

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

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| In the Matter of the Appeal of: |) | OTA Case No.: 240415871 |
| R. BISHOP, |) | CDTFA Case ID: 3-717-764 |
| dba Bloomin' Remedies |) | |
| |) | |
| |) | |

OPINION ON PETITION FOR REHEARING

Representing the Parties:

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| For Appellant: | Victor Kawana, Representative |
| For Respondent: | Jennifer Barry, Attorney |

K. WILSON, Hearing Officer: On July 16, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA). CDTFA’s decision which denied, in part, an administrative protest filed by R. Bishop (appellant) of a Notice of Determination (NOD) dated July 12, 2021. The NOD is for \$632,541 in tax, plus applicable interest, and a failure-to-file penalty of \$63,254.06 for the period October 1, 2019, through December 31, 2020 (liability period).¹

On August 15, 2025, appellant timely petitioned for a rehearing with OTA on the basis that: (1) there is newly discovered evidence, material to the appeal, which appellant could not have reasonably discovered and provided prior to issuance of the Opinion; (2) insufficient evidence to support OTA’s written opinion; and (3) the Opinion is contrary to law. OTA concludes that the grounds set forth in this petition for rehearing (PFR) do 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

¹ CDTFA added an additional 10 percent finality penalty of \$63,254.10 to the NOD for appellant’s failure to timely pay the NOD before August 11, 2021. CDTFA also assessed a collection cost recovery fee of \$950 on November 12, 2021, to reimburse its costs for collection of the unpaid liability. CDTFA prepared a reaudit to recalculate unreported taxable sales by adjusting the average number of customers, which will reduce the tax to \$546,764 with corresponding reductions to interest and the penalties.

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).)

Newly Discovered, Material Evidence

A party seeking a rehearing on the basis of newly discovered material 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 is material to the party's case. (Cal. Code Regs., tit. 18, § 30604(a)(3); see *Doe v. United Air Lines, Inc.* (2008) 160 Cal.App.4th 1500, 1506.) Evidence is "newly discovered" if it was not known or accessible to the party seeking rehearing prior to the issuance of the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(3); see *Hayutin v. Weintraub* (1962) 207 Cal.App.2d 497, 512.) A PFR will be denied when no reason is shown for why the newly discovered evidence could not have been discovered and produced with reasonable diligence prior to issuance of the written opinion. (See *Mitchell v. Preston* (1950) 101 Cal.App.2d 205, 207-208.) 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, 779.) 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.)

Appellant stated in the appeal that he filed a police report in connection with the unauthorized use of his identifying information, but instead of providing the alleged police report, appellant now contends that new evidence, a Federal Trade Commission (FTC) Identity Theft Report, an IRS Identity Theft Affidavit, and a Department of Veteran's Affairs (VA) Disability letter, all dated August 15, 2025, support his contentions for the PFR. OTA notes that these documents were initiated by appellant after the Opinion was issued on July 16, 2025. While the FTC Identity Theft Report and the IRS Identity Theft Affidavit establish that appellant reported the theft of his identity to the FTC and IRS on August 15, 2025, neither establish that appellant's identity was used in connection with the business without his knowledge or consent or that he previously reported the misuse of his identity. Additionally, it is not clear why appellant did not initiate these filings when he discovered that his identity was allegedly being misused in

January 2021, prior to the issuance of the Opinion, when it was within his ability to do so. Regarding the VA disability letter, OTA already considered appellant's arguments concerning his involvement in the business and found that appellant's explanations were contradictory and lacked credibility. Thus, OTA finds that the evidence provided is not newly discovered and does not meet the criteria for a rehearing on this basis.

Insufficient Evidence

To find that there is an insufficiency of evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different opinion. (*Appeal of Riedel*, 2024-OTA-004P.)

In his PFR, appellant argues again that CDTFA has not met its burden of proving that appellant is a responsible person as defined in Revenue and Taxation Code (R&TC) section 6829 and California Code of Regulations, title 18, (Regulation) section 1702.5(b)(1) in accordance with the preponderance of evidence standard of proof required under Regulation section 1702.5(d). Appellant asserts that these legal provisions contain the statutory framework upon which CDTFA is permitted to hold an individual personally liable for the sales and use tax liability of a business entity. Appellant argues that CDTFA has failed to produce any evidence that appellant was an officer, member, manager, employee, director, shareholder, partner, person having any responsibility for the filing of the returns or the payment of tax on behalf of Bloomin' Remedies, or person who had a duty to act for Bloomin' Remedies in complying with the provisions of the Sales and Use Tax Law.

Based on the evidence, the Opinion concluded that appellant was the owner of the business. CDTFA issued the NOD to appellant as a sole proprietor. R&TC section 6829 provides that, when certain requirements are met, a responsible person may be held personally liable for the unpaid tax liabilities of a separate legal entity such as a corporation, partnership, or limited liability corporation (LLC). Here, there is no evidence that the business operated as a corporation, partnership, LLC, or other separate legal entity, and thus R&TC section 6829 does not apply.²

As mentioned above, OTA finds that the evidence provided is not newly discovered, and the new evidence is not material as to produce a different result. Therefore, appellant has not shown that there was insufficient evidence to justify the Opinion.

² R&TC section 6829 was intended to give CDTFA another tool to collect sales taxes from persons responsible for such collection, not to protect individuals from any liability they would otherwise have. (See *State Bd. of Equalization v. Leal (In re Leal)* (9th Cir. BAP 2007) 366 B.R. 77, 83.)

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 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 Riedel, supra.*) This requires a review of the Opinion in a manner most favorable to the prevailing party and indulging of all legitimate and reasonable inferences to uphold the Opinion. (*Ibid.*) The question before OTA on a PFR does not involve examining the quality or nature of the reasoning behind OTA’s Opinion, but whether the Opinion can be valid according to the law. (*Ibid.*)

It appears appellant is making a contrary to law argument, as mentioned earlier, that CDTFA has not met its burden of proving that appellant is a responsible person as defined in R&TC section 6829 and Regulation section 1702.5(b)(1) in accordance with the preponderance of evidence standard of proof required under Regulation section 1702.5(d). Appellant asserts that these legal provisions contain the statutory framework upon which CDTFA is permitted to hold an individual personally liable for the sales and use tax liability of a business entity.

Again, the Opinion concluded, based on the evidence, that appellant was the owner of the business. CDTFA issued the NOD to appellant as a sole proprietor. R&TC section 6829 provides that, when certain requirements are met, a responsible person may be held personally liable for the unpaid tax liabilities of a separate legal entity such as a corporation, partnership, or LLC. Here, there is no evidence that the business operated as a corporation, partnership, LLC, or other separate legal entity, and thus R&TC section 6829 does not apply. Therefore, OTA finds that the Opinion is not contrary to law and appellant’s argument is not sufficient to grant a rehearing on this ground.

Accordingly, appellant has not shown the evidence provided is newly discovered, material evidence, the evidence was insufficient to justify the Opinion, or that the Opinion is contrary to law such that a rehearing should be granted. Consequently, the PFR is denied.

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

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Andrew Wong
Administrative Law Judge

Signed by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 12/29/2025