

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011449  
**JACK ATKINS AND** )  
**YVONNE DARLING-ATKINS** ) Date Issued: August 27, 2019  
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants: Kenneth Curry, Tax Appeals Assistance Program (TAAP)

For Respondent: Michael J. Cornez, Tax Counsel V

For the Office of Tax Appeals: William J. Stafford, Tax Counsel III

A. ROSAS, Administrative Law Judge: On April 4, 2019, this panel issued an Opinion reversing the Franchise Tax Board’s (FTB) denial of a claim for refund for the 2014 tax year. FTB then filed a petition for rehearing under Revenue and Taxation Code (R&TC) section 19048. Upon consideration of the petition for rehearing, we conclude that the grounds discussed in the petition do not constitute good cause for a new hearing. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Do*, 2018-OTA-002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.)

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, 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. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Do, supra.*)

In its petition for rehearing, FTB contends the panel misinterpreted the following language: “at any time *during* the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued.” (Cal. Code Regs., tit. 18, § 19133(b), emphasis added.) In its petition, FTB sets forth the same arguments made prior to our opinion: that we should give deference to FTB’s opinion that the word “during” should be interpreted as meaning “for” and that any other interpretation is contrary to the history of R&TC section 19133 and the regulation thereto. FTB also provides examples of prior nonprecedential opinions in which the California State Board of Equalization and the Office of Tax Appeals purportedly applied FTB’s interpretation of the word “during.” But as noted in our April 4, 2019 Opinion, we reject that interpretation; and because we concluded that the word “during” is unambiguous, the panel was not required to give deference to FTB’s interpretation. (*Bonnell v. Medical Bd. of Calif.* (2003) 31 Cal.4th 1255, 1264-1265; *Department of Corrections & Rehabilitation v. State Personnel Bd.* (2016) 247 Cal.App.4th 700, 708.) Instead, we interpreted “during” based on the plain meaning rule: “[t]he term ‘during’ denotes a temporal link; that is surely the most natural reading of the word as used in the statute.” (*United States v. Ressam* (2008) 553 U.S. 272, 274-275.)

FTB’s petition for rehearing simply repeats the arguments it previously asserted on appeal. FTB has not demonstrated irregularity in our proceedings; provided newly discovered evidence that FTB could not, with reasonable diligence, have discovered and produced prior our opinion; or established that the evidence was insufficient to justify our opinion. Furthermore, FTB has not demonstrated that our reliance on the plain meaning rule constituted an error in law.

Thus, we deny FTB’s petition for rehearing, and we affirm our April 4, 2019 Opinion.

DocuSigned by:  
*Alberto Rosas*  
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Alberto T. Rosas  
Administrative Law Judge

We concur:

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

DocuSigned by:  
*Jeff Angeja*  
0D390BC3CCB14A9...  
Jeffrey G. Angeja  
Administrative Law Judge