

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: INDIA OVEN, INC.)))))	OTA Case No.: 220911466 CDTFA Case ID: 2-580-513
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Tarlochan Singh Sahiwal, CPA Gurdev Singh, President
For Respondent:	Jason Parker, Chief of Headquarters Ops.

N. RALSTON, Administrative Law Judge: On May 20, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (respondent). Respondent’s decision denied, in part, a petition for redetermination filed by India Oven, Inc. (appellant) of a Notice of Determination (NOD) dated February 2, 2021. The NOD is for \$85,819 in tax, plus applicable interest, for the period January 1, 2017, through December 31, 2019 (liability period). Subsequently respondent completed a reaudit, which resulted in a reduction of \$30,460 to the determined tax, from \$85,819 to \$55,359.

On June 18, 2025,¹ appellant timely petitioned for a rehearing with OTA on the basis that there is newly discovered evidence which it could not have reasonably discovered and provided prior to the hearing. OTA concludes that the ground set forth in this petition for rehearing (PFR) does not constitute a basis for granting a new hearing.

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

¹ Appellant’s petition for rehearing (PFR) was timely filed on June 18, 2025. In its initial PFR, appellant requested 30 days to provide additional information, which OTA granted. Appellant subsequently filed a brief and the additional information on July 23, 2025.

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 Riedel*, 2024-OTA-004P.)

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.) Newly discovered evidence is looked upon with suspicion and disfavor, and the party must make a strong showing of the necessary requirements to support a PFR on this ground. (See *Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 138.) OTA, as the trier of fact, prefers a record which contains all the evidence the parties believe is relevant. (*Appeal of Shanahan*, 2024-OTA-040P.) 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. (*Ibid.*) 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 PFR. (*Ibid.*; Cal. Code Regs., tit. 18, § 30604(a)(3).)

Appellant asserts that it has concerns with respondent's use of 1099-K² forms, that respondent obtained for the audit period, to determine that appellant's sales were understated. Appellant has not specifically identified grounds for a rehearing but has provided 18 exhibits that appellant has not provided previously. These exhibits consist of credit card receipts and handwritten invoices for several dates throughout the liability period. Thus, it appears that appellant is asserting newly discovered evidence as a ground for rehearing.

Before OTA can consider this new evidence for any purpose, the PFR must establish that the evidence was newly discovered, material evidence, that appellant could not have reasonably discovered prior to the issuance of the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(3).)

Appellant has failed to establish that the evidence that it provides could not have been reasonably discovered and provided prior to the issuance of this Opinion. OTA's Opinion in this matter was issued on May 20, 2025. Appellant has not explained why it was unable to provide

² Form 1099-K is an Internal Revenue Service form titled, "Payment Card and Third-Party Network Transactions," which shows the monthly and annual amounts paid to a merchant by a bank, credit card company, or third-party network during a given time period. Form 1099-K includes payments made by electronic means, including, but not limited to, credit cards, debit cards, and PayPal.

these documents, which consist of appellant’s own business records, prior to the issuance of OTA’s Opinion. Appellant does not address when it obtained the documents or explain what steps appellant took to obtain the documents. Instead, appellant reasserts the same arguments that it made at hearing. Thus, appellant has failed to establish that it exercised reasonable diligence in attempting to obtain the newly discovered evidence prior to the issuance of the Opinion. Therefore, OTA cannot grant a rehearing on this basis.

Signed by:
Natasha Ralston

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Natasha Ralston
Administrative Law Judge

We concur:

Signed by:
Joshua Lambert

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Josh Lambert
Administrative Law Judge

Signed by:
Kim Wilson

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Kim Wilson
Hearing Officer

Date Issued: 12/8/2025