

Impairment, which appellants contend is the necessary proof as required by FTB to prove financial disability.

A party seeking a rehearing under the grounds of newly discovered evidence must show that: (1) the evidence is newly discovered; (2) the party exercised reasonable diligence in discovering and producing it; and (3) the evidence materially affects the substantial rights of the party. (*Doe v. United Air Lines, Inc.* (2008) 160 Cal.App.4th 1500, 1506.)¹ Failure to show any of these three requirements is sufficient to deny a taxpayer's petition for rehearing based on newly discovered, relevant evidence. (*Ibid.*) As noted in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 at p. *2, the trier of fact "prefer[s] a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before [the Opinion], but was not, the goal of reaching the correct result must usually fall to the need to efficiently resolve matters." As such, if a party attempts to submit evidence after the Opinion has been issued, the party must show that the proffered evidence is material and could not have been produced prior to the issuance of the Opinion in order for OTA to grant the petition. (Cal. Code Regs., tit. 18, § 30604(a)(3); *Appeal of Shanahan, supra.*)

In the underlying Opinion, OTA noted that appellants failed to submit the first page of FTB Form 1564, and that the second page was incomplete due to a blank patient/taxpayer information section. Therefore, it was inherently unclear whether the physician affidavit referred to B. Dadon (appellant-husband) so as to furnish the necessary proof to claim financial disability. With this petition, appellants attempt to resubmit a complete version of FTB Form 1564.² However, appellants have not shown that FTB Form 1564 could not have been submitted prior to the issuance of the underlying Opinion, which is dispositive in concluding that this petition does not constitute a basis for a new hearing.


Furthermore, appellant must show that the evidence materially affects the substantial rights of the party. In the context of newly discovered evidence, the trier of fact has concluded that new evidence is material when it is likely to produce a different result. (*Appeal of*

¹ OTA's grounds for granting a rehearing are established by regulation, based largely on regulations established by its predecessor, the State Board of Equalization. As seen in *Appeal of Wilson Development, Inc.*, (94-SBE-007) 1994 WL 580654, the grounds were originally based on relevant causes provided for in Code of Civil Procedure (CCP) section 657. As such, case law analyzing the relevant causes in CCP section 657, such as *Doe v. United Airlines, supra*, provides guidance for the analysis here.


² While not essential to the appeal, OTA notes that while the first page of the FTB Form 1564 is resubmitted, Part III of page one remained unanswered. Additionally, the previously blank patient/taxpayer information section on page two of FTB Form 1564 was added after the date that the physician signed on March 26, 2023.


Shanahan, supra.) Additionally, the underlying Opinion explained that appellants have not met the requirement of the plain language of the statute, which requires that no spouse or any other individual be legally authorized to act on the taxpayer's behalf in financial matters. (R&TC, § 19316(b).) To reiterate, although A. Dadon (appellant-wife) did not participate in appellant-husband's businesses, which may have made it difficult for appellant-wife to access tax information, this does not constitute reasonable cause or equitable tolling of the statute of limitations for filing a refund claim. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Here, resubmitting FTB Form 1564 would not likely produce a different result because it does not provide evidence showing that no spouse or any other person was legally authorized to act on appellant-husband's behalf in financial matters.

Here, appellants' dissatisfaction with the outcome of the appeal, and the repeated arguments in this petition (which were considered and rejected in the underlying Opinion), do not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, OTA denies appellants' petition.

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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Keith T. Long
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

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