

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18083545
MOUNT DIABLO TILE AND STONE CO.)	CDTFA Case ID 940667
)	CDTFA Account No. 101-720029
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: A. Nahmias, President

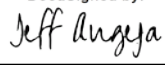
For Respondent: Jason Parker, Chief,
Headquarters Operations Bureau

J. ANGEJA, Administrative Law Judge: On December 12, 2019, this panel issued an opinion that sustained the action of respondent California Department of Tax and Fee Administration (CDTFA) in deleting the negligence penalty and relieving the failure-to-file penalty for the period January 1, 2015, through February 7, 2015, but otherwise denying appellant's petition for redetermination. By letter dated January 10, 2020, Mount Diablo Tile and Stone Co. (appellant) filed a petition for rehearing (PFR) in which appellant asserts that it has new evidence from a witness regarding this matter. Appellant supplemented its PFR with an unsworn letter from Ms. S. Reed, a former employee, in which Ms. Reed asserts that she has witnessed the problems in the relationship between appellant's owners, which allegedly contributed to the tax liability at issue herein. Upon consideration of the PFR, we conclude that the grounds set forth therein do not meet the requirements of California Code of Regulations, title 18, section 30604. (See also *Appeal of Do*, 2018-OTA-002P.)


As herein relevant, a rehearing may be granted where a taxpayer provides newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to the issuance of the written opinion. (Cal. Code Regs., tit. 18, § 30604(a)-(e); *Appeal of Do*, *supra*.)

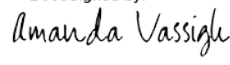
Here, appellant’s PFR raises no new evidence, because at the hearing appellant’s president, Mr. Nahmias, testified under oath regarding the allegedly problematic relationship between him and his business partner (a co-owner of appellant). Moreover, Ms. Reed appeared as appellant’s co-representative at the hearing, at which she asserted that the relationship between Mr. Nahmias and his partner was troubled and in fact “violent.” Therefore, appellant’s PFR does not set forth new evidence, but repeats the same arguments that appellant presented to Office of Tax Appeals (OTA) during the hearing. OTA has already considered these arguments and concluded that they afforded no basis on which to recommend any reduction to the measure of tax.

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.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge

Date Issued: 5/27/2020