

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

In the Matter of the Appeal of: ) OTA Case No. 18053229  
**RONNA J. ROBERTSON** )  
 ) Date Issued: September 23, 2019  
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants: Ronna J. Robertson  
For Respondent: Michael J. Cornez, Tax Counsel V

J. ANGEJA, Administrative Law Judge: On April 23, 2019, this panel issued an Opinion sustaining the Franchise Tax Board’s (FTB) imposition of additional tax of \$902, but reversing FTB’s imposition of a \$619 demand penalty. FTB then filed a petition for rehearing pursuant Revenue and Taxation Code (R&TC) section 19048, in which FTB asserts that the demand penalty should be upheld. FTB raises two arguments: that the decision in this case is based on an error of law, and that appellant is a repeat nonfiler who has received multiple Demands for Tax Return that support the imposition of the demand penalty. Upon consideration of the petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Sjofinar Masri Do*, 2018-OTA-002P.)

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 Sjofinar Masri Do*, *supra*.)

Regarding FTB's first argument, the language in controversy includes the following: "*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 for rehearing, 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.

As noted in our April 23, 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.)

Regarding FTB's second argument, FTB now asserts for the first time in this appeal that it issued Demands for Tax Returns and Notices of Proposed Assessment to appellant during 2012, 2013, and 2014, for the years 2009 through 2012. FTB asserts that these notices satisfy the requirements of Regulation 19133, as Office of Tax Appeals (OTA) has applied it, and therefore the penalty should be sustained. However, we specifically requested this information by letter dated October 12, 2018, and in its November 13, 2018, response, FTB merely repeated its primary argument and provided no response or evidence regarding our request. All of the notices that FTB now provides were previously available, and thus are not newly discovered evidence that FTB could not have discovered and produced prior to the decision of the appeal. Therefore, the new evidence does not establish grounds for a rehearing.

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 23, 2019 Opinion.

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

We concur:

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

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