

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: PBM SERVICES, INC.)))))	OTA Case No.: 230914400 CDTFA Case ID: 1-572-274
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Johan Janssens, President
For Respondent:	Jason Parker, Chief of Headquarters Ops.

S. BROWN, Administrative Law Judge: On September 24, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).¹ CDTFA’s decision denied, in part, a petition for redetermination filed by PBM Services, Inc. (appellant) of a Notice of Determination (NOD) dated September 10, 2019. The NOD is for tax of \$36,542, plus applicable interest, for the period July 1, 2015, through September 30, 2018 (liability period). Thereafter, CDTFA conducted a reaudit that reduced the taxable measure by \$14,132, which reduced appellant’s tax liability by \$1,277, to \$35,265.

On October 25, 2025, appellant timely filed a petition for rehearing (PFR) with OTA.² 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 Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, “CDTFA” shall refer to the board.

² Appellant’s PFR is postmarked October 25, 2025, and appellant perfected its PFR by letter postmarked November 26, 2025. (See Cal. Code Regs., tit. 18, § 30602.)

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.) A ground for a rehearing is material if it is likely to produce a different result. (See *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728.)

Appellant's PFR alleges that the first five of these grounds exist for rehearing. As explained below, OTA concludes that the PFR does not establish any basis for granting a new hearing.

Irregularity in the Proceedings or Accident or Surprise

A rehearing will be granted when an irregularity in the appeal proceedings occurs prior to issuance of the Opinion and prevents fair consideration of the appeal. (Cal. Code Regs., tit. 18, § 30604(a)(1).) This would generally include any departure by OTA from the due and orderly method of conducting appeal proceedings by which the substantial rights of a party (here, appellant) have been materially affected. (*Appeal of Shanahan*, 2024-OTA-040P.) Examples of irregularities include the absence of a judge from the courtroom during a portion of the trial, and a judge threatening to prejudge testimony unless a witness is withdrawn. (*Ibid.*)

A rehearing will also be granted 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. (Cal. Code Regs., tit. 18, § 30604(a)(2).) 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 Shanahan, supra.*)

Appellant lists both of these as grounds for rehearing. However, appellant does not identify any irregularity in the appeal proceedings, or any accident or surprise occurring during the appeal proceedings. Consequently, appellant is not entitled to a new hearing on either of these grounds.

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); *Doe v. United Air Lines, Inc.* (2008) 160 Cal.App.4th 1500, 1506.) Newly discovered evidence must be material in the sense that it is likely to produce a different result. (See *Santillan v. Roman Catholic Bishop of Fresno, supra*, 202 Cal.App.4th at p. 728; *Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764.) 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.) 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 did not submit any new documents, but lists two items as "newly discovered evidence": (1) receipts showing that appellant paid sales tax reimbursement on its purchases of parts and supplies; and (2) the OTA transcript of the June 17, 2025 hearing in this matter. Regarding the purported receipts, appellant fails to provide any explanation regarding how such receipts are newly discovered or how appellant exercised reasonable diligence in discovering and producing them; accordingly, appellant has not established that any receipts are newly discovered evidence. While this alone is dispositive, OTA also notes that appellant does not establish that such receipts would likely produce a different result;³ thus, OTA finds they are not material evidence warranting a rehearing. Similarly, the OTA transcript of the June 17, 2025 hearing does not constitute newly discovered material evidence that would likely produce a different result. Consequently, the PFR does not establish grounds for a rehearing on the basis of newly discovered, material evidence.

³ Appellant's stated reason for identifying the receipts as new evidence is to raise a new argument that appellant is not a retailer of tangible personal property and thus does not owe sales tax pursuant to Revenue and Taxation Code (R&TC) sections 6012 and 6051. However, the record contains extensive evidence showing that appellant was a retailer who made retail sales of tangible personal property in the regular course of business (R&TC, §§ 6007, 6008, 6014, 6015) and thus owes sales tax on retail sales measured by appellant's gross receipts. (R&TC, §§ 6012, 6051.)

Insufficient Evidence

To find that there is 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, the Opinion should have reached a different conclusion. (Code Civ. Proc., § 657; *Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.) Appellant argues that the Opinion contains various alleged factual errors and, thus, there is insufficient evidence to support the Opinion.

None of appellant's stated disagreements with the Opinion reflect any errors in the Opinion, nor any findings lacking sufficient evidence. Rather, the PFR's descriptions of purported factual errors actually relate to how the Opinion's findings were contrary to appellant's contentions, such as contentions about how CDTFA should have conducted the audit differently. As discussed in the Opinion, the evidence supports that CDTFA could not conduct a direct audit based solely on appellant's records, but that CDTFA examined appellant's records and accepted some of the information therein. In reaching its conclusions, OTA reviewed all of the documentation and arguments provided by the parties and issued an Opinion which gave appropriate consideration to the evidence and arguments appellant presented on appeal.

In addition, OTA notes that the PFR labels as "errors" findings that are obviously supported in the record. For example, while the PFR disputes the Opinion's finding that appellant acknowledged it "has a haphazard way of recording things," that statement by appellant's representative is reflected on page 43 of the transcript of the June 17, 2025 hearing, and during the video recording of the hearing at approximately the one hour, four minute mark.⁴

Accordingly, appellant has not shown that there was insufficient evidence to justify the Opinion.

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 that involves a 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 Riedel, supra.*) This requires a review of the Opinion in a manner most favorable to the prevailing party and indulging in all

⁴ Transcript is located at: <https://ota.ca.gov/wp-content/uploads/sites/54/2025/08/230914400-PBM-Services-Inc-Transcript-061725.pdf>. Video is located at: <https://www.youtube.com/live/bze8uhkfa2U>.

legitimate and reasonable inferences to uphold the Opinion if possible. (*Ibid.*) OTA will grant a rehearing when the petitioning party establishes that the Opinion incorrectly stated or applied the law and, therefore, is contrary to law. (*Appeal of Shanahan, supra.*) On a PFR, the question before OTA does not involve examining the quality of the reasoning behind OTA's Opinion, but whether that Opinion can be valid according to the law. (*Appeal of Riedel, supra.*)

Appellant contends that the Opinion's finding that the parties executed a timely extension of the waiver of the statute of limitations is contrary to law. Appellant argues that the waiver extension is not a valid legal contract because CDTFA did not sign the document, and thus CDTFA did not accept the waiver extension.

This waiver extension was on a CDTFA-122 (Waiver of Limitation) form, which CDTFA presented to appellant during the audit. A CDTFA-122 form waives the applicable statute of limitations for a specified period, thereby extending the deadline by which CDTFA may timely issue an NOD. (See R&TC, § 6488.) Thus, appellant is arguing that CDTFA did not accept its own waiver extension that CDTFA requested appellant to sign.

The Opinion previously considered this argument and found it unpersuasive. The Opinion concluded that the waiver extension's printed language "Accepted: [CDTFA]" establishes that CDTFA accepted the waiver extension. Appellant's dissatisfaction with the outcome of its appeal and attempt to reargue the same issue a second time are not grounds for a rehearing. (*Appeal of Graham and Smith, 2018-OTA-154P.*) Therefore, OTA concludes that the Opinion is not contrary to law.

In light of all of the above, OTA concludes that appellant has not established any grounds for a rehearing. Appellant's PFR is denied.

Signed by:



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Suzanne B. Brown
Administrative Law Judge

We concur:

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Josh Aldrich
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 4/2/2026