STATE BOARD OF EQUALIZATION
PERSONAL INCOME TAX APPEAL

BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:	**OPINION ON PETITION FOR REHEARING**
BENJAMIN R. DU AND	**2007-SBE-001-A**
CARMELA L. DU	Case No. 339310

Representing the Parties:

For Appellant:	Charles P. Rettig
	Avram Salkin
	Sharyn M. Fisk
For Respondent:	Jozel L. Brunett, Tax Counsel
Counsel for the Board of Equalization:	Louis A. Ambrose, Tax Counsel

On July 17, 2007, we issued an opinion in which we held that this Board has no jurisdictional authority to hear and decide appellants' claim for a refund in the amount of $288,938 for 1999. In our opinion, we held that appellants' claim was barred pursuant to Revenue and Taxation Code section 19752, subdivision (a)(4), as a condition of appellant's election of the Voluntary Compliance Initiative (VCI) option (Option 1) afforded by that subdivision. Consequently, we concluded that the invalidity of appellants' refund claim precluded the exercise of our jurisdiction to determine the matter. Appellants then filed a petition for rehearing. However, under Revenue and Taxation Code section 19334 a petition for rehearing may be properly filed only after a determination of a claim for refund is made by this board. Therefore, consistent with our opinion, we conclude that the petition is invalid and that we may not exercise our jurisdiction to hear and decide it.

We further note that even if this board had jurisdiction to hear and decide the petition for rehearing, the grounds set forth therein do not constitute good cause for a new hearing, as required by the *Appeal of Wilson Development, Inc.* (94-SBE-007), decided by this Board on October 5, 1994. In *Appeal of Wilson Development, Inc.*, *supra*, we determined that 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 before this Board 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 our decision of the appeal; 4) insufficiency of the evidence to justify the decision, or the decision is against law; or 5) error in law.

In the petition for rehearing, appellants maintain that we have "inherent jurisdiction" to determine whether respondent properly computed the amount of interest owed by appellants. Appellants argue that this "inherent jurisdiction" derives from our statutory authority as the tribunal constituted for hearing and deciding administrative appeals from final actions taken by respondent. Appellants also contend that they are entitled to interest suspension pursuant to the plain language of Revenue and Taxation Code section 19116 and as provided in FTB Notice 2005-4, in which respondent stated that interest would be automatically refunded to taxpayers who met the requirements specified therein.

Although appellants present a different basis for our authority to hear and decide the appeal, we conclude that appellants have not shown good cause for rehearing on any of the grounds enumerated in *Appeal of Wilson Development, Inc., supra.* In support of their contention of jurisdictional authority, appellants generally cite the appeal provisions and one section of Taxpayers' Bill of Rights Act provisions of the Revenue and Taxation Code. However, it is well-settled in California law that administrative agencies, such as this board, have only the powers conferred on them either expressly or by implication under the Constitution or statutes. (*AFL v. Unemp. Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1042.) Thus, we may exercise our jurisdiction only in accordance with applicable legal authority.

In this regard, Revenue and Taxation Code section 19752, subdivision (a)(4), provides

that, "notwithstanding" other provisions of the Revenue and Taxation Code that afford a taxpayer the right to claim a refund, a taxpayer who elects to participate in the VCI, Option 1 is barred from filing a claim for refund. The term "notwithstanding" is considered to be an expression of legislative intent that the statute controls in the circumstances covered by its provisions, despite the existence of other law which would otherwise apply to require a different or contrary outcome. (See *In Re Summer H.* (2006) 139 Cal.App.4th 1315, 1328.) Therefore, a taxpayer who elects to participate in the VCI, Option 1 is barred from claiming a refund and this board may exercise its jurisdiction, under these circumstances, only upon the filing of a valid claim for refund. Consequently, we conclude that the opinion was not against the law and that appellants have not demonstrated an error of law. We further conclude that the remaining issues are the same as those raised in the appeal and, as such, also do not present any of the cognizable grounds for rehearing.

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ORDER

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the petition be, and the same is, hereby dismissed, and this Board's decision of July 17, 2007 be, and the same hereby is, affirmed.

Done at Culver City, California, this 26th day of February, 2008, by the State Board of Equalization, with Board Members Ms. Chu, Ms. Yee, Mr. Leonard, Ms. Steel, and Ms. Marcy Jo Mandel* present.

Judy Chu, Ph.D., Chair

Betty T. Yee, Member

Bill Leonard, Member

Michelle Steel, Member

Marcy Jo Mandel*, Member

*For John Chiang per Government Code section 7.9.