

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

In the Matter of the Appeal of: ) OTA Case No. 19085158  
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**R. MIRANDA AND** )  
**E. MIRANDA** )  
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellants: Paul S. Blason, C.P.A., M.S.T

For Respondent: Bradley J. Coutinho, Tax Counsel III

H. LE, Administrative Law Judge: On August 18, 2020, the Office of Tax Appeals (OTA) issued an Opinion sustaining respondent Franchise Tax Board’s proposed tax deficiency determinations that are based upon federal adjustments for the 2014 and 2015 tax years.

R. Miranda and E. Miranda (appellants) then timely filed a petition for rehearing (PFR) with OTA based on an accident or surprise which occurred during the appeal proceedings. Upon consideration of appellants’ PFR, we conclude that the ground set forth therein does not constitute a basis for 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 which occurred prior to issuance of the Opinion and prevented the fair consideration of the appeal; (2) an accident or surprise that occurred during the appeal proceedings and prior to the issuance of the Opinion, 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 Opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the appeals hearing or proceeding.

(Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.) As to the second ground, the terms “accident” and “surprise” have substantially the same meaning, and each is used to denote some

detrimental condition or situation in which a party is unexpectedly placed without any negligence on the part of that party, which ordinary caution could not have guarded against. (*Appeal of Beau*, 2018-OTA-061P; *Kauffman v. De Mutiis* (1948) 31 Cal.2d 429, 432.)<sup>1</sup> A party that is surprised by a condition or situation should seek a postponement or deferral. (See *Kauffman v. De Mutiis, supra*, 31 Cal.2d at pp. 432–433.)

Here, appellants contend a ground for a rehearing exists because the IRS’s delays due to the COVID-19 pandemic constitute an “accident” or “surprise” preventing the IRS from granting appellants’ audit reconsideration requests. Appellants also request that we defer “the rehearing until June 2021,” which we interpret to mean they want a deferral of our reconsideration of the merits of their appeal if we grant a rehearing here. However, we disagree that a ground for a rehearing exists.

After we previously granted appellants’ two deferral requests and an automatic 60-day extension due to the COVID-19 pandemic,<sup>2</sup> appellants did not seek a further deferral even though they were aware their appeal was submitted for a decision on the written record without an oral hearing.<sup>3</sup> Thus, appellants did not take ordinary caution against the alleged accident or surprise by seeking an additional deferral to allow the IRS more time to consider their audit reconsideration requests. Their failure to do so does not rise to the level of an accident or surprise sufficient to constitute a ground for a rehearing. In any event, as noted in our Opinion, appellants could have, but did not, submit substantive evidence to show that respondent’s proposed assessments are in error, and we fail to see how their pending audit reconsideration

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<sup>1</sup> OTA’s grounds for granting a rehearing are established by regulation, based largely on regulations established by our predecessor, the State Board of Equalization. As seen in *Appeal of Wilson Development, Inc., supra*, the grounds were originally based on relevant causes provided for in the California Code of Civil Procedure (CCP) section 657. As such, case law analyzing the relevant causes in CCP section 657 provides guidance for our analysis here.

<sup>2</sup> Even before the COVID-19 pandemic began, upon appellants’ request, we previously granted two deferrals (one from August 13, 2019, until October 4, 2019, and another from October 4, 2019, until December 9, 2019), to allow appellants the opportunity to work with the IRS on their audit reconsideration requests. Then, on April 22, 2020, we informed appellants that we granted an automatic 60-day extension for appellants to file their reply brief. (See OTA Legal Notice 2020-01, Apr. 30, 2020.)

<sup>3</sup> On December 31, 2019, we informed appellants that we have not received a request for a further deferral and that we returned the appeal to active proceedings. Later, on June 25, 2020, we acknowledged appellants’ request to submit the appeal for decision on the basis of the written record, and we informed appellants that it may take several months for their appeal to be decided. Subsequently, on August 18, 2020, we issued our Opinion in this appeal.

requests before the IRS prevented them from doing so.<sup>4</sup> Therefore, we find that appellants have not established the existence of a ground for a rehearing. We accordingly deny appellants’ PFR and their deferral request.

DocuSigned by:  
*Huy "Mike" Le*  
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Huy "Mike" Le  
Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
*John O Johnson*  
873D9797B9E54E1...  
John O. Johnson  
Administrative Law Judge

Date Issued: 3/10/2021

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<sup>4</sup> Also, appellants’ IRS account transcripts—dated after appellants submitted their PFR—continue to reflect that the IRS has not canceled or revised its determinations.