

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011167
JOHN J. PETERSEN) Date Issued: April 9, 2019
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: John J. Petersen

For Respondent: David Muradyan, Tax Counsel III

For Office of Tax Appeals: Neha Garner, Tax Counsel III

A. ROSAS, Administrative Law Judge: On June 23, 2015, the California State Board of Equalization (BOE) issued a summary decision that sustained respondent Franchise Tax Board’s (FTB) proposed assessment for the 2009 tax year, as modified to reflect additional tax of \$1,560 and an accuracy-related penalty of \$312, plus interest.¹ Appellant John J. Petersen (Petersen) petitioned for a rehearing.

The grounds mentioned in Petersen’s petition do not constitute good cause for a new hearing. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Do*, 2018-OTA-002P, Mar. 22, 2018; *Appeal of Wilson Development, Inc.*, 94-SBE-007, Oct. 5, 1994.) In *Appeal of Wilson Development, Inc.*, *supra*, 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, relevant evidence, which the party could not, with reasonable diligence, have discovered and produced prior to the decision; 4) insufficiency of the

¹ Under Assembly Bill 102, the Taxpayer Transparency and Fairness Act of 2017, the duty of processing administrative appeals for franchise and income taxes transferred from BOE to the newly created Office of Tax Appeals.

evidence to justify the decision, or the decision is against law; or 5) error in law. The Office of Tax Appeals adopted these standards for a petition for rehearing in its Rules for Tax Appeals. (See Cal. Code Regs., tit. 18, § 30604.)

Of these five grounds, Petersen bases his petition on the third; that is, that there was relevant evidence that BOE did not have at the time it made its decision, and that this new evidence materially affected his rights. In support, Petersen makes two arguments to show good cause for a new hearing based on the existence of this third ground. We will discuss each of his two arguments.

First, Petersen argues that BOE made its decision “without critical information that would have at least reduced, if not eliminated the liability altogether,” because the IRS allowed him to deduct personal property taxes on his Schedule A. But BOE’s summary decision already accounted for this adjustment. BOE’s summary decision noted that, during the appeal process, FTB allowed an adjustment for personal property taxes. FTB follows federal adjustments to the extent allowable by law; however, a federal action does not necessarily bind FTB to follow it. (*Appeal of Der Wienerschnitzel International, Inc.*, 79-SBE-063, Apr. 10, 1979.) During the appeal process, Petersen showed his entitlement to his claimed deduction for personal property taxes (\$1,153), real estate taxes (\$1,390), and educator expenses (\$500). FTB modified the Notice of Action on appeal to allow for these additional deductions and reduced the assessment of additional tax from \$1,853 to \$1,560. FTB also reduced the assessment of the accuracy-related penalty from \$370.60 to \$312. BOE included these modifications in its June 23, 2015 summary decision.

FTB states that, once apprised of Petersen’s perfected petition for rehearing, FTB reviewed a current federal account transcript. The transcript showed that, on January 18, 2016, the IRS abated the tax by \$687. FTB stated that it requested more documentation from the IRS, and that, based on the Revenue Agent Report dated November 16, 2015, the IRS allowed an additional \$2,738 in previously disallowed itemized deductions (\$1,390 in real estate taxes, \$1,153 in personal property taxes, and \$195 in cash contributions), resulting in a \$687 tax abatement. Following BOE’s decision, the only change at the federal level that FTB had not accounted for was the allowance of \$195 in cash contributions. However, since then, FTB has recomputed Petersen’s tax liability to reflect the additional \$195 in cash contributions the IRS

allowed. Accordingly, FTB has reduced Petersen’s tax liability from \$1,560 to \$1,551 and the accuracy-related penalty from \$312 to \$310.20.

Second, Petersen argues that the case was still in the appeals process with the Internal Revenue Service (IRS), and because FTB’s actions are based on federal actions, FTB should have waited until the conclusion of the federal appeals process. At the time BOE rendered its June 23, 2015 summary decision, Petersen’s federal account transcript showed that he filed a claim on October 15, 2012; however, his claim did not result in any tax abatement. Two months after BOE issued its decision, Petersen filed another claim with the IRS. Therefore, at the time that BOE rendered its decision, there was no federal claim pending.

Our focus is on June 23, 2015, the date BOE issued its summary decision. Focusing on this date leads to two conclusions: (1) Petersen did not have any federal claims pending as of that date, and (2) BOE’s summary decision was based on the relevant evidence in existence and available as of that date, when BOE rendered its decision. While subsequent events have given rise to new evidence in the form of a federal adjustment, FTB has already recomputed the proposed assessment to fully account for all federal adjustments. Petersen has received the full benefit of the federal revisions. So those revisions are not new evidence that would materially affect his rights on appeal.

Therefore, Petersen has not shown good cause for a new hearing, and we deny his petition for rehearing.

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:
John O. Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Andrew J. Kwee
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Andrew J. Kwee
Administrative Law Judge