

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18012107
)	
CLIFTON ROSE)	Date Issued: May 14, 2018
)	
)	
)	

DECISION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Clifton Rose
For Respondent:	Brian Werking, Tax Counsel
For Office of Tax Appeals:	Tom Hudson, Tax Counsel III

G. THOMPSON, Administrative Law Judge: On November 14, 2017, the California State Board of Equalization (BOE) issued a decision in which it sustained the proposed assessment of the Franchise Tax Board (FTB or respondent) for the 2005 tax year, as modified to reflect additional tax of \$1,413.00 and a late-filing penalty of \$305.75, plus interest.¹ By letter dated December 14, 2017, appellant Clifton Rose petitioned for a rehearing. Upon consideration of appellant's petition, we conclude that the grounds set forth therein do not constitute good cause for a new hearing, as required by the *Appeal of Do*, 2018-OTA-02P, decided March 22, 2018 (citing the *Appeal of Wilson Development, Inc.*, 94-SBE-007, decided October 5, 1994),² and by California Code of Regulations, title 18, § 30602(c)(5).

In *Appeal of Wilson Development, Inc.*, *supra*, the BOE determined that good cause for a new hearing may be shown where one of the following grounds exists and the rights of the

¹ Pursuant to Assembly Bill 102, The Taxpayer Transparency and Fairness Act of 2017, the duty of resolving administrative appeals for personal income tax matters has been transferred from the BOE to the Office of Tax Appeals.

² Precedential opinions of the BOE that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals (OTA) unless a panel removes, in whole or in part, the precedential status of the opinion as part of a written opinion that the panel issues pursuant to this section. (Cal. Code Regs., tit. 18, § 30501(d)(3).) Opinions of the OTA may be viewed at: <https://ota.ca.gov/opinions>. BOE opinions may be viewed on the BOE's website at: <http://www.boe.ca.gov/legal/legalopcont.htm>.

complaining party are materially affected: 1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its appeal; 2) accident or surprise, which ordinary prudence could not have guarded against; 3) newly discovered evidence, material for the party making the petition for rehearing, which the party could not, with reasonable diligence, have discovered and produced prior to the decision of the appeal; 4) insufficiency of the evidence to justify the decision, or the decision is against law; or 5) error in law. These standards for a petition for rehearing have been codified in the Office of Tax Appeals Rules for Tax Appeals. (See California Code of Regulations, title 18, § 30602(c)(5).)

In his petition for rehearing, appellant asserts that he was “surprised” by the decision because he received it before he had a chance to discuss it with the representative that he says he was “promised” when he initiated his appeal in 2015.³ Appellant states that his representative failed to represent him and “verbally told him so over the telephone indicating that he ‘WOULD NOT’ represent him before terminating the phone call.”

With regard to appellant’s argument of inadequate representation, we note that taxpayers are not required to be represented in their appeals, nor are they entitled to government appointed representation. Here, appellant filed his own appeal letter. The BOE informed him, by letter dated January 9, 2017, that his representative from the Tax Appeals Assistance Program would no longer be representing him. The BOE provided appellant thirty days to file a reply brief if he wished to do so. However, he did not file a brief, request an extension, or otherwise respond. Thus, he had notice that his representative would no longer be representing him, and was provided with an opportunity to make additional arguments, but he did not take advantage of that opportunity.

Appellant also argues he was never informed of who was at meetings regarding to his appeal. It is not clear what meetings appellant is referring to. We note that appellant never requested an oral hearing before the BOE and that the Members of the BOE are identified on its website and in letters sent by the BOE to appellant. By letter dated February 16, 2017, the BOE notified appellant that the deadline for his brief had passed, that his appeal would be decided on the basis of the written record and without an oral hearing, and that he would be notified of the BOE’s decision. Appellant did not reply to the February 16, 2017 letter or otherwise

³ It appears that appellant is referring to a representative who may have been assigned to assist in his appeal under the BOE’s Tax Appeals Assistance Program. That program allowed law students to assist taxpayers in their appeals before the BOE, under the supervision of licensed attorneys.

communicate with the BOE until December 14, 2017, when he filed this petition for rehearing after receiving the BOE’s decision.

Appellant asserts in his petition that there are “too many issues” with regard to the BOE’s decision for him to discuss. However, he does not identify any error in the BOE’s decision.

Appellant had a full opportunity to present any issues or arguments prior to the BOE’s decision, consistent with due process, and he has not shown a ground for rehearing. There is nothing before us to indicate that there was an irregularity in the proceedings that materially affected appellant’s rights or prevented a fair consideration of his appeal. We have no evidence of accident or surprise, which ordinary prudence could not have guarded against. Appellant had notice and an opportunity to be heard but chose to submit the matter on a record that did not support his position. Appellant does not come before us now with any newly discovered evidence, and the evidence that is in the record supports the decision, which is consistent with the law. (See *Appeal of Do, supra.*)

For the foregoing reasons, appellant’s petition for rehearing is denied.

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Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge

We concur:

DocuSigned by:
Neil Robinson
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Neil Robinson
Administrative Law Judge

DocuSigned by:
Michael Geary
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Michael Geary
Administrative Law Judge