

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. (*Appeal of Wilson Development, Inc., supra*; *Appeal of Sjofinar Do, supra*.) These grounds for a petition for rehearing have been adopted in the Office of Tax Appeals (OTA) Rules for Tax Appeals. (See Cal. Code Regs., tit. 18, § 30604.)

In their petition for rehearing, it appears that appellants argue that this Office should grant a rehearing based on an irregularity. Specifically, appellants assert that FTB issued the Notice of Proposed Assessment (NPA) after the statute of limitations lapsed for appellants to file for a tax credit from Virginia. In addition, appellants contend that this Office issued its decision without affording appellants sufficient time in the appeal process.

The grounds for rehearing listed in the OTA Rules were adopted from Code of Civil Procedure section 657, which sets forth the grounds for a new trial in a California trial court. (*Appeal of Wilson Development, supra*.) Generally, an irregularity in a proceeding broadly includes “any departure by the court from the due and orderly method of disposition of an action by which the substantial rights of a party have been materially affected.” (*Jacoby v. Feldman* (1978) 81 Cal.App.3d 432, 446 [quoting 5 Witkin, Cal. Procedure (2d ed. 1971) Attack on Judgment in Trial Court, § 24, p. 3602].) To grant relief on this ground, the irregularity must have prevented appellants from having a fair consideration of their case. (*Appeal of Wilson Development, Inc., supra*; *Appeal of Sjofinar Do, supra*.)

With regard to the 2012 NPA, it was issued to appellants on April 1, 2016, and, therefore, was timely pursuant to Revenue and Taxation Code (R&TC) section 19057, which requires that the FTB issue an NPA within four years of the date a taxpayer filed his or her California return.² As for appellants’ contention that the NPA was issued after Virginia’s statute of limitations expired for the claiming of a credit for the taxes paid to California, we note that another state’s statute of limitations has no bearing on appellants’ appeal with this Office. As discussed in the June 6, 2018 decision, R&TC section 18001(a)(2) looks at whether appellants were entitled to a credit in Virginia, not whether appellants received a tax credit from Virginia. For these reasons, the expiration of the Virginia statute of limitations is not relevant to the issues on appeal and does not constitute an irregularity in the proceedings.

² Pursuant to R&TC section 19066, returns filed before the original due date of the tax return are deemed as filed on the original due date (i.e., April 15, 2013 for the 2012 tax year). Appellants had filed their 2012 tax return on March 1, 2013 (See the filing date in the upper right-hand corner of page 1 of respondent’s exhibit A).

With concern to appellants’ contention that this Office issued its decision without affording appellants sufficient time in the appeal process, appellants had a full opportunity to present their arguments and evidence during the briefing period. Appellants waived their right to an oral hearing and, therefore, the matter was decided based on the written record. This Office decided this matter based on the facts and evidence provided to it and found that appellants failed to provide any evidence establishing that they are entitled to an “Other State Tax Credit.” In their petition for rehearing, appellants do not provide any evidence demonstrating error in the FTB’s determination, or this Office’s decision. Furthermore, appellants have failed to show that they were prevented from having a fair consideration of their appeal.

For these reasons, we find that the petition for rehearing does not present any grounds establishing good cause for a rehearing as set forth in the *Appeal of Sjofinar Do, supra*, and the *Appeal of Wilson Development, Inc., supra*. Accordingly, appellants’ petition is hereby denied.

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

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

DocuSigned by:
Linda C. Cheng
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Linda C. Cheng
Administrative Law Judge