

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
ESTATE OF C. KOVAN (Dec'd)) OTA Case No. 240817084
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Marc Kovan, Administrator
For Respondent: Paige Chang, Attorney

A. KLETTER, Administrative Law Judge: On June 4, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$5,720 for the 2018 tax year. In the Opinion, OTA held that the statute of limitations bars appellant's claim for refund for the 2018 tax year.

On July 2, 2025, Appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19334. Upon consideration of appellant's petition, OTA concludes that appellant has not established a basis for granting a rehearing.

OTA will grant a rehearing where one of the following grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the appeal proceedings which occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, which the 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 in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Shanahan*, 2024-OTA-040P.)

Appellant does not specify the grounds upon which appellant seeks a rehearing. Appellant states that appellant was unaware that a physician's affidavit was needed, provides appellant's voluminous medical records, and requests the opportunity to provide a physician's

affidavit. OTA interprets appellant's petition as asserting accident or surprise and newly discovered evidence as grounds for rehearing.

Grounds for rehearing based on an accident or surprise

California Code of Regulations, title 18, (Regulation) section 30604(a)(2) permits a rehearing when an accident or surprise occurs during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented. The terms "accident" and "surprise" have substantially the same meaning, and each is used to denote some detrimental condition or situation in which a party is unexpectedly placed without any negligence on the part of that party, which ordinary caution could not have guarded against. (*Appeal of Le Beau*, 2018-OTA-061P; *Kauffman v. De Mutiis* (1948) 31 Cal.2d 429, 432.) A rehearing is only appropriate if the accident or surprise materially affected the substantial rights of the party seeking the rehearing. (Code Civ. Proc., § 657; *Appeal of Le Beau*, *supra*.)

In its opening brief, FTB explained the procedures and requirements for establishing financial disability, including the physician's affidavit requirement. OTA acknowledged FTB's opening brief and allowed appellant an opportunity to file a response to FTB's opening brief. Appellant did not respond to FTB's opening brief. Subsequently OTA issued an Opinion finding that appellant failed to establish financial disability because appellant did not provide the requisite affidavit from C. Kovan's physician, nor sufficient information to establish the period in which C. Kovan was incapable of managing his financial affairs. Appellant's failure to respond to FTB's opening brief does not amount to a detrimental condition or situation in which appellant was unexpectedly placed, and appellant must bear the consequence of that choice.

Moreover, the Opinion explained that R&TC section 19316 provides a narrow exception to the statute of limitations for financial disability but a taxpayer is not considered financially disabled where there is a spouse or other legally authorized person to act on the taxpayer's behalf in financial matters during the relevant period. (R&TC, § 19316(b)(2).) The failure to provide the medical records or affidavit was not material because appellant concedes that C. Kovan had an authorized representative, and therefore, appellant does not qualify for the financial disability exception. Consequently, there is no basis for rehearing based on an accident or surprise.

Grounds for rehearing based on newly discovered evidence

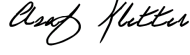
Regulation section 30604(a)(3) permits a rehearing on the ground of newly discovered evidence. A party seeking rehearing on the grounds of newly discovered evidence must show that: (1) the evidence is newly discovered; (2) the party exercised reasonable diligence in

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 the three required elements is sufficient to deny a taxpayer's petition for rehearing based on newly discovered evidence. (See *ibid.*) As the Board of Equalization, OTA's predecessor, noted in the *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, OTA "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."

Appellant's petition includes voluminous medical records, which appellant asserts shows that C. Kovan was diagnosed with dementia at the time FTB issued the Notice of Proposed Assessment (NPA), and requests the opportunity to obtain a physician's affidavit. Concerning the medical records, appellant knew or should have known about the pertinent evidence but did not provide it to FTB or on appeal to OTA. (See *Doe v. United Air Lines, Inc., supra*, 106 Cal.App.4th at p. 1509.) Appellant has provided no explanation for failing to provide the medical records earlier and has asserted no facts demonstrating that appellant was unable to obtain the medical records prior to the issuance of OTA's Opinion. (See *ibid.*) To date, appellant has not provided a physician's affidavit and concedes that appellant sought the affidavit only after OTA issued its Opinion. As described above, appellant concedes that C. Kovan had an authorized representative and the failure to provide the medical records or affidavit was not material because C. Kovan does not qualify for the financial disability exception. Therefore, there is no ground for rehearing based on newly discovered evidence.


¹ As provided in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a new hearing.

Based on the foregoing, appellant has not shown that grounds exist for a rehearing and OTA finds that a rehearing is not warranted. Accordingly, appellant's petition is hereby denied.

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Asaf Kletter
Administrative Law Judge

We concur:

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Keith T. Long
Administrative Law Judge

Signed by:

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Seth Elsom
Hearing Officer

Date Issued: 10/20/2025