OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **A. ABOLFAZLI**	OTA Case No.: 240215362 CDTFA Case ID: 3-694-456

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: A. Abolfazli

For Respondent: Amanda Jacobs, Attorney

S. BROWN, Administrative Law Judge: On November 17, 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 denied, in part, an administrative protest filed by A. Abolfazli (appellant) of a Notice of Dual Determination (NODD) dated February 23, 2022. The NODD is for tax of $27,721.11, plus applicable interest, and penalties of $4,698.91 for the period January 1, 2019, through July 31, 2019 (liability period), and reflects CDTFA's determination that appellant is personally liable as a responsible person for the unpaid sales tax liabilities of Amin Auto Group, Inc. (AAG) under Revenue and Taxation Code (R&TC) section 6829.

On December 16, 2025, appellant filed a timely petition for rehearing (PFR) with OTA on the grounds that: there is insufficient evidence to justify the Opinion; the Opinion is contrary to law; and there were "[e]rrors of law in the analysis of willfulness and ability to pay." The PFR further contends that the Opinion failed to properly consider material evidence presented during the hearing, and that the penalties and interest included in the liability are improper. The PFR also includes proposed new exhibits. For the reasons discussed below, OTA concludes that the PFR does not establish a basis for granting a rehearing.

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 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.)

<u>Newly Discovered, Material Evidence</u>

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.) 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.)

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.) 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.)

Here, the PFR proposes new exhibits consisting of bank statements that include images of checks.[1] Appellant has not provided any argument or evidence to show that these proposed new exhibits are newly discovered evidence, material to the appeal, which appellant could not, with reasonable diligence, have discovered and provided prior to issuance of the Opinion. A party who fails to offer certain evidence because it is unaware of its relevance cannot later, upon realizing its significance, claim it is "newly discovered." (*Slemons v. Paterson* (1939) 14 Cal.2d 612, 615; see *Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4th 10, 14.)

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[1] Although the exhibits admitted into evidence during the hearing include AAG's bank statements, those exhibits were for a different bank account number. Thus, the proposed exhibits attached to the PFR are not part of the oral hearing record.

Because appellant has not established that the proposed exhibits are newly discovered evidence, OTA does not address the question of whether the proposed new exhibits are material to appellant's case, meaning that they are likely to produce a different result. Consequently, appellant's proposed new evidence does not support a basis for rehearing.

Error In Law

A rehearing may be granted where there is an error in law in the OTA appeals hearing or proceeding, other than a legal error in the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(6), (b).) Courts have found that a new trial may be granted based on an error in law if the court's original ruling, as a matter of law, was erroneous. (See *Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 17-18, citing *Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391.) A claim on a PFR that there was an error in law is a claim of procedural wrong; for example, an erroneous ruling on the admission or rejection of evidence. (See *Nakamura v. Los Angeles Gas & Elec. Corp.* (1934) 137 Cal.App. 487.)

Appellant contends that an error in law occurred because there were "[e]rrors in law in the analysis of willfulness and ability to pay." However, this contention does not allege any error in law because it is not an assertion of a procedural wrong. Accordingly, OTA interprets this as an argument that the Opinion is contrary to law, which is discussed below. As such, appellant has not established that there was an error in law.

Insufficient Evidence or Contrary to Law

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 Opinion clearly should have reached a different conclusion. (Code Civ. Proc., § 657; *Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.) OTA considers the evidence in the light most favorable to the prevailing party (here, CDTFA). (*Appeal of Shanahan*, 2024-OTA-040P.)

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 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 legitimate and reasonable inferences to uphold the Opinion if possible. (*Ibid*.) 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. (*Ibid*.)

Under R&TC section 6829, one of the requirements to establish willfulness is that when the responsible person had actual knowledge that taxes were due, the person also had the ability to pay the taxes but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(C).) Appellant contends that there is insufficient evidence to establish that AAG had funds available to pay the tax liabilities because, at the time AAG received payments into its bank account, those funds were immediately owed to either consignors who had entered into consignment agreements with AAG, or to a flooring-plan financing lender that AAG was contractually obligated to pay in order to release title to the vehicle. Similarly, appellant argues that the Opinion misapplied the willfulness standard under R&TC section 6829, and thus is contrary to law; specifically, appellant contends that he was not willful because the funds in AAG's bank account were "legally encumbered and unavailable," and that the Opinion "improperly equates gross deposits with the ability to pay, which is a misapplication of the law."

As discussed in the Opinion, bank statements and other financial records show deposits and payments to AAG, and thus establish that AAG had sufficient funds available to pay the 1Q19, 2Q19, and 3Q19 tax liabilities at the times when appellant knew those liabilities were due and unpaid. Appellant's contention that the funds in AAG's bank account were contractually owed to others is unpersuasive because AAG collected sales tax reimbursement on its sales, and that tax reimbursement was available to pay the sales tax liability. Regardless of a business's contractual arrangements with others, collected sales tax reimbursement is owed to CDTFA. (See *Loeffler v. Target Corp*. (2014) 58 Cal.4th 1081.) As noted in the Opinion, use of collected sales tax reimbursement to pay other creditors indicates that a business had funds available to pay taxes but elected to use those funds for other purposes. Therefore, sufficient evidence establishes that on or after the dates the taxes were due, appellant had funds available and the ability to pay (or to cause to be paid) AAG's taxes, but did not do so, and thus that appellant's failure to pay the taxes met the willfulness element of R&TC section 6829.

In addition, OTA notes that appellant is essentially reiterating an argument that he made during the oral hearing. The Opinion already considered and rejected this argument. Appellant's dissatisfaction with the outcome of the appeal does not establish grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, OTA finds that appellant has not established grounds for rehearing based on insufficient evidence or that the Opinion is contrary to law.

Penalties and Interest

Appellant's PFR includes his request that "penalties and interest should be abated." However, appellant previously waived relief of penalties and interest as issues in the hearing. As memorialized in the August 6, 2025 Minutes and Orders of Prehearing Conference: "Although CDTFA's Appeals Bureau Decision included two additional issues (penalty relief and interest relief), appellant indicated that he was not including those issues in the current appeal."

In the PFR, appellant has not substantiated that the introduction of this new legal issue is grounds for a rehearing. A PFR is not an opportunity to raise new issues that could have been addressed in the Opinion. (See *Cavallaro v. Commissioner*, T.C. Memo. 2019-144, at p. 26.)

In summary, OTA finds that appellant has not established any grounds for a rehearing. Consequently, the PFR is denied.

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

We concur:

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 6/22/2026