

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
N. CARROLL) OTA Case No. 231014549
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: N. Carroll
For Respondent: Raul Medina, Legal Intern

T. STANLEY, Administrative Law Judge: On July 30, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax of \$4,742, and applicable interest, for the 2017 taxable year. In the Opinion, OTA held that appellant did not establish that FTB erred in its application of the duty days formula to determine appellant’s California source income for 2017.

On August 7, 2025, appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 on the basis that a letter from appellant’s 2017 employer shows error in FTB’s determination. Upon consideration of appellant’s petition, OTA concludes that the ground set forth in the petition 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 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 contends in the petition that a letter, dated July 25, 2025, from the Texas football team that employed him in 2017, is newly discovered evidence that is material to the appeal. Appellant asserts that the letter is dispositive of the appeal and requests that it be dismissed.

California Code of Regulations, title 18, section 30604(a)(3) only permits a rehearing for newly discovered evidence, material to the appeal, which the filing party (here, appellant) could not have reasonably discovered and provided prior to issuance of the Opinion. In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (*Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728.) As noted in *Appeal of Shanahan, supra*, OTA prefers a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before the Opinion was issued, 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 reasonably been produced prior to the issuance of the Opinion for OTA to grant the petition. (Cal. Code Regs., tit. 18, § 30604(a)(3); *Appeal of Shanahan, supra.*)

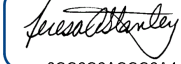
First, appellant has not established that the letter dated July 25, 2025, could not have reasonably been produced prior to issuance of the Opinion on July 30, 2025. The letter is from a representative of the Texas football team and is addressed “To Whom it May Concern.” The letter states that the Texas football team’s records do not indicate whether appellant played in the preseason game held in California in 2017 but do show that appellant received a check for the game that was played in California. The letter further indicates that since it was a preseason game appellant “would not have received any of his in-season pay.”

Neither the letter nor appellant’s petition indicate why such information could not have reasonably been obtained and provided to OTA prior to the date the Opinion issued on July 30, 2025. Newly discovered evidence is evidence that could not reasonably have been discovered sooner. Presumably a letter from appellant’s 2017 employer could have been obtained much earlier. As such, appellant’s letter is not newly discovered evidence.

With respect to the materiality of the letter, the author does not contend that appellant did not have duty days in California in 2017, as calculated by FTB and sustained by OTA. The letter admits that appellant was paid for the preseason game, whether he played or not. OTA also notes that in appellant’s appeal, he states that “I played one preseason game in California in 2017.” The term “duty days” or “working days” is not meant to include only those days that an

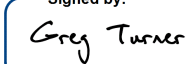
athlete participated in a game. As the Opinion noted working days include “all days on which the player’s team practices, travels, or plays” in California. Appellant did one or more of those things on the two days he was in California working for the Texas football team in 2017.

Accordingly, OTA finds that appellant has not established any ground for a rehearing, and the petition is denied.

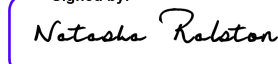
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Teresa A. Stanley
Administrative Law Judge

We concur:

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Greg Turner
Administrative Law Judge

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Natasha Ralston
Administrative Law Judge

Date Issued: 12/9/2025