

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042570
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ADOLFO REYES DELGADO) Date Issued: March 29, 2019
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OPINION

Representing the Parties:

For Appellant: Adolfo Reyes Delgado

For Respondent: Pamela Bergin, Tax Counsel III

J. ANGEJA, Administrative Law Judge: On December 20, 2018, the Office of Tax Appeals (OTA) issued a decision sustaining respondent California Department of Tax and Fee Administration’s (CDTFA) denial of appellant’s petition for redetermination of CDTFA’s Notice of Determination, which assessed a liability under the California Cigarette and Tobacco Products Tax Law consisting of a \$32,195 tax liability, an \$8,048.75 fraud penalty, an \$8,049 failure-to-secure-license penalty, a \$3,219.50 penalty for failure to file tax returns, and a \$950 collection cost recovery fee, for the period April 1, 2013 through April 30, 2013.

By letter dated January 12, 2019, Adolfo Reyes Delgado (appellant) petitioned for rehearing of this matter. Upon consideration of the petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing, as required by *Appeal of Sjofinar Do*, 2018-OTA-002P,¹ and California Code of Regulations, title 18, section 30604, subdivisions (a)-(e).

A rehearing may be granted where one of the following grounds exists and the rights of the complaining party are materially affected: (1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; (2) accident or surprise that occurred during the proceedings and prior to the issuance of the written opinion, which ordinary

¹ Opinions of the OTA are generally available on its website: <www.ota.ca.gov/opinions>.

prudence could not have guarded against; (3) newly discovered, relevant evidence, which the party could not, with reasonable diligence, have discovered and produced prior to the issuance of the written opinion; (4) insufficient evidence to justify the written opinion, or the opinion is contrary to law; or (5) an error in law. (*Appeal of Sjofinar Do, supra*; Cal. Code Regs., tit. 18, § 30604(a)-(e).)

In his petition for rehearing, appellant does not set forth specific grounds for a new hearing, but repeats the same arguments that he presented to OTA during the initial appeal (i.e., he asserts that the criminal court’s order of restitution satisfies any remaining civil liability, and he argues that the Los Angeles County Sheriff’s recount of the number of unstamped cigarettes is incorrect). OTA has already addressed these arguments. In its December 20, 2018 opinion, OTA rejected the same contentions and sustained CDTFA’s actions.

Appellant has not demonstrated any irregularity in OTA’s proceedings, offered new evidence which he could not, with reasonable diligence, have discovered and produced prior to the decision of his appeal, or established that the evidence was insufficient to justify OTA’s decision. Furthermore, appellant has not demonstrated any error in law. Accordingly, we find appellant has not shown good cause for a new hearing as is required by the authorities referenced above.

For the foregoing reasons, appellant’s petition is hereby denied.

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Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Michael Geary
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Michael F. Geary
Administrative Law Judge