

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 230914418
M. PALITZ	)	
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Lisa Nelson, Attorney
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For Respondent:	Marguerite Mosnier, Attorney Supervisor
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A. VASSIGH, Administrative Law Judge: On August 29, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax of \$10,811, an accuracy-related penalty of \$2,162.20, and applicable interest for the 2015 tax year. In the Opinion, OTA held that appellant had not established error in FTB’s proposed assessment of additional tax, which was based on federal adjustments, and that appellant has not established that the accuracy-related penalty should be abated.

On September 29, 2025, appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048 on the basis that there is newly discovered evidence that is material to the case and/or an error in law¹ in the OTA appeals hearing or proceeding. Upon consideration of appellant’s petition, OTA concludes that the ground(s) 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

¹ Appellant’s petition asserts a rehearing is warranted based on “an error in law or fact.” OTA will address this as an error in law in the OTA appeal hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6).

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.)

Newly Discovered, Material Evidence

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.) 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 petition for rehearing 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.)

In his petition for rehearing, appellant states that a medical event left him "physically limited in what he can do on a day to day basis." Appellant additionally asserts that in 2021, "appellant's place of business was broken into and his original business records were amongst various boxes which were stolen." Appellant states that medical records and a police report in support of appellant's claim "can be provided." Appellant does not indicate that this is newly discovered evidence, and why documentation could not have been previously submitted to FTB and OTA. Appellant had the opportunity to provide evidence in the form of exhibits during the briefing process. (Cal. Code Regs. tit. 18, §§ 30214 and 30304(a).) Not only has appellant failed to explain why the medical documents and police reports were not provided prior to the issuance of OTA's Opinion, appellant has not provided such evidence at all. (Cal. Code Regs., tit. 18, § 30602(c)(5)(C); *Appeal of Le Beau*, 2018-OTA-061P.) Thus, appellant has not established that a rehearing should be granted on this ground.

Insufficient Evidence

To establish that there is insufficient evidence to justify the Opinion, appellant must show that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different conclusion. (Code Civ. Proc., § 657; *Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.) Evidence is considered in the light most favorable to the prevailing party (here, FTB). (*Appeals of Swat-Fame Inc., et al.*, *supra*.)

To the extent appellant argues that OTA's failure to consider the circumstances surrounding his failure to submit an Offer in Compromise (OIC) to the IRS resulted in insufficient evidence to justify the Opinion, appellant has not established that this is a ground for rehearing. The evidence in this case included copies of the FEDSTAR report and the federal account transcript showing the IRS adjustments and the resulting assessment. This evidence created a rebuttable presumption that the adjustments and proposed assessment are accurate, and appellant presented no evidence to rebut this presumption. (R&TC, § 18622(a).)

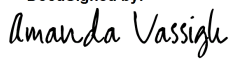
Error in Law

Appellant also requests a rehearing on the basis of "error in law." A rehearing may be granted where there is a procedural error in law in the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, 30604(a)(6); see Code Civ. Proc, § 657(7).) The panel must conclude that OTA committed an error as a matter of law. (See *Bruck v. Adams* (1968) 259 Cal.App.2d 585, 587.) Whether such an error has caused sufficient prejudice to justify the granting of a new hearing is a matter left to the discretion of the panel. (*Id.* at p. 588.) A procedural error in law does not include an incorrect application of the law (legal error) in OTA's decision. (*Appeal of Swat-Fame, Inc., et al.*, *supra*; Code Civ. Proc, § 657(7).)

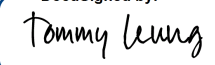
In this appeal, appellant has not raised any arguments suggesting that there was a procedural error in law in the hearing. Appellant's arguments regarding the OIC and regarding the evidence in the record do not establish any error in law. Appellant appears to be under the impression that an OIC with the IRS indicates that the IRS adjustments were wrong. An OIC would only address the potential for reduced payment to the IRS, in satisfaction of the amount owed. Therefore, it would not affect the validity of the underlying adjustments upon which FTB's proposed assessment is based. OTA correctly concluded in the Opinion that the submission of an OIC to the IRS would not be material to a determination of whether appellant showed error in the proposed assessment and penalty in this appeal.

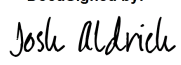
Since appellant does not identify any error he believes occurred during the course of the appeal proceedings, appellant has not established that a rehearing should be granted on this ground.

Accordingly, this panel finds that appellant have not established that a ground exists for a rehearing pursuant to Regulation section 30604(a). Appellant's petition for rehearing is denied.

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Amanda Vassigh
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Josh Aldrich
Administrative Law Judge

Date Issued: 9/2/2026