

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 241117917
K. HUBER	)	
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	K. Huber
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For Respondent:	David C. Cortez, Associate Government Program Analyst
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H. FAMULARO, Administrative Law Judge: On March 11, 2026, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of the Franchise Tax Board (respondent) proposing additional tax of \$4,871, a late-filing penalty of \$1,217.75, and applicable interest for the 2021 tax year. In the Opinion, OTA held K. Huber (appellant) had not established error in respondent's proposed assessment of tax or reasonable cause to abate the late-filing penalty.

Appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code section 19048 on the basis that his Social Security Record was not considered prior to issuance of the Opinion. Although appellant does not articulate a ground for rehearing as set forth in California Code of Regulations, title 18, section 30604, OTA will treat appellant's petition as being filed both on the basis that there is newly discovered, material evidence, as well as there is insufficient evidence to support OTA's Opinion. Upon consideration of appellant's petition, OTA concludes that the grounds 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 the substantial rights of the party (here, appellant) seeking a rehearing are materially affected: (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.)

Appellant appears to contend that his Social Security Record, which reflects that appellant earned income from 1966 through 2019 but earned no income from 2020 through 2024, is newly discovered evidence that was not considered prior to issuance of the Opinion. A party seeking a rehearing under the grounds of newly discovered evidence must show that the proffered evidence could not have been produced prior to issuance of the Opinion and is material for OTA to grant the petition. (Cal. Code Regs., tit. 18, § 30604(a)(3); *Appeal of Shanahan*, *supra*.) 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.) Appellant's petition under this ground fails for two reasons. First, appellant has not established that his Social Security Record could not have been produced prior to issuance of the Opinion. Second, while appellant's Social Security Record reflects that appellant had no earned income during the 2021 tax year, it does not establish that appellant did not receive taxable retirement distributions or dividend income during that tax year because this type of income is generally not subject to Social Security taxes (but may be subject to income tax) and therefore it is *not* reflected on that record. (See 42 U.S.C. § 1382a(a)(1) [defining earned income].) Rather, as provided on the Social Security Administration's website, the Social Security Record only includes earned income, such as wages or net income from self-employment, that is subject to Social Security taxes.¹

In addition, appellant appears to contend that the Opinion's reliance on respondent's estimate that appellant's income exceeded the 2021 filing threshold based on third-party payor information returns is not legally sufficient. To find that there is insufficient evidence to justify the Opinion, OTA must find, after weighing the evidence in the record, including reasonable inferences from that evidence, that OTA clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) In the Opinion, OTA concluded that

¹ The Social Security Administration's Frequently Asked Questions, "What Income Is Included in Your Social Security Record?" provides the following: "Only earned income, your wages, or net income from self-employment is covered by Social Security . . . [.] [p]ension payments, annuities, and the interest or dividends from your savings and investments **are not earnings** for Social Security purposes . . . [.] and [y]ou may need to pay income tax, but you do not pay Social Security taxes." (<https://www.ssa.gov/benefits/retirement/planner/annuities.html>, emphasis in original [accessed August 7, 2026].)

respondent properly estimated that appellant's income exceeded the 2021 filing threshold based on third-party payor information returns that indicated appellant received dividend income of \$28 and taxable retirement distributions totaling \$90,737 during the 2021 tax year. However, as discussed above, appellant's Social Security Record does not establish that appellant did not receive taxable retirement distributions or dividend income during the 2021 tax year because such income is not considered earnings subject to Social Security taxes and therefore is not reflected on appellant's Social Security Record. Appellant has not otherwise established that this income is not taxable. Moreover, appellant has failed to show that OTA improperly concluded that the late-filing penalty should not be abated for reasonable cause.

Therefore, OTA finds that appellant has not established that there is newly discovered, material evidence to the appeal or that there is insufficient evidence to justify the Opinion. Thus, appellant's petition is denied.

Signed by:

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Hans Famularo
Administrative Law Judge

We concur:

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Steven Kim

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Steven Kim
Administrative Law Judge

Signed by:

Natasha Ralston

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Natasha Ralston
Administrative Law Judge

Date Issued: 8/13/2026