

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18012116
)	Date Issued: February 27, 2019
ANDRE JACKSON)	
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Andre Jackson
For Respondent:	Anne Mazur, Specialist
For the Office of Tax Appeals:	Andrew Jacobson, Tax Counsel III

A. VASSIGH, Administrative Law Judge: On August 31, 2017, the California State Board of Equalization (BOE) issued a decision sustaining the Franchise Tax Board’s (FTB or respondent) proposed assessment of tax, late-filing penalty, notice and demand penalty, and interest for the tax year 2013. In addition, BOE imposed a frivolous appeal penalty of \$5,000.

By letter dated September 28, 2017, Andre Jackson (appellant) petitioned for rehearing of this matter pursuant to section 19048 of the Revenue and Taxation Code. Upon consideration of the 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 Do*, 2018-OTA-002P, Mar. 22, 2018; *Appeal of Wilson Development, Inc.*, 94-SBE-007, Oct. 5, 1994,¹ and California Code of Regulations (CCR), title 18, section 30820, subdivisions (a)-(d).

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

¹ “Precedential opinions of the [BOE] which were adopted prior to January 1, 2018 . . . may be cited as precedential authority by OTA 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.” (Cal. Code Regs., tit. 18, § 30501, subd. (d)(3).) The BOE’s precedential opinions may be viewed on the BOE’s website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>. The Office of Tax Appeals’ (OTA) opinions may be viewed at: <<https://ota.ca.gov/opinions>>.

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. (*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 Rules for Tax Appeals (OTA Rules). (See CCR, tit. 18, § 30820, subds. (a)-(d).)

In his petition for rehearing, appellant does not set forth specific grounds for a new hearing, but repeats the same arguments that he presented to the BOE during the initial appeal (e.g., he asserts that he is not subject to tax and that only by volunteering himself into “a condition of servitude” to California or the United States would he incur a tax obligation.) Appellant’s contentions were previously addressed in the initial appeal. The BOE decision rejected appellant’s contentions and determined that appellant’s arguments were frivolous and groundless, and that appellant had failed to show error in the FTB’s proposed assessment of additional tax and penalties. The BOE also noted that appellant has a long history of failing to file California income tax returns and raising frivolous arguments before the BOE. Therefore, the BOE imposed a frivolous appeal penalty in the amount of \$5,000 for 2013.

Appellant has not demonstrated any irregularity in the BOE’s proceedings, offered new evidence which he could not, with reasonable diligence, have discovered and produced prior to the decision of his appeal, or established that the evidence was insufficient to justify the BOE’s decision. Furthermore, appellant has not demonstrated any error in law. Accordingly, we find appellant has not shown good cause for a new hearing as is required by the authorities referenced above.

For the foregoing reasons, appellant’s petition is hereby denied and the BOE’s Summary Decision adopted August 31, 2017, including the imposition of the frivolous appeal penalty, is upheld.

DISPOSITION

Appellant's petition for rehearing is denied.

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Jeff Angeja
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Jeff Angeja
Administrative Law Judge

DocuSigned by:
Neil Robinson
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Neil Robinson
Administrative Law Judge