction in calculating its taxes for 2015 and 2016 for the amount of the cash distributions it made to Mr. Bsiso that he used to pay Enterprise's taxes, that the distribution was double taxed, and that OTA's Opinion did not correctly calculate Enterprise's E&P under IRC section 312(a). As discussed in the Opinion, although federal law allows for the deduction of state and local taxes paid by a C Corporation, as ordinary and necessary business expenses, California law does not have a corresponding provision for the deduction of federal taxes paid. (R&TC, § 24345(a), (b)(1).) The Opinion accepted FTB's calculation of Enterprise's E&P, which was correctly reduced by the amount of the deemed dividends made to Mr. Bsiso in both 2015 and 2016.

Similarly, appellants point out that Enterprise paid federal and state taxes and assert OTA should have adjusted for those taxes, but the taxes were paid in 2018, not in 2016. Appellants, as noted above, are simply rehashing the arguments they made on appeal before

OTA. Appellants made the same arguments; e.g., that FTB's bank balance calculation is inaccurate and incorrectly applies the law, but now argues that OTA allegedly made those same mistakes in its analysis. As fully discussed in the Opinion, the evidence supports the application of the laws and the conclusions reached. Thus, appellants have not established the Opinion is contrary to law.

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). Moreover, as to appellants' repeated arguments which were considered and rejected in the Opinion, they do not constitute grounds for rehearing. (*Appeal of Shanahan*, *supra*.) Likewise, appellants' dissatisfaction with the outcome of the appeals is not grounds for a rehearing. (*Ibid*.) Accordingly, appellants' Petition is denied.[6]

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Hans Famularo
Administrative Law Judge

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Seth Elsom
Hearing Officer

Date Issued: 9/3/2026

[6] Appellants' only argument with respect to the late-filing penalty is that it should be abated as FTB and OTA incorrectly calculated the tax liabilities of the parties. Thus, OTA does not address it further.