

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 18043013
<b>KARIHAN FILIPINO FOODS</b>	)	CDTFA Acct. No. 101-349543
<b>CORPORATION</b>	)	CDTFA Case ID: 867151
	)	
	)	
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:	Alberto L. Prado, President
For Respondent:	Lisa Renati Hearing Representative

On August 27, 2019, the Office of Tax Appeals (OTA) issued an opinion 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 proposed a liability under the California Sales and Use Tax Law consisting of a tax liability of \$169,293.28 of additional tax, a fraud penalty of \$42,323.51, and applicable interest, for the period January 1, 2010, through September 30, 2013.

By letter received September 27, 2019, Karihan Filipino Foods Corporation (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 Do*, 2018-OTA-002P<sup>1</sup> and California Code of Regulations, title 18, section 30604(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

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<sup>1</sup> Opinions of the OTA are generally available on its website: < [www.ota.ca.gov/opinions](http://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 Do, supra*; Cal. Code Regs., tit. 18, § 30604(a)-(e).)

In its petition for rehearing, appellant asserts that during the audit, appellant failed to allow CDTFA to audit appellant’s actual daily sales, but instead provided records from all of appellant’s business operations which included nontaxable sales for resale to other restaurants. Appellant asserts that its failure to allow CDTFA to audit appellant’s actual daily sales constitutes an “irregularity in the audit proceeding” that may have affected the outcome of the audit and our written opinion in this matter, which warrants a rehearing. As relevant here, our August 27, 2019 opinion rejected the contention regarding alleged sales for resale, and sustained CDTFA’s actions.

Appellant has not demonstrated any irregularity in OTA’s proceedings (i.e., alleged “audit irregularities” are not OTA proceedings), offered new evidence which could not, with reasonable diligence, have been discovered and produced prior to the decision of its 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.

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

We concur:

DocuSigned by:  
*Linda C. Cheng*  
8E585BFAC08946D  
Linda C. Cheng  
Administrative Law Judge

DocuSigned by:  
*Nguyen Dang*  
4D465973FB44469...  
Nguyen Dang  
Administrative Law Judge

Date Issued: 1/22/2020