OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **B. ALZANDANI** **dba FUNKY TOWN APPAREL**	OTA Case No. 19044593 CDTFA Case ID 151-107

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: B. Alzandani

For Respondent: Jason Parker, Chief of Headquarters Operations

N. RALSTON, Administrative Law Judge: On May 18, 2021, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA). CDTFA's decision partially denied a petition for redetermination filed by B. Alzandani (appellant) of a Notice of Determination (NOD) dated August 8, 2017. The NOD is for $62,214.92 in tax, and applicable interest, for the period January 1, 2013, through December 31, 2015 (liability period).

On June 16, 2021, appellant timely petitioned for a rehearing with OTA on the basis that OTA's written Opinion was contrary to law.[1] We conclude that the grounds set forth in this petition do not constitute a basis for a new hearing.

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

[1] Appellant's Petition for Rehearing states that OTA committed an "error in law," however, by definition an "error in law" occur at the appeals hearing or proceedings and is other than a legal error in the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(6), (b). As appellant's petition refers to what appellant claims is an erroneous determination made by OTA in its Opinion, we understand that appellant intended to claim that OTA's Opinion was contrary to law.

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; (5) the Opinion is contrary to law; or (6) an error in law that occurred during the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.)[2]

As relevant here, a new hearing may be granted where 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 Wilson Development, Inc*. (94-SBE-007) 1994 WL 580654.) The question of whether the opinion is contrary to law is not one which involves a weighing of the evidence, but instead, requires a finding that the opinion is "unsupported by any substantial evidence"; that is, the record would justify a directed verdict against the prevailing party. *(Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906.) This requires a review of the opinion in a manner most favorable to the prevailing party, and an indulging of all legitimate and reasonable inferences to uphold the opinion if possible. (*Id*. at p. 907.) The question before us on a petition for rehearing does not involve examining the quality or nature of the reasoning behind OTA's 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 his petition should be granted based on appellant's contention that OTA incorrectly determined that appellant was the retailer when appellant was involuntarily living outside of the United States during the liability period. In support of these contentions, appellant provides a letter from appellant's bookkeeper and tax preparer who confirms that appellant is the owner of the business and was outside of the country from March 1, 2012, until February 1, 2016. The bookkeeper notes that during this period, the store manager provided the bookkeeper with the monthly sales figures that the bookkeeper then used to prepare sales and use tax returns.

CDTFA contends that there is no provision that shifts the sales tax liability to an employee when the owner of the business is out of the country. The tax liability belongs to the retailer (i.e., the holder of the seller's permit), which in this case is appellant, no matter who is running the business when the sales are made. (R&TC, § 6066.)

[2] As provided in *Appeal of Wilson Development, Inc., supra*, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable caselaw as relevant guidance in determining whether to grant a new hearing.

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. (R&TC §§ 6012, 6051.) Appellant does not dispute that he is the owner of the sole proprietorship and the holder of the seller's permit under which the sole proprietorship operated. Appellant only argues that he was out of the country during the liability period. While the store may have been managed by another person during the liability period, appellant, as the store owner and holder of the seller's permit, is considered the retailer. As such, even if we accept appellant's contention that he was outside the country during the liability period as true, appellant would still be responsible for the payment of sales tax. (*Appeal of Pasatiempo Investments*, 2020-OTA-069P; R&TC §§ 6051, 6066).

Based on the foregoing, appellant has not demonstrated the Opinion was contrary to law and has not alleged or established any other basis for granting a rehearing. Thus, we find appellant has not established the requirements for a new hearing as provided by the authorities referenced above, and appellant's petition is hereby denied.

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 9/28/2021