

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18012103
)
SJOFINAR MASRI DO) Date Issued: March 22, 2018
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Sjofinar Masri Do

For Respondent: Brian C. Miller, Tax Counsel III

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

HOSEY, Administrative Law Judge: On October 24, 2017, the California State Board of Equalization (BOE) 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 years 2010, 2011 and 2012.¹ By letter dated November 22, 2017, appellant petitioned for rehearing of this matter. Upon consideration of appellant's 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, 1994.²

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, as amended by Assembly Bill 131 (2017-18 Reg. Sess.), the duty of processing administrative appeals for corporate franchise and income taxes was transferred from the BOE to the newly created Office of Tax Appeals.

² Pursuant to the Office of Tax Appeals Rules for Tax Appeals, section 30501(d)(3), precedential opinions of the 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: www.boe.ca.gov.

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 codified in the Office of Tax Appeals Rules for Tax Appeals. (See California Code of Regulations, title 18, § 30602(c)(5)(A-D).)

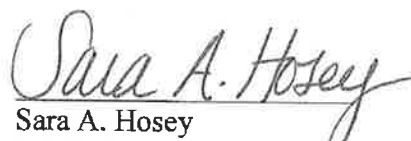
In her petition for rehearing, appellant does not set forth specific grounds for a new hearing, but asserts that she should be allowed to “refresh” and “elaborate” on her previous arguments. Further, appellant contends that she has emails between herself and her ex-husband (possibly dating from March 8, 2016 to the present), that she wants to submit in support of her previously argued contention that spousal support payments that she received from her ex-husband should be treated as nontaxable child support payments. In addition, appellant’s petition includes an email dated November 15, 2017, from her daughter’s school, addressing various issues with her daughter. Appellant asks us to reconsider her appeal “fairly and impartially.”

It appears appellant is asserting newly discovered evidence as grounds for a rehearing, as she seeks to admit additional documentation at this time. However, as to the alleged emails from her ex-husband, appellant has not provided those emails. As for the email from her daughter’s school, we find that the email is not material to appellant’s arguments nor does it demonstrate that there was insufficient evidence to justify the BOE’s decision. More importantly, appellant has not shown that these emails could not have been produced before the BOE’s decision of October 24, 2017.


Furthermore, appellant has not demonstrated irregularity in the BOE’s 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. 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, § 30602(c)(5)(A-D) for obtaining a rehearing.

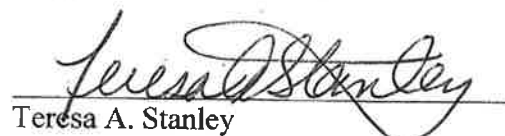
As to appellant's request for a fair and impartial result, we note that the BOE's decision was clearly based on appellant's failure to show error in the proposed assessments of additional tax, penalties, and interest. Appellant had the burden of proving error in the FTB's proposed assessments, and she failed to meet that burden of proof.

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


Sara A. Hosey
Administrative Law Judge

We concur:


Douglas Bramhall
Administrative Law Judge


Teresa A. Stanley
Administrative Law Judge