

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 complaining party are materially affected: 1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; 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 adopted in the Office of Tax Appeals Rules for Tax Appeals. (See Cal. Code Regs., tit. 18, § 30602(c)(5)(A-D).)

Appellant advances several arguments in support of her petition. First, she states that she was not adequately represented by her tax representative(s). Second, appellant argues that the Internal Revenue Service (IRS) refunded her \$4,368.97 for the 2009 tax year in 2014 and the state should, therefore, also owe her a refund. Third, appellant “request[s] that the matter be dismissed” and that the amount she owes be reduced, “under the Petition for Redetermination, or under the Settlement Program,” to “not more than \$200.”

A review of the record in this matter shows that appellant filed her appeal on November 10, 2014, setting forth her disagreement with the proposed state income tax assessment, which was based on a federal adjustment. On appellant’s behalf, a student from the Tax Appeals Assistance Program filed a response to the FTB’s opening brief on September 12, 2016. In the response, appellant’s representative argued that the IRS misreported appellant’s rental real property basis and that her basis should be increased to reduce her tax liability. The FTB then filed its reply brief, noting that “appellant provides neither factual argument nor legal argument to support her position.” Appellant and the Tax Appeals Assistance Program were informed that appellant had an opportunity to file a response to the FTB’s reply brief, but failed to file one.

Appellant has not shown that she was inadequately represented in this proceeding, or what additional facts and evidence an “adequate” representative would have submitted on her behalf. More significantly, appellant has not shown that her allegedly inadequate representation created an irregularity in the proceedings that prevented appellant from having a fair consideration of her case. Appellant had the opportunity to explain her case, set forth her disagreement with the FTB, and provide supporting evidence.

Appellant’s additional arguments also are without merit. Appellant claims that FTB should reduce its proposed assessment because she received a 2009 refund from the IRS in 2014. These allegations were raised in her original appeal and her reply brief and they were addressed in the BOE’s Summary Decision. They are not newly discovered evidence that might warrant granting a petition for rehearing. Appellant also asks that we reduce appellant’s tax liability and “settle” this dispute. Although the FTB has statutory authority to settle disputed liabilities with taxpayers, and to compromise certain final liabilities, the OTA does not. Further, we have no jurisdiction over FTB’s settlement or Offer in Compromise (OIC) programs, and we express no opinion as to whether appellant might qualify under either program.⁴ Our function is to determine the correct amount of the taxpayer’s California income tax liability. (*Appeals of Fred R. Dauberger, et al.*, 82-SBE-082, Mar. 31, 1982.)

In sum, appellant has not shown any irregularity in the proceedings, offered new evidence which she could not, with reasonable diligence, have discovered and produced prior to the decision of her appeal, or established that the evidence was insufficient to justify the BOE’s decision. Additionally, appellant has not demonstrated any error in law by the BOE or accident or surprise, which ordinary prudence could not have guarded against. Thus, we find appellant has not shown good cause for a new hearing under *Appeal of Wilson Development, Inc., supra*, nor has she made the showing required by California Code of Regulations, title 18, section 30602(c)(5)(A-D) for obtaining a rehearing.

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



Sara A. Hosey
Administrative Law Judge

⁴ We note that FTB offers an OIC program pursuant to § 19433, under which FTB may consider a taxpayer’s ability to pay in determining how much to collect on certain liabilities once they have gone final. (https://www.ftb.ca.gov/bills_and_notices/OIC/shtml). Taxpayers also may apply to enter into an installment payment agreement with FTB. (<https://www.ftb.ca.gov/online/eIA/index.asp>). Additionally, FTB offers a settlement program pursuant to § 19442, under which FTB can evaluate the costs and risks associated with the appeal. (https://www.ftb.ca.gov/law/notices/2007/2007_2.pdf). Appellants can contact FTB for further information about these programs.

We concur:

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Tommy Leung
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge