OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **M. GORDON**	OTA Case No.: 230814024 CDTFA Case ID: 020-060

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Jeffrey D. Hamilton, E.A.

For Respondent: Amanda Jacobs, Attorney

T. STANLEY, Administrative Law Judge: On November 12, 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 a petition for redetermination filed by M. Gordon (appellant) of a Notice of Dual Determination (NODD) dated April 16, 2024. The NODD is for tax of $184,007 and penalties of $49,061, plus applicable interest, and penalties of $49,061.20 for the period July 1, 2009, through February 12, 2011 (liability period).

On December 11, 2025, appellant timely petitioned for a rehearing with OTA on the basis that there is newly discovered evidence, material to the appeal, that appellant could not have reasonably discovered prior to the issuance of the Opinion on November 12, 2025. Appellant also alludes to insufficiency of the evidence to justify the Opinion. OTA concludes that the grounds set forth in this petition 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 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.

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 Evidence

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. (*Appeal of Shanahan*, 2024-OTA-040P, citing *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728.) As noted in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 at p. *2, the trier of fact "prefer[s] a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before [the Opinion], 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 been produced prior to the issuance of the Opinion in order for OTA to grant the petition. (*Appeal of Shanahan*, *supra*.)

Appellant presents documentation that he alleges constitutes a "recent discovery" of S. Hyder's motivation and false statements that led to appellant being named a responsible person. In support, appellant provides: (1) an unsigned stipulated judgement dated May 23, 2011, between M&L Smith, Inc. (M&L) and R&B Wholesalers, Inc. (R&B), an assignee of General Electric Distribution Finance Corp. (GE); (2) a November 20, 2025 letter signed by P. Metsch and directed To Whom It May Concern, expressing the author's opinion that GE acted in excess of its contractual and legal authority in taking control of M&L's bank account; (3) an agreement for transfer of telecommunications services dated February 18, 2011, and signed by appellant and S. Hyder; (4) a Notice to Pay Rent or Quit payable by February 13, 2011; (5) a letter from Sunrise Bank dated October 27, 2009, delineating terms of a possible purchase of M&L's dba Aztec Appliances; (6) an unsigned January 6, 2015 letter from R. Burgraff stating that R&B did not receive any orders from appellant; and (7) a letter from a law firm dated March 12, 2015, following up on a consultation with appellant regarding a potential lawsuit by appellant against S. Hyder.

First, OTA notes that each of these documents, except for the letter signed by P. Metsch, predates issuance of the November 12, 2025 Opinion by several years. Appellant does not explain why he considers any of these documents to be newly or “recently” discovered nor why he could not have discovered and provided them earlier. Moreover, newly discovered evidence must be material to the appeal, which requires that the new evidence be likely to produce a different result, here, in appellant’s favor. (See *Appeal of Shanahan*, *supra*.) The evidence proffered by appellant does not lead to a conclusion, much less prove, that appellant is not a person responsible for the liabilities of M&L Throughout the proceedings, appellant has made it clear that he believes S. Hyder was in essence setting him up to be responsible for M&L’s liabilities so that S. Hyder could be free from successor liability upon starting a new appliance business. The letter that post-dates the Opinion only states that in the author’s opinion, GE acted in excess of its authority, which is irrelevant to the matter at issue here of whether appellant is a person responsible for M&L’s sales and use tax liabilities. Appellant’s arguments were considered and rejected in the Opinion, and appellant’s dissatisfaction with the outcome of the appeal does not constitute grounds for a rehearing. (See *Appeal of Shanahan*, *supra*.)

Appellant has not established that the evidence submitted with the petition is newly discovered or that it would result in a different outcome even if it were newly discovered. Therefore, appellant has not established that newly discovered evidence is grounds for a rehearing.

<u>Insufficient Evidence to Justify the Opinion</u>

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, the panel clearly should have reached a different opinion. (Code Civ. Proc. § 657; *Bray v. Rosen* (1959) 167 Cal.App.2d 680, 684.)[2]

Appellant asserts that even though he was an authorized signer on M&L’s bank account, he had no control over the company’s assets. Appellant contends that the Opinion failed to consider that a finance agreement between M&L and GE shows that GE was entitled to be compensated in the amount of $1.75 for each $1.00 in appliance sales. Appellant alleges this proves that M&L, and thus appellant, was prevented from paying M&L’s obligations.

[2] As provided in *Appeal of Wilson Development, Inc.*, *supra*, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a new hearing.

Appellant's arguments are unavailing. The test for holding a person personally responsible for the sales and use tax liabilities of a terminated entity, such as M&L, does not include the question of who had control over the entity's assets. A sub-element in the analysis of whether a party may be held personally responsible is that when the responsible person had actual knowledge of the ability to pay the taxes but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(C).) The Opinion details that M&L had sufficient funds during the liability period with which to pay its sales and use tax liabilities. Regardless of the finance agreement between M&L and GE, the following evidence clearly showed that funds were available and used for purposes other than for payment of sales and use tax liabilities: (1) wage history records showing payments to employees during the period between the third quarter of 2009 (3Q09) and 1Q11; (2) checks to supplier R&B, along with records of payments M&L made to R&B throughout the liability period; (3) records of payments that M&L made to GE during the period 3Q09 through 4Q10; (4) a letter regarding rent payments that M&L made to its landlord during 4Q10; (5) a credit card merchant statement for the period 4Q09 through 1Q10 showing deposits into M&L's bank account; (6) bank statements showing withdrawals during the period 4Q09 through 1Q10, and (7) M&L's federal income tax returns for the 2009 through 2011 taxable years, which list M&L's gross receipts and cost of goods sold for those tax years.

The evidence listed above far outweighs the evidence appellant had already provided regarding the referenced finance agreement and provides more than sufficient evidence to justify the Opinion. Therefore, appellant has not established grounds for a rehearing, and his petition is denied.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Steven Kim
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Steven Kim
Administrative Law Judge

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

Date Issued: 4/14/2026