OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011990
	) CDTFA Acct. No. 84-161186
J. STEWARD	) CDTFA Case ID: 661880
	)
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: J. Steward

For Respondent: Kevin B. Smith, Tax Counsel III

J. ANGEJA, Administrative Law Judge: On November 13, 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 J. Steward (appellant). CDTFA's decision denied appellant's petition for redetermination of CDTFA's Notice of Determination, which proposed a tax liability of $8,838.75 tax and applicable interest in connection with appellant's purchase and use of a 2010 recreational vehicle (RV). During the hearing in this matter, CDTFA conceded that appellant is entitled to a $4,875.22 credit against the proposed liability for sales tax paid to the State of Arizona on the RV, pursuant to Revenue and Taxation Code (R&TC) section 6406. OTA's opinion included the allowance for that credit. 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.)

In his PFR, appellant asserts that OTA's opinion is contrary to law because it "directly contradicts the Song-Beverly Act as it applies to implied and express warranties (California Lemon Law), [because OTA] in its opinion dated November 13, 2019 states that this is a warranty transaction (factual findings section 7), not a separate transaction." Appellant further asserts CDTFA's actions during this appeal have denied appellant's due process rights, including appellant's ability to seek a refund from the dealer and/or manufacturer. Finally, appellant asserts that OTA failed to rule on the alleged "irregularities in the odometer readings" of the vehicle at issue here, and that the repair orders do not support CDTFA's claims that the RV was in California for a continuous 30-day time span.

We first note that appellant raised each of these arguments in his briefs and during the hearing in this matter, which OTA rejected in its November 13, 2019 opinion. On this basis alone, we conclude that a rehearing is not warranted.

Next, we reject appellant's assertion that our opinion is contrary to law, because the transaction at issue here is appellant's purchase and use of the 2010 RV, not the 2013 replacement vehicle provided by the manufacturer. In other words, the 2013 warranty-replacement vehicle is part of the 2010 RV purchase, but it is the 2010 RV purchase that is the transaction at issue, not its replacement. And, for the reasons explained in our opinion, use tax applies to appellant's purchase and use in this state of the 2010 RV, even if it was subsequently replaced pursuant to warranty.

We also reject appellant's assertion that CDTFA's alleged actions denied appellant's due process rights and his ability to pursue a refund from the dealer or manufacturer, because OTA lacks jurisdiction over such alleged due process violations. (See Cal. Code Regs., tit. 18, § 30104(d).)[1]

Finally, appellant misconstrues the law regarding the above-referenced 30-day repair period. The dates on the repair orders establish that the RV was in this state for an aggregate amount of at least 115 days. As explained in our opinion, we concluded that tax applies to

[1] In any event, we are aware of no potential refund claim against the manufacturer or dealer, given that appellant paid no tax to the dealer or manufacturer in connection with the purchase of the 2010 RV, the manufacturer fully replaced the 2010 RV at no cost to appellant, and the *manufacturer* paid sales tax to this state in connection with the purchase of the 2013 replacement RV, which has no effect on the tax applicable to the purchase and use of the 2010 RV in this state.

appellant's purchase and use of the RV because it was used in this state for at least 115 days, which exceeded the 30-day safe-harbor exclusion. (Cal. Code Regs., tit. 18, § 1620(b)(5)(A)1.) Whether any of those days were continuous has no effect on our conclusion.

For the foregoing reasons, we conclude that 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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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:
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Richard I. Tay
Administrative Law Judge

Date Issued: 3/11/2020