2026-OTA-318
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **G. MORRIS AND** **R. MORRIS**	OTA Case No. 240115167

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants: R. Morris

For Respondent: Jeffrey Gates, Attorney

T. STANLEY, Administrative Law Judge: On November 25, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellants' claim for refund of $2,614 for the 2018 taxable year. In the Opinion, OTA held appellants' claim for refund was barred by the statute of limitations.

On December 17, 2025, appellants timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19334 on the basis that they had newly discovered documentation showing they were continuing to appeal the IRS decision to deny their 2018 federal claim for refund due to expiration of the federal statute of limitations. Upon consideration of appellants' petition, OTA concludes that the ground set forth in this 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.)

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.) 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*.)

Appellants contend that one of the reasons OTA denied the appeal of their claim for refund was that the IRS had similarly denied appellants' claim for refund for 2018 (the taxable year at issue in this appeal) based on expiration of the statute of limitations. Appellants assert that their appeal with the IRS is still pending. Appellants state that if the IRS makes adjustments to their 2018 taxable year, they will similarly be entitled to adjustments at the state level, which may entitle them to their claimed refund. In support, appellants submit a letter from the IRS dated September 8, 2025 (IRS letter), wherein the IRS states that it cannot consider appellants' 2018 claim for refund because appellants' supporting information was incomplete. The letter noted that the IRS continued to deny appellants' federal claim for refund due to expiration of the federal statute of limitations. Appellants also submit a letter from them to the IRS dated October 10, 2025, requesting the IRS to perform a thorough review of their amended return for taxable year 2018.

First, OTA determines whether the evidence appellants submitted is newly discovered. The hearing for this matter was held on July 22, 2025, so appellants could not have produced it prior to the oral hearing. However, the IRS letter pre-dated the Opinion issued on November 25, 2025, and therefore appellants could have produced it prior to the issuance of the Opinion. Similarly, their reply to the IRS, dated October 10, 2025, could not have been produced prior to the date of the hearing but could have been submitted to OTA prior to issuance of the Opinion. Moreover, even if the letters were discovered after issuance of the Opinion, newly discovered evidence is only material if it is likely to produce a different result. (See *Santillan v. Roman Catholic Bishop of Fresno*, *supra*.)

Here, OTA did mention R. Morris' testimony at the oral hearing that the IRS had denied appellants' federal claim for refund for 2018 following at least four appeals to the IRS. That fact, however, was not material to the Opinion's ultimate conclusion that appellants' claim for refund was barred pursuant to the California statute of limitations, which differs in significant aspects from the federal statute of limitations (e.g., four years from the due date for the return instead of three years from the due date for the return). Appellants' contention that they continue to appeal their 2018 taxable year with the IRS does not change the fact that their claim for refund is barred by the California statute of limitations. (See R&TC, § 19306(a).) Therefore, whether appellants' evidence is newly discovered or not, it is immaterial and does not change the result for this appeal.

Appellants assert that if the IRS adjusts their 2018 liability, they will be able to seek similar adjustments to their California tax liability. When the IRS makes or allows a change or correction that adjusts a taxpayer's liability, the taxpayer may file with FTB a claim for credit or refund resulting from the adjustment. (R&TC, § 19311(a).) The claim for refund or credit may be filed within two years of the date of the final IRS determination, and FTB may allow a timely filed credit or claim for refund. (*Ibid*.) As relevant here, in the event that the IRS accepts appellants' amended 2018 tax return and issues them a credit or refund, appellants may report adjustments to FTB, which may then consider whether it is obligated by California law to follow any federal adjustments. Speculation as to what may or may not occur at the federal level does not alter the correctness of the Opinion issued for this appeal.

Accordingly, OTA finds that appellants have not established grounds for a rehearing, and OTA denies the petition.

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

Signed by:
L. Katrine Shelton
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L. Katrine Shelton
Administrative Law Judge

Date Issued: 4/8/2026