

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18083553
TRISTEN AVIATION GROUP, LLC) CDTFA Case ID: 359778
) CDTFA Account No. 84-079720
)
)
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Richard Levy, C.P.A.
Alan Abrams, Attorney

For Respondent: Joshua A. Aldrich, Tax Counsel

On July 25, 2019, the Office of Tax Appeals (OTA) issued an opinion sustaining respondent California Department of Tax and Fee Administration’s (CDTFA) denial of Tristen Aviation Group, LLC’s (appellant) petition for redetermination of CDTFA’s Notice of Determination, which proposed a liability under the California Sales and Use Tax Law consisting of a tax liability of \$109,314, plus applicable interest, based on CDTFA’s disallowance of appellant’s claimed exemption from use on its purchase of a 1982 Cessna Citation II 550 aircraft for \$1,325,000.

By letter dated August 26, 2019, appellant timely 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 prudence could not have guarded against; (3) newly discovered, relevant evidence, which the

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

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 its petition for rehearing, appellant raises two arguments. First, appellant asserts that an irregularity in the appeal process occurred because on June 3, 2019, CDTFA provided two new exhibits (N and O), that CDTFA withheld until June 3, 2019, thereby prejudicing appellant's appeal. Second, appellant asserts that since OTA factually determined that appellant leased the aircraft to third parties during the test period, OTA has made an error of law by allowing use tax to be measured by the entire purchase price of the aircraft, rather than a measure consisting of the fair rental value of the aircraft. (See Rev. & Tax. Code, § 6244, subd. (d); Cal. Code Regs., tit. 18, § 1661, subd. (b).)²

Regarding the alleged procedural irregularity, as we explained both at the hearing, as well as in our June 13, 2019, email to the parties prior to the hearing, CDTFA submitted Exhibits N and O by the mutually-agreed deadline of June 3, 2019, and OTA and CDTFA received appellant's objections to those Exhibits via email on June 12, 2019, all prior to the hearing in this matter. In our June 13, 2019 email and on the record at the hearing, we explained that we had considered the timely Exhibits, as well as appellant's objections thereto, and we overruled appellant's objections. We admitted both Exhibits N and O, as well as appellant's objections (Exhibit 14), into the evidentiary record. Accordingly, we find no procedural irregularity in the admission into evidence of CDTFA's timely Exhibits N and O, as well as appellant's objections thereto.

Regarding the alleged error of law, we begin by noting that for all of the disputed transactions at issue herein, appellant transferred temporary possession and control of the aircraft to third parties, which qualifies as a lease for California Sales and Use Tax purposes. (See Cal. Code Regs., tit. 18, § 1660, subd. (a).) Also, the aircraft qualifies as mobile transportation equipment. (Cal. Code Regs., tit. 18, § 1661, subd. (a)(1).)

² Contrary to appellant's primary argument on appeal, this assertion does not aver that appellant's use of the aircraft was exempt because the aircraft was purchased for use and was used in common carrier operations. (See (Rev. & Tax. Code, §§ 6366 subd. (a), 6366.1 subd. (a).) Appellant's assertion addresses the applicable measure of tax on connection with leased mobile transportation equipment. (See Cal. Code Regs., tit. 18, § 1661, subd. (b).)

Revenue and Taxation Code section 6244, subdivision (d) provides that when the use of such equipment is limited to leasing the equipment, the purchaser may elect to pay the use tax measured by the fair rental value, if the election is made on or before the due date of a return for the period in which the equipment is first leased. The election must be made by reporting tax measured by the fair rental value on the return for that period, or in such other manner as CDTFA may prescribe. Tax must thereafter be paid with the return for each reporting period, measured by the fair rental value, whether the equipment is within or without the state. The election may not be revoked with respect to the equipment as to which it is made. (Rev. & Tax. Code, § 6244, subd. (d).)

Here, the undisputed facts establish that appellant’s use of the aircraft was not limited to leasing, and in fact appellant used the aircraft for approximately 82 hours before the first lease. In addition, there is no evidence that appellant made a timely election to report tax measured by the fair rental value of the aircraft by reporting tax on rental receipts in the first period in which it leased the aircraft.³ Accordingly, appellant has not established that the proper measure of tax was the fair rental value of appellant’s leases of the aircraft, and there is no 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.

DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:
Linda C. Cheng
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Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 12/24/2019

³ We also note that if appellant had timely elected to pay tax measured by the fair rental value of the aircraft (i.e., appellant’s lease receipts), such receipts would continue to be taxable (Rev. & Tax. Code, § 6244, subd. (d)), and in the aggregate, could exceed the purchased price of the aircraft. In other words, appellant’s argument, if successful, could result in an even larger liability.