



As brief background, California imposes a tax on the entire taxable income of its residents. (R&TC, § 17041(a).) Taxpayers may exclude disability benefits from taxable income if the premiums paid for the disability plan were includable in their gross income. (*Tuka v. Commissioner* (2003) 120 T.C. 1, 4.) The taxpayer has the burden of proof to show that amounts received from a disability or accident plan are deductible. (*Beisler v. Commissioner* (9th Cir. 1987) 814 F.2d 1304, 1306.) In the underlying appeal, FTB proposed to assess additional tax based on taxable wages reported by Aetna for the 2015 tax year. As relevant here, appellant argued that the income reported by Aetna was related to non-taxable disability payments and should be excluded from taxable income. Appellant asserted that he submitted all the necessary documents to support his position to FTB. Appellant alleged misconduct by FTB in withholding and concealing these documents that would prove the disability payments were non-taxable.

The Opinion found that appellant failed to meet his burden of proof to establish the amount reported by Aetna was comprised of non-taxable disability payments; therefore, appellant failed to demonstrate error in FTB's proposed assessment. The Opinion noted that none of the documents that appellant asserted would support his position were part of the record before OTA. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof, and a taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Shanahan, supra.*)

In his petition, appellant argues that FTB is responsible for his failure to maintain the records necessary to prove the payments he received were non-taxable. Appellant asserts that FTB issued deficiency notices for tax years 2010 through 2014 based on the disability payments received from Aetna in those years; however, upon appellant's submission of documentation, including a copy of the 2004 United Healthcare contract, FTB purportedly issued a letter in 2014 (2014 FTB Letter) "confirming that there would be no deficiency." Appellant asserts that he relied on the 2014 FTB Letter as a determination that the matter was settled and thus did not maintain a copy of the 2004 United Healthcare contract that would prove the disability payments received in the 2015 tax year were non-taxable. Appellant contends that the 2014 FTB Letter proves he submitted the necessary evidence and that FTB had a duty to preserve such evidence. Appellant does not provide a copy of the 2014 FTB Letter or any other evidence to support his position.<sup>1</sup>

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<sup>1</sup> OTA's jurisdiction is limited to the 2015 tax year that was originally on appeal. However, OTA notes that neither party provides any evidence to support or contradict the claims made regarding the 2010 through 2014 tax years.

### Newly Discovered Evidence

California Code of Regulations, title 18, (Regulation) 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. (*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 has not provided a copy of the evidence upon which he bases his petition. Appellant's unsupported assertions regarding a prior year determination are not sufficient to establish that evidence exists that would produce a different result on a subsequent tax year on appeal. Additionally, even if appellant's assertions are true, it is well established that each tax year stands on its own terms and must be separately considered. (*Appeal of Kwon et. al.*, 2021-OTA-296P; *Appeal of Laude* (76-SBE-096) 1976 WL 4112 [OTA's predecessor not bound by FTB's determination in a prior tax year].) Therefore, the assertion that a determination letter was issued regarding prior years not on appeal does not establish grounds for a rehearing of a subsequent tax year.

### Contrary to Law

The contrary to law standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) The question of whether the Opinion is contrary to law is not one which involves weighing of the evidence, but instead, requires a finding that the Opinion is "unsupported by any substantial evidence"; that is, the record would justify a directed verdict against the prevailing party. (*Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) This requires a review of the Opinion in a manner most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the Opinion if possible. (*Ibid.*) The question before OTA on a petition does not involve examining the quality or nature of the reasoning behind OTA's Opinion, but whether that Opinion can be valid according to the law. (*Ibid.*)

Here, appellant alleges that the Opinion is contrary to law because it found appellant failed to prove the 2015 disability payments were non-taxable, when the 2014 FTB Letter proves that the payments were non-taxable. As explained above, appellant has not produced the 2014 FTB Letter, or evidence indicating that the 2014 FTB Letter applies to the 2015 tax year on appeal. A review of the Opinion and the record in a manner most favorable to FTB indicates the

Opinion is valid according to the law. Appellant’s continued unsupported assertions and lack of evidence do not establish the Opinion is contrary to law.

Error in Law

An error in law in the OTA appeals hearing or proceeding is a procedural error, other than a legal error in the Opinion. (Cal. Code Regs., tit. 18, § 30604(b).) Appellant asserts there was an error in law because the Opinion found appellant responsible for his failure to provide documents he claims he already submitted to FTB. By doing so, appellant alleges “OTA committed a prejudicial error of law that prevented a fair consideration of the appeal.”


Appellant is arguing that OTA made a legal error in the application of the burden of proof. As such, appellant’s claim is essentially a claim that the Opinion is contrary to law, which has already been discussed above. Appellant’s argument is not related to a procedural error. Therefore, appellant has not established an error in law in the OTA appeals hearing or proceeding.

Conclusion

For the aforementioned reasons, OTA finds that appellant has not established that a ground exists for a rehearing pursuant to Regulation section 30604(a). Furthermore, as to appellant’s repeated arguments which were considered and rejected in the Opinion, they do not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Likewise, appellant’s dissatisfaction with the outcome of his appeal is not grounds for a rehearing. (*Ibid.*) Accordingly, appellant’s petition is denied.

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 Erica Parker  
 Hearing Officer

We concur:  
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 Steven Kim  
 Administrative Law Judge

DocuSigned by:  
  
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 Sara A. Hosey  
 Administrative Law Judge

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