

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010995
)
MICHAEL LEE AND SHUAN LEE) Date Issued: October 12, 2018
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: Michael Lee and Shuan Lee
For Respondent: Donna L. Webb, Staff Operation Specialist

J. JOHNSON, Administrative Law Judge: On March 16, 2018, the Office of Tax Appeals issued a decision in which it sustained the Franchise Tax Board’s (respondent) proposed assessment of additional tax and interest for the taxable year 2012. By letter dated April 15, 2018, appellants perfected their petition 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 The Board of Equalization determined that good cause for a new hearing may be shown where one of five grounds exists and the rights of the complaining party are materially affected. (*Ibid.*) As relevant to this appeal, appellants present arguments asserting that there was an insufficiency of the evidence to justify the decision, or that the decision is against law.

Specifically, appellants argue that their amended return for the 2012 tax year was not given due consideration, and that respondent overstated their refund amount for the 2012 tax year. Appellants’ arguments for rehearing are reiterations of arguments already presented and considered in their appeal. Appellants provided a copy of their amended return with their appeal letter, respondent addressed their amended return, and we considered their

¹ BOE precedential opinions are generally available for viewing on the BOE’s website: <http://www.boe.ca.gov/legal/legalopcont.htm>.

amended return in the decision on appeal. As we found in the decision on appeal, the amended return fails to show error in respondent's position, and it provides no support for the position that a rehearing is warranted because our decision created an "injustice based on a mistake of law or misunderstanding of facts." (*Appeal of NASSCO Holdings, Inc.*, 2010-SBE-001, Nov. 17, 2010 [discussing *In re Jessup* (1889) 81 Cal. 408, 471-472].) Accordingly, appellants' contentions regarding the amended return do not warrant a rehearing.

Appellants' arguments regarding the refund amount are the same arguments made previously on appeal.² Appellants again assert that respondent applied only \$80 to their 2013 tax year; however, respondent showed on appeal that, in fact, it applied \$1,938 to the 2013 tax year from payments made toward the 2012 tax year. Appellants cannot now claim to reduce the amount applied to the 2013 tax year in an effort to satisfy proposed additional tax for the 2012 tax year.

As with appellants' argument regarding the amended return, their argument pertaining to the calculation of the refunded amount does not raise concerns about the validity of the decision on appeal sufficient to warrant the granting of a rehearing. Appellants had the burden on appeal of proving error in respondent's proposed assessment of tax, and they failed to meet that burden. Appellants cannot satisfy the requirements for the granting of a rehearing by presenting the same or similar arguments that they presented during the initial appeal.

Therefore, appellants have not shown good cause for a new hearing, as designated under *Appeal of Wilson Development, Inc.*, 94-SBE-007, *supra*, and *Appeal of Sjofinar Masri Do*, 2018-OTA-002P, decided March 22, 2018; or California Code of Regulations, title 18, section 30602(c)(5).

² On petition, appellants revise their calculations to claim, instead of an overpayment of their tax liability by \$1,181, that they do not owe the additional tax of \$1,860, plus interest, because they had \$1,858 in overpaid tax that was neither refunded nor applied to their 2013 tax year account.

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

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge