OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18124119
	) CDTFA Case No. 18124119
MEHDI ASGARINEJAD	) CDTFA Acct. No. SR EA 097-137895
dba Net Micro	)
	)
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Cruz Saavedra, Attorney

For Respondent: Jarrett Noble, Tax Counsel III

J. LAMBERT, Administrative Law Judge: On September 12, 2019, the Office of Tax Appeals (OTA) issued an opinion in which it sustained a decision issued by respondent California Department of Tax and Fee Administration (CDTFA), on a petition for redetermination filed by Mehdi Asgarinejad (appellant). CDTFA's decision denied appellant's petition for redetermination of CDTFA's Notice of Determination, which proposed a tax liability of $584,213, plus accrued interest, and penalties totaling $204,474.59[1] for the period July 1, 2000, through December 31, 2002. Appellant filed a timely petition for rehearing (PFR). We conclude that the grounds set forth therein do not establish a basis for granting a rehearing.

OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to 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 that occurred during the proceedings. (Cal. Code Regs, tit. 18, § 30604; *Appeal of Do* (2018-OTA-002P).)

[1] The penalties include a 25-percent fraud penalty of $146,053.26 and a failure-to-file penalty of $58,421.33. Appellant did not dispute these penalties.

In his PFR, appellant only disputes the tax liability with regard to computers purchased from Abacus Computer Corporation (Abacus), and not American Sunrex Corporation (Sunrex).[2] Additionally, appellant does not dispute our opinion with regard to the discussion of the "true object test" under California Code of Regulations, title 18, section 1501. Instead, appellant contends that he should not be liable for sales tax on the computers he purchased from Abacus because he did not issue a resale certificate to Abacus. As a result, appellant argues that Abacus was the retailer of the computers sold to appellant and, therefore, Abacus should be held liable for the sales tax.

Furthermore, appellant contends that, by failing to issue a resale certificate to Abacus, he did not represent to Abacus that he was purchasing the computers for the purpose of reselling them. As a result, appellant argues that he should not be liable for use tax as applicable under Revenue and Taxation Code (R&TC) section 6244, subdivision (a), which provides for the imposition of use tax when a purchaser issues a resale certificate or purchases property for the purpose of reselling it and makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. Based on the above, appellant contends that his PFR should be granted on the grounds that the OTA opinion is in error as a matter of law.

California imposes a sales tax on a retailer's retail sales in this state of tangible personal property, measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (Rev. & Tax. Code, § 6051.) Here, the original opinion issued by OTA made a factual determination that appellant sold the computers at retail and was, therefore, liable for the sales tax. Specifically, the opinion stated that, "exclusive of whether resale certificates were issued, appellant is liable for the sales tax because he made retail sales to his students." Appellant does not dispute our conclusion. Accordingly, the opinion correctly applied the law in determining that appellant was liable for sales tax as a retailer, pursuant to R&TC section 6051.

Turning to appellant's contentions, we note that a "retail sale" is expressly defined in the law as a sale of tangible personal property for any purpose other than resale in the regular course of business. (Rev. & Tax. Code, § 6007(a)(1).) The presence or absence of a resale certificate

[2] At issue in the original appeal was whether appellant owed tax on the computers from both Abacus and Sunrex.

does not determine whether a sale is a retail sale. Instead, a resale certificate merely relieves a seller from the burden of establishing that a sale is not subject to tax as a retail sale, pursuant to R&TC section 6091. As such, the fact that appellant did not issue a resale certificate to Abacus does not overcome the fact that appellant, as a retailer, did, in fact, resell the computers. Abacus' sales to appellant were for resale and, therefore, excluded from tax under R&TC section 6007, subdivision (a)(1). Therefore, with or without a resale certificate, the sales by Abacus to appellant were, in fact, nontaxable sales for resale and, as a result, Abacus is not liable for sales tax on those transactions.

Based on the foregoing, appellant has not demonstrated any error in law and has not alleged or established any other basis for granting a rehearing. Thus, we find appellant has not shown good cause for a new hearing as required by the authorities referenced above, and appellant's petition is hereby denied.

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Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

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

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

Date Issued: 1/10/2020