

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18083591
KATZIR’S FLOOR & HOME DESIGN INC.)	CDTFA Case ID: 254332
)	CDTFA Acct. No. 013-763190
)	
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Norman J. Kreisman, Attorney
For Respondent:	Jason Parker, Chief Headquarters Operations Bureau

J. ANGEJA, Administrative Law Judge: On October 21, 2019, the Office of Tax Appeals (OTA) issued an opinion in which it sustained a decision issued by respondent California Department of Tax and Fee Administration (CDTFA), on a petition for redetermination filed by Katzir’s Floor & Home Design, Inc. (appellant). CDTFA’s decision denied appellant’s petition for redetermination of CDTFA’s Notice of Determination, which proposed a liability of \$133,274.32 of additional tax and applicable interest, for the period January 1, 1999, through December 31, 2001. In its subsequent decision, CDTFA reduced the tax liability from \$133,274.32 to \$111,868.06, relieved the interest for the period June 30, 2014, through May 5, 2016, and denied the remainder of the petition. Appellant filed a timely petition for rehearing (PFR). We conclude that the grounds set forth therein do not establish a basis for granting a rehearing.

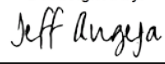
OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to issuance of the written opinion; (4) insufficient evidence to justify the written opinion or the

opinion is contrary to law; or (5) an error in law that occurred during the proceedings. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Do*, 2018-OTA-002P.)

In its PFR, appellant asserts that on August 20, 2019, on the night before the hearing, appellant’s long-time accountant, Roland Zito, certified public accountant (CPA), advised appellant that he could not appear at the August 21, 2019 hearing because he was ill. Appellant observes that CDTFA was represented by two hearing representatives as well as an attorney, while appellant was represented only by Omer and Jeannette Katzir. Appellant argues that appellant was “mismatched and overwhelmed by [CDTFA’s] professional representation.” Appellant contends that this constituted an irregularity and surprise to appellant, warranting a new hearing.

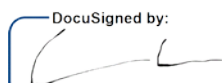
Under the Rules for Tax Appeals, appellant may choose the representation of any authorized person or persons (Cal. Code Regs., tit. 18, § 30211(a)), and neither appellant’s choice of representatives nor the (alleged) sudden absence thereof constitutes an irregularity *in the proceedings*. The hearing was duly noticed, during which Omer and Jeannette Katzir represented appellant in the proceedings and presented argument and evidence on appellant’s behalf. Appellant has not shown any irregularity during the hearing.


Furthermore, at no time did appellant advise that its CPA was unavailable for the hearing, nor did appellant request a postponement of the hearing based on the alleged unavailability of its representative. In other words, appellant did not exercise ordinary caution (i.e., requesting a postponement) that would have prevented any surprise arising from the absence of appellant’s CPA.¹ Accordingly, we conclude that appellant has not shown good cause for a new hearing as required by the authorities referenced above, and appellant’s petition is hereby denied.

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Jeffrey G. Angeja
Administrative Law Judge

¹As relevant, OTA may postpone an oral hearing for good cause, including the unavailability of a party or representative to appear at an oral hearing due to illness. (Cal. Code Regs., tit. 18, § 30220(b)(1).) Because appellant did not request a postponement on this basis at or prior to the hearing, we need not opine on whether a denial of such a postponement request constitutes an error in law during the proceedings. Appellant has not raised any other basis to explain why it was erroneous for the oral hearing to proceed as scheduled (and without objection from either party).

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/4/2020