

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

In the Matter of the Appeal of:

**R. KHRAICH**) OTA Case No. 18012026  
) CDTFA Account No. 101-219591  
) CDTFA Case ID 888965  
)  
)  
)**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:

Thomas J. Borchard, Attorney  
Frank Mickadeit, Attorney

For Respondent:

Jason Parker, Chief of Headquarters  
Operations

D. CHO, Administrative Law Judge: On March 4, 2020, the Office of Tax Appeals (OTA) issued an Opinion sustaining respondent California Department of Tax and Fee Administration's (CDTFA) denial of R. Khraich's (appellant) petition for redetermination of a Notice of Determination.<sup>1</sup> Specifically, OTA concluded that appellant failed to meet his burden of proof to establish that CDTFA's determination was erroneous or overstated. Appellant filed a timely petition for rehearing, which states that appellant has "new, material evidence" that would warrant an adjustment to the determined measure of tax. Upon consideration of the petition for rehearing, we conclude that the reason set forth in the petition for rehearing does not establish grounds for a new hearing. (See Cal. Code Regs., tit. 18, § 30604; see also *Appeal of Do*, 2018-OTA-002P.)

A new hearing may be granted where one of the following grounds exists, and the substantial rights of the filing party are materially affected: "(a) an irregularity in the appeal proceedings which occurred prior to issuance of the written opinion and prevented fair consideration of the appeal; (b) an accident or surprise which occurred during the appeal proceedings and prior to the issuance of the written opinion, which ordinary caution could not

---

<sup>1</sup> The panel that issued the Opinion consisted of Administrative Law Judges Daniel K. Cho, Linda C. Cheng, and Nguyen Dang.

have prevented; (c) newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to issuance of the written opinion; (d) insufficient evidence to justify the written opinion or the opinion is contrary to law; or (e) an error in law.” (Cal. Code Regs., tit. 18, § 30604(a)-(e); see also *Appeal of Do, supra.*)

Appellant states in his petition for rehearing that “after he received the OTA’s denial, he contacted an attorney. It was then that he realized that he could obtain from lenders the records showing the specific loans that had been canceled.” Appellant contends that these documents would be “evidence of buy-backs and unwinds” that would virtually eliminate appellant’s measure of unreported taxable sales. Appellant further explains that he “did not attempt to obtain this level of detail earlier because he simply did not realize that it could be obtained.” Appellant attested to these arguments and statements in a declaration signed under penalty of perjury.

As previously stated, California Code of Regulations, title 18, section 30604(c) states that a new hearing may be granted when the filing party obtains newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to issuance of the written opinion. Although appellant states in his petition for rehearing that he was unaware of the possibility of obtaining evidence from his lenders, at the December 18, 2019 hearing, OTA asked appellant whether he attempted to go his lenders and obtain additional records to support his position. (See Transcript p. 19.)<sup>2</sup> In response, appellant testified under oath that he attempted to go back to one of the financial institutions to obtain the records of his buybacks but ultimately failed to obtain any documentation. (*Id.* at pp. 19-20.) Appellant’s position in his petition for rehearing is directly contrary to this testimony. Based on appellant’s testimony in response to OTA’s question, it is clear that appellant was aware of this evidence prior to the issuance of the written Opinion. Therefore, appellant has not demonstrated that the evidence he wishes to now present is something that he could not have reasonably discovered and provided prior to the issuance of the written Opinion. Because appellant fails to meet this requirement, there is no need to proceed any further with our analysis.

Based on the foregoing, we deny appellant’s petition for rehearing.

DocuSigned by:

*Daniel Cho*

Daniel K. Cho

Administrative Law Judge

We concur:

DocuSigned by:

*Suzanne B. Brown*

Suzanne B. Brown

Administrative Law Judge

DocuSigned by:

*Nguyen Dang*

Nguyen Dang

Administrative Law Judge

Date Issued: 10/19/2020

<sup>2</sup> The hearing transcript is available on OTA’s website at: <https://ota.ca.gov/hearings/>.