OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18011040
	)	
MAJID GHABOOSI AND NADEREH ANSARI	)	Date Issued: August 13, 2018
	)	
	)	
	)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Majid Ghaboosi and Nadereh Ansari

For Respondent: Donna L. Webb, Staff Operation Specialist

For the Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

D. BRAMHALL, Administrative Law Judge: On May 9, 2018, this Office issued a decision in which it sustained the Franchise Tax Board's (FTB or respondent) proposed assessments of tax deficiencies, additions to tax, and interest for the taxable year 2010. By letter dated May 23, 2018, appellants petitioned for rehearing of this matter. Upon consideration of appellants' petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing, as required by the *Appeal of Wilson Development, Inc.*, 94-SBE-007, October 5, 1994.[1]

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,

[1] Pursuant to the Office of Tax Appeals Rules for Tax Appeals, section 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) which were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals 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. BOE opinions are generally available for viewing on the BOE's website: http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion.

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 Cal. Code Regs., tit. 18, § 30602(c)(5)(A-D).) Further, these standards were recently confirmed in our decision in *Appeal of Sjofinar Masri Do*, 2018-OTA-002P, March 22, 2018.

In their petition for rehearing, appellants assert that a potential error was made in evaluating the statute of limitations issue and that they should be allowed to rely on newly discovered evidence to establish error in respondent's assessment as grounds for a rehearing.

As to the statute of limitation question, appellants misunderstand applicable law. Specifically, appellants contend that the Notice of Proposed Assessment (NPA) allowed them to file a protest by May 29, 2015, six (6) weeks after the statute of limitations for respondent to issue the NPA expired on April 15, 2015. Appellants incorrectly assume some legal connection between the time to assert their protest rights, which is not an issue in their appeal, and the statute of limitations for respondent to propose a deficiency assessment. No authority for that assertion is cited nor are we aware of any such authority. Appellants have not further contested the timeliness of the NPA issued by respondent. No such connection exists, and further, no error was made in the application of applicable law in reaching our decision on this issue.

As to newly discovered evidence, appellants submitted with their application a document from the Colorado Department of Revenue confirming that Colorado law allows a deduction in computing Colorado taxable income for Colorado source capital gains. This document was presumably submitted to rebut the point made in our decision that under federal tax law, to which California conforms, there is no basis for any such deduction. This evidence is not relevant since the treatment of the gain, which is the basis for respondent's assessment, for Colorado tax purposes has no bearing on its treatment under California tax law.

Furthermore, appellants have not demonstrated irregularity in our proceedings, offered any relevant new evidence, or established that the evidence in the record was

insufficient to justify our decision. We therefore find that appellants have neither shown good cause for a new hearing under *Appeal of Wilson Development, Inc.*, *supra*, or *Appeal of Sjofinar Masri Do, supra*, nor have they 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, appellants' petition is hereby denied.

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Douglas Bramhall
Administrative Law Judge

We concur:

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Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge