

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

In the Matter of the Appeal of:	)	OTA Case No. 20035926
<b>MUTUAL MEDICINAL COLLECTIVE</b>	)	CDTFA Case ID 092-045
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	)	
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: C. Macias, CEO

For Respondent: Jason Parker, Chief of Headquarters Ops.

J. ALDRICH, Administrative Law Judge: On February 8, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).<sup>1</sup> CDTFA’s decision ordered a reaudit but otherwise denied a petition for redetermination filed by Mutual Medicinal Collective (appellant) of the Notice of Determination (NOD) dated September 26, 2017. The NOD is for tax of \$414,575.55, plus applicable interest, and a penalty of \$41,457.57 for the period July 1, 2014, through June 30, 2017 (audit period).

CDTFA performed the reaudit, which reduced the total measure of tax from \$5,209,235 to \$4,859,078 and will result in corresponding reductions to the tax, interest, and penalty.

On March 10, 2023, appellant filed this timely petition for rehearing (PFR) with the Office of Tax Appeals (OTA) asserting that there was insufficient evidence to support OTA’s Opinion and that there is newly discovered, relevant evidence.<sup>2</sup> OTA concludes that the grounds set forth in this PFR do not constitute a basis for a new hearing.

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<sup>1</sup> Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, “CDTFA” shall refer to the board.

<sup>2</sup> Appellant does not specifically cite any of the recognized grounds for a PFR. OTA therefore infers from appellant’s arguments, discussed more fully below, that these are the grounds upon which appellant relies.

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 Opinion; (4) insufficient evidence to justify the Opinion; (5) the opinion is contrary to law; or (6) an error in law that occurred during 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.)

Good cause for a new hearing may be shown where there was insufficient evidence to justify the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(4); *Appeal of Wilson Development, Inc.*, *supra*.) After briefing has concluded following a perfected PFR, the panel examines the evidentiary record.<sup>3</sup> To find that there is an insufficiency of evidence to justify the opinion, the panel must be convinced from the entire record that the prior panel clearly should have reached a different conclusion. (See Code Civ. Proc., § 657; *Appeals of Swat-Fame Inc., et al.*, 2020-OTA-45P.)

Appellant argues that the tax amount is overstated. Appellant asserts that it was struggling during the audit period such that its CEO made withdrawals from his defined contribution plans, a 401(a) plan and a 403(b) plan, and used his personal savings to pay appellant's rent in 2017. In support, appellant provided documents to show its CEO made early withdrawals from his defined contribution plans. In sum, appellant asserts that the fact that appellant's CEO used his savings and made early withdrawals shows that appellant did not make \$4,859,078 in sales during the audit period.

Here, appellant's arguments or assertions are mostly a reiteration of those that were made during OTA's appeal process. These arguments and assertions were already addressed in the Opinion. The evidentiary record includes audit working papers, reaudit working papers, related documents, and other evidence that supports the factual findings in the Opinion. Further, the audited measure and the actions of appellant's CEO, described above, are not mutually

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<sup>3</sup> A PFR is assigned to a panel that includes only one administrative law judge (ALJ) who signed the original Opinion, usually the lead ALJ who authored the Opinion, and two new ALJs who did not participate in the original panel's deliberations. (Cal. Code Regs., tit. 18, § 30606(a).)

exclusive. Accordingly, OTA finds that appellant has not established that there was insufficient evidence to justify the Opinion.

To find that a rehearing is warranted based on newly discovered evidence, appellant must show that there is newly discovered, relevant evidence, which could not have been reasonably discovered and provided prior to the issuance of the Opinion and that evidence materially affects appellant's rights. (Cal. Code Regs., tit. 18, § 30604(a)(3); see *Ullwelling v. Crown Coach Corp.* (1962) 206 Cal.App.2d 96, 127-128.) Evidence is "newly discovered" if it was not known or accessible to the party seeking a rehearing prior to the issuance of the Opinion. (See *Hayutin v. Weintraub* (1962) 207 Cal.App.2d 497, 512.) In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (See *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728; *Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764.)

Here, appellant does not explain why the newly submitted supporting documents could not have been provided prior to the issuance of the Opinion or why they were newly discovered. Furthermore, while the supporting documents show early withdrawals from the defined contribution accounts of appellant's CEO, this fact alone does not support a basis for an adjustment. Moreover, appellant's books and records were overwhelmingly absent from the record. Without appellant's sales and use tax records, the submission does not shed light on appellant's actions relative to its sales. Thus, the supporting documents would be unlikely to produce a different result. Therefore, OTA finds that appellant has failed to establish that a rehearing is warranted based on newly discovered evidence.

Accordingly, OTA finds that appellant has not established grounds for a new hearing.

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

We concur:

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*Teresa A. Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

Date Issued: 7/13/2023