

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18011084
)	
KHANITHA ANDERSON)	Date Issued: December 3, 2018
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Khanitha Anderson
For Respondent:	Alisa L. Pinarbasi, Tax Counsel
For Office of Tax Appeals	William J. Stafford, Tax Counsel III

ROBINSON, Administrative Law Judge: On August 13, 2018, the Office of Tax Appeals (OTA) issued a decision in which it sustained the Franchise Tax Board’s (FTB’s or respondent’s) proposed assessment of tax and a delinquent filing penalty, plus accrued interest. Additionally, OTA imposed a frivolous appeal penalty of \$500. Appellant submitted a Petition for Rehearing on September 1, 2018. Respondent filed a reply brief in response to appellant’s Petition for Rehearing on October 16, 2018. 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 *Appeal of Sjofinar Masri Do*, 2018-OTA-002P, March 22, 2018.

In *Appeal of Sjofinar Masri Do*, *supra*, OTA 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 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 of Tax Appeals. (See Cal. Code of Regs., tit. 18, § 30602(c)(5)(A-D).)

In her Petition for Rehearing, appellant again argues that FTB's imposition of a frivolous filing penalty is legally incorrect. As pointed out in our August 13, 2018 Opinion, the frivolous return penalty is different from the frivolous appeal penalty, and the frivolous return penalty was not part of the assessment from which appellant appealed. In her Petition for Rehearing, appellant makes no further argument and produces no further evidence, that would meet any of the criteria necessary for OTA to grant petitioner's request for a new hearing. None of the criteria specified in *Appeal of Sjofinar Masri Do, supra*, or California Code of Regulations, title 18, § 3062(c)(5)(A-D), have been satisfied.

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

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Neil Robinson
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Neil Robinson
Administrative Law Judge

We concur:

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Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge

DocuSigned by:
Douglas Bramhall
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Douglas Bramhall
Administrative Law Judge