

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of: GERALD GRENIER AND KATHY GRENIER))))))	OTA Case No. 18012320 Date Issued: June 13, 2018
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Emil Pollak, Executive Director Bay Area Financial Resource Center
For Respondent:	Brian Werking, Tax Counsel

ROBINSON, Administrative Law Judge: On December 11, 2017, the Board of Equalization (BOE) issued a decision in which it sustained the Franchise Tax Board’s (FTB’s or respondent’s) denial of appellants’ claims for refund in the amount of \$101.75 for 2005 and in the amount of \$15,825.39 for 2007 because appellants’ claims for refund were barred by the statute of limitations.¹ By letter dated January 2, 2018, appellants petitioned for rehearing in 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 *Appeal of Wilson Development, Inc.*, 94-SBE-007, October 5, 1994,² our recent decision in *Appeal of Sjofinar Do*, 2018-OTA-002P, March 22, 2018, and California Code of Regulations, title 18, section 30602, subdivision (c)(5).³

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 involving franchise and income taxes was transferred from the BOE to the newly created Office of Tax Appeals.

² Pursuant to the emergency regulations of the Office of Tax Appeals, California Code of Regulations, title 18, section 30501(d)(3), 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 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.

³ Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

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 were reaffirmed in our recent decision in *Appeal of Sjöfinar Do, supra*, and have been codified in our Rules for Tax Appeals. (See Cal. Code Regs., tit. 18, § 30602, subd. (c)(5)(A-D).)

In their petition for rehearing, appellants set forth three grounds for a new hearing: (1) that there was an irregularity in the proceedings that prevented appellants from receiving a fair consideration of their case, (2) that the evidence does not justify the decision, and (3) that the decision is contrary to the law.

Appellants' claim that there was an irregularity in the proceedings stems from the establishment of the Office of Tax Appeals (OTA) in 2017. Although the Legislature, in establishing the OTA, did not authorize OTA to schedule and hear tax appeals until the beginning of 2018, appellants' representative alleges that in September of 2017 an "Appeals Analyst" told him that this appeal was in "suspense" and that appellants would be notified when the case was transferred to the OTA. Based on this experience, appellants contend that it was error for the BOE to have decided the appeal when it could have waited "a few more weeks" and allowed OTA to decide the appeal.

Under the legislation governing the transition of tax adjudication responsibilities from the BOE to the OTA, the BOE had exclusive authority to decide appeals until December 31, 2017. Appellants have made no showing that the BOE's process for evaluating and determining appeals changed in any material way during the transition period. Appellants have proffered no evidence to support their position that they were subject to any process irregularity.

Moreover, if appellants had demonstrated a process irregularity, that would not require a rehearing unless that irregularity prevented appellants from receiving fair consideration of their appeal. The record shows that appellants fully participated in the appeal process by filing briefs,

and that they affirmatively waived their right to an oral hearing. The BOE decided appellants' appeal while it still had jurisdiction to do so. Thus, appellants have failed to demonstrate how any perceived procedural irregularity prevented them from receiving fair consideration of their appeal.

Appellants also argue that the BOE's decision is not supported by the evidence and that the decision is contrary to law. In support of this position, appellants present the same arguments that they presented on appeal (primarily, that an overpayment was created when respondent adjusted appellants' account in September 2015, rather than in 2010 when payments were made to FTB). These arguments were addressed in the BOE's decision, and we do not find that appellant's reiteration of these arguments shows that the BOE's decision was unsupported by the evidence or contrary to law.⁴

BOE's decision was based on facts in the record and a correct legal analysis demonstrating that appellants' refund claim was filed after both the four-year and one-year statutes of limitations contained in section 19306 had expired. We find no error in the BOE's determination.


Appellants have not demonstrated procedural irregularities that prevented their appeal from receiving fair consideration, that there was insufficient evidence to support the BOE's decision, or that BOE's decision contained legal error. Accordingly, we find Appellants have not shown good cause for a new hearing under *Appeal of Wilson Development, Inc., supra*, nor have they made the showing required by California Code of Regulations, title 18, section 30602, subdivision (c)(5)(A-D) for obtaining a rehearing.

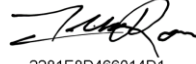
For the foregoing reasons, appellants' petition is hereby denied.

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Neil Robinson
Administrative Law Judge

⁴ Appellants submitted two supplemental briefs in connection with their petition for rehearing (dated March 15, 2018, and April 9, 2018), both after the briefing period closed. For the most part, those briefs merely restated appellants' arguments. The claim raised in appellants' April 9, 2018, brief, that FTB "denied the claim for refund in bad faith and based on fraudulent practice," is without merit. The record reveals that appellants' refund claim was denied because it was filed after the statute of limitations periods had expired.

We concur:

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John O. Johnson
Administrative Law Judge

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Alberto T. Rosas
Administrative Law Judge