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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **M. MCCASTER**	)	OTA Case No.: 241218424

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: M. McCaster

For Respondent: Eric R. Brown, Attorney

J. LAMBERT, Administrative Law Judge: On February 18, 2026, the Office of Tax Appeals (OTA) issued an Opinion in the matter of the appeal of M. McCaster (appellant). The Opinion sustained a decision by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of $2,179 for 2019 and $4,839 for 2020. Specifically, appellant asserted that he has sovereign immunity and his income is exempt from taxation because he is a member of an Indian tribe, the "Mathias El Tribe" and lives on tribal reservation land. In the Opinion, OTA held that appellant did not show that he was a member of a federally recognized Indian tribe within Indian country and therefore, no exemption from taxation applied.

Appellant timely filed a petition for rehearing (PFR). Pursuant to California Code of Regulations, title 18, section 30604(a)(1)-(6), OTA will grant a rehearing where one of the following grounds 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.

Appellant contends that a rehearing should be granted because the Opinion is contrary to law.[1] To find that the Opinion is contrary to law, OTA must determine whether the Opinion is unsupported by any substantial evidence. (*Appeals of Swat-Fame, Inc., et al*., 2020-OTA-045P.) 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. (*Ibid*.)

Appellant argues that OTA did not properly follow title 18, United States Code (U.S.C.) section 1151, that OTA failed to consider title 25, U.S.C. section 1301 [defining such terms as "Indian tribe" and "Indian"], and failed to apply the Indian Canons of Construction, which require statutes affecting Indians and Indian lands to be liberally construed in favor of Indians and tribal interests.[2] However, as stated in the Opinion, pursuant to R&TC section 17131.7, gross income shall not include earned income derived from sources within "Indian country" of an eligible taxpayer. An eligible taxpayer for purposes of R&TC section 17131.7 is an individual who is a member of a federally recognized Indian tribe in this state who resides within Indian country in this state as defined by title 18, U.S.C. section 1151. The Opinion found that "Mathias El" is not among the federally recognized tribes under the U.S. Bureau of Indian Affairs. While appellant points to various legal authorities, appellant does not explain how such authorities demonstrate that the Opinion is contrary to law.

Appellant contends that a rehearing should be granted because there is insufficient evidence to justify the Opinion. To find that there is insufficient evidence to justify the Opinion, OTA must find, after weighing the evidence in the record, including reasonable inferences from that evidence, that OTA clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc., et al*., *supra*.)

Appellant argues that OTA failed to evaluate the evidence, including tribal trust documentation, land-use instruments, affidavits, and tribal governance and judicial documentation. However, OTA considered all the evidence in the record and did not find that the evidence established that appellant is entitled to the exemption. For example, the Opinion stated that, while appellant provides a form it filed with the Kern County Assessor to declare his property lot as a foreign country, FTB provides a description of appellant's property from the

[1] Appellant also contends that a rehearing is granted because of an irregularity in the proceeding and there was an error in law in the proceeding. However, appellant only provides arguments that are related to whether because there is insufficient evidence to justify the Opinion and the Opinion was contrary to law. Furthermore, OTA finds that there was no irregularity in the proceeding and no error in law in the proceeding.

[2] Appellant also argues that OTA did not consider the U.S. Supremacy Clause. However, OTA is prohibited from ruling on that issue. (See *Appeal of Acosta and Castro,* 2022-OTA-235P.)

Kern County Assessor-Recorder's office that does not indicate the property is within Indian country. Additionally, Form W-2 wage income reported with his 2019 return provides no indication that the income at issue was from a reservation or Indian country source. As such, OTA held that appellant did not show that his property is within "Indian country" within the meaning of U.S.C. section 1151.

Overall, appellant provides the same or similar arguments that were considered and rejected in the Opinion, and which OTA continues to find to be unpersuasive. (See *Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, appellant has not established that any ground exists to warrant a rehearing. As a result, appellant's PFR is denied.

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

Date Issued: 8/10/2026