OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011120
K. CHANGLIAO	)
	)
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: K. Changliao

For Respondent: David Hunter, Tax Counsel IV

A. KWEE, Administrative Law Judge: On January 17, 2020, we issued a written opinion sustaining Franchise Tax Board's (FTB's) proposed assessment of $7,284 in tax, plus applicable interest, for the 2013 taxable year. Our opinion held that K. Changliao (appellant) failed to show that unreported income of $87,354 should be excluded from his taxable income. Appellant timely petitioned for a rehearing pursuant to Revenue and Taxation Code section 19048, based on allegedly newly discovered evidence, which appellant submitted with his petition. We conclude that appellant failed to establish a basis for granting a rehearing.

DISCUSSION

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).)

As indicated above, in addition to establishing that a ground for rehearing exists, the basis for rehearing must materially affect the substantial rights of the party seeking a rehearing. A

ground for a rehearing is material if it is likely to produce a different result. (See *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708; *Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764; *Trovato v. Beckman Coulter, Inc*. (2011) 192 Cal.App.4th 319.)

Newly Discovered Evidence

Here, appellant is petitioning for a rehearing on the grounds of newly discovered evidence which could not have been discovered and produced prior to the issuance of the written opinion. (Cal. Code Regs., tit. 18, § 30604(c); see *Hall v. Goodwill Industries of Southern California* (2011) 193 Cal.App.4th 718, 731.) Newly discovered evidence is "material" if it is likely to produce a different result. (*Sherman v. Kinetic Concepts, Inc.* (1998) 67 Cal.App.4th 1152, 1161.)

Appellant submitted the evidence in question with his petition and contends that the new "evidence was [from] prior to the decision and [was] newly discover[ed] after hours of trying to find anything that can prove I was working at Ridgerock [Tools, Inc. (Ridgerock)] and selling their items on eBay . . . for work not for personal income." The new evidence consists of four United States Postal Service (USPS) online label records, consisting of tracking numbers and print dates (all dated July 26, 2013) for four different items sold by seller "square2box" on eBay. In addition, appellant submitted a chain of emails between appellant and Ridgerock. The emails were sent between February 13, 2020, and March 30, 2020. In one of the earlier emails, appellant requested proof from Ridgerock that appellant (referring to himself as Synaline) was selling for Ridgerock during 2013. In response, Ridgerock indicated that it was sending appellant a "report of sales transactions to customer 'Synaline' . . . for the year of 2013." In appellant's reply to Ridgerock, appellant explains that he needed documentation to show "that I was working at Ridgerock and was selling online for the company for the year 2013." Appellant further indicates that the 2013 report that Ridgerock provided to him was not helpful because it included no such sales.

First, the email correspondence merely summarizes information which existed in 2014, many years prior to the issuance of OTA's written opinion. Furthermore, this information was readily available because all appellant needed to do was email his former employer to obtain it. Therefore, this evidence does not constitute "newly discovered" evidence for purposes of granting a rehearing because it was constructed from information which could have been

produced prior to the issuance of the written opinion.[1] (*Appeal of Wilson Development, Inc.*, *supra*.) Furthermore, even if we were to accept this information, it would have no impact on our decision. In our decision, we concluded that appellant failed to provide evidence to support his contention that the unreported income is attributable to Ridgerock and that appellant was only acting as a middleman for Ridgerock. In his petition for rehearing, appellant provided documentation from Ridgerock indicating that appellant was a "customer," and that Ridgerock treated its 2013 transactions with appellant as sales to appellant (i.e., as its customer). This information neither helps nor supports appellant's contention.

Second, the four USPS tracking numbers from 2013 similarly do not qualify as newly discovered evidence for the same reasons. Appellant's only explanation for being unable to timely provide the 2013 postage labels was that he had to spend hours looking for them. The fact that a taxpayer must look for records does not make those records not reasonably discoverable prior to issuance of the decision for purposes of granting a rehearing. Furthermore, in our decision we concluded that appellant (as opposed to Ridgerock) earned the income reported on the 1099-K. Evidence that appellant was shipping products that he sold on eBay would only support such a finding.[2]

[1] As relevant, by letter dated August 27, 2018, approximately six months prior to issuing the decision, OTA specifically requested that appellant provide documentation to support his contentions and reopened the briefing period to afford him an additional opportunity to do so.

[2] Appellant did not provide information, such as a PayPal, Inc. (PayPal) transaction report for 2013, to link any postage expenses to 1099-K income earned from PayPal.

In summary, appellant failed to establish that the required elements for granting a rehearing due to newly discovered evidence has been met, because the evidence was readily discoverable prior to issuance of our decision. Furthermore, even if we were to find that the evidence was not reasonably discoverable, the documents submitted with appellant's petition are immaterial to the outcome of this appeal. In conclusion, appellant has not established that any of the grounds for granting a rehearing were met. As such, appellant's petition is denied.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

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

Date Issued: 7/22/2020