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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18124074
H. ERAGA	) CDTFA Case ID: 940710
	)
	)
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Hassen Mohsen, Representative

For Respondent: Jason Parker,
Chief of Headquarters Operations

J. ALDRICH, Administrative Law Judge: On June 18, 2020, the Office of Tax Appeals (OTA) issued a written opinion (Opinion) sustaining respondent California Department of Tax and Fee Administration's (CDTFA) denial of H. Eraga's (appellant) petition for redetermination of CDTFA's Notice of Determination (NOD). The NOD is for $41,697.76 in tax, plus interest, for the period of April 1, 2012, through December 31, 2014 (audit period). CDTFA's decision concluded that appellant failed to establish that adjustments were warranted to the audited understatement of taxable sales.

By letters dated June 22, 2020, and August 10, 2020, appellant timely filed a petition for rehearing (PFR). We interpret her PFR to contend that there was insufficient evidence to support the Opinion or the Opinion is contrary to law.[1] (Cal. Code Regs., tit. 18, § 30604(d).) With respect to this ground for a rehearing, appellant contends that OTA's Opinion erred in failing to consider her video evidence, which we discuss below. We conclude that the grounds set forth in her PFR do not establish a basis for granting a hearing, as required by *Appeal of Do*, 2018-OTA-002P, and California Code of Regulations, title 18, section 30604(a)-(e).

[1] Appellant does not expressly state which of the five grounds she is asserting, rather she contends that she was treated unfairly because her evidence was dismissed, and as such did not receive a fair review of the case. Appellant makes other assertions which we do not address because they are unclear or without basis.

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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 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).)

Here, good cause for a new hearing may be shown where there was insufficient evidence to justify the Opinion or the Opinion was contrary to law, such that the substantial rights of the complaining party are materially affected. (Cal. Code Regs., tit. 18, § 30604(d); *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) A ground for rehearing is material if it is likely to produce a different result. (*Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728; *Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764; *Trovato v. Beckman Coulter, Inc.* (2011) 192 Cal.App.4th 319.)

In order to find that there is insufficient evidence to justify the Opinion or the Opinion is against (or contrary to) law, OTA must determine that the Opinion is "unsupported by any substantial evidence." (*Appeal of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) This requires a review of the Opinion in a manner most favorable to the prevailing party, and an indulging of all legitimate and reasonable inference to uphold the opinion if possible. (*Sanchez-Corea v. Bank of America* (1985) 28 Cal.3d 892, 907.) The question before us on a PFR does not involve examining the quality or nature of the reasoning behind the Opinion, but whether that Opinion is valid according to the law. (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976.)

Appellant argues that the evidence she presented was clear and substantial. As discussed in the Opinion, appellant's only piece of evidence was a video, approximately four minutes in duration. Appellant used the video to support her contention that unassociated individuals made purchases on her Pitco Wholesale (Pitco) account. Furthermore, appellant continues to assert that the observation of CDTFA's auditor, regarding her ample cigarette and tobacco products (CTP) inventory, was false. Appellant "believes that she was treated unfairly by [dismissing] the

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evidence provided and did not receive a review of the case." In the Opinion, we rejected the same contentions and sustained CDTFA's actions. Appellant's dissatisfaction with the Opinion and attempt to reargue the same issues do not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.)

The Opinion is supported by substantial evidence, which includes but is not limited to the following: the audit workpapers, which documented the auditor's observation regarding CTP inventory; the Pitco sales report, which documented purchases made under appellant's account number; and the 1Q14 compilation of total purchases of taxable merchandise using the Pitco sales report together with records from appellant's other vendors.

Based on the foregoing, we find that the Opinion was supported by substantial evidence contained in CDTFA's audit workpapers. Furthermore, there is no argument or basis to find that the law was applied incorrectly. Since we determined that CDTFA's determination was reasonable and rational, appellant had the burden to establish that adjustments to the audited understatement were warranted. (*Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 616.) In sum, we find that appellant failed to establish a ground for rehearing and appellant's petition for rehearing is denied.

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

DocuSigned by:
Andrew J. Kwee
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Andrew J. Kwee
Administrative Law Judge

Date Issued: 11/18/2020