OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 19024324) CDTFA Case IDs: 566514, 852214, 916749
F. MEHRJERDI	)
	)
dba Sebastopol Fast Gas	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Mitchell Stradford, Representative James Dumler, Representative
For Respondent:	Chad T. Bacchus, Tax Counsel IV Cary Huxsoll, Tax Counsel IV Jason Parker, Chief of Headquarters Ops.

K. LONG, Administrative Law Judge: On October 7, 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 denied a petition for redetermination (PFR) filed by F. Mehrjerdi dba Sebastopol Fast Gas (appellant) of two Notices of Determination (NODs): the first, dated February 4, 2011, for tax of $237,449.23, plus applicable interest, and a negligence penalty of $23,744.94, for the period March 22, 2007, through September 30, 2009; and the second, dated October 29, 2014, for tax of $70,808.09, plus applicable interest, and a negligence penalty of $7,080.79, for the period October 1, 2009, through June 30, 2010.

On November 8, 2021, appellant timely petitioned for a rehearing with OTA on the basis that there is insufficient evidence to justify OTA's Opinion or OTA's Opinion is contrary to law. Appellant raises the same contentions in her PFR as she did in the underlying appeal. Specifically, appellant contends that CDTFA improperly issued NODs to her following the audit of her business, Sebastopol Fast Gas. Appellant asserts that Sebastopol Fast Gas was a partnership and not a sole proprietorship. Appellant argues that because CDTFA issued the NODs to her as a sole proprietor, and not a partnership, then they are void. Appellant argues that OTA disregarded evidence which, according to appellant, shows that Sebastopol Fast Gas was a

partnership, including: appellant and her husband's joint federal income tax return; financial statements; a bank statement; and the auditor's findings from the examination of the fuel purchases. Appellant also argues that OTA misapplied the law with respect to California Code of Regulations Title 18, (Regulation) section 1699(f)(2).[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 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.)

The question of whether there is insufficient evidence to justify the written opinion, or 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 (here, CDTFA), and an indulging of all legitimate and reasonable inferences to uphold the opinion to the extent possible. (*Id.* at p.907.) The question before us on a PFR 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.) In addition, insufficiency of the evidence as a ground for a rehearing means the level of insufficiency that causes a trier of fact, when weighing conflicting evidence, to thereafter conclude that facts in support of the decision weigh less than those which are in opposition. (*Bray v. Rosen* (1959) 167 Cal.App.2d 680, 683.)

[1] Appellant also contends, for the first time, that she does not stipulate to any "amount that has been asserted to be owed." During the appeal, appellant did not provide any evidence or argument to dispute the tax liability, as calculated by CDTFA. Additionally, appellant confirmed at the oral hearing on August 26, 2021, that she conceded the measure was calculated correctly. Appellant has not shown that any of the grounds for rehearing as enumerated in Regulation section 30604 apply to CDTFA's calculation of the audit liability. Accordingly, we do not discuss the amount of the liability further.

Regarding appellant's contention that the NOD was improperly issued, OTA has already addressed and rejected appellant's arguments in the Opinion. Additionally, we note that OTA specifically analyzed the evidence that appellant asserts we disregarded. For example, the Opinion discusses auditor notes contained within CDTFA's audit workpapers, which we accepted as evidence that a partnership existed. We also found that there was no dispute that Sebastopol Fast Gas shared a bank account with appellant's other business, Kenwood Food & Gas, which was a partnership. However, we found that other evidence, including appellant and her husband's joint federal income tax return, indicated that appellant's business was a sole proprietorship. Appellant's dissatisfaction with the Opinion and attempt to reargue the same issue does not constitute grounds for a rehearing. (*Appeal of Smith*, 2018-OTA-154P.)

Next, we consider appellant's assertions as to Regulation section 1699(f)(2). Appellant argues that Regulation section 1699(f)(2) does not apply because there was no transfer of Sebastopol Fast Gas from appellant to the partnership. Instead, appellant asserts that Sebastopol Fast Gas was always a partnership. As discussed in the Opinion, and above, we examined the evidence and reached a different conclusion. We concluded that Sebastopol Fast Gas was a sole proprietorship owned by appellant during the liability period. As such, appellant is liable for the tax.

However, during the appeal, OTA found that appellant's husband operated Sebastopol Fast Gas. OTA also found there was no dispute that appellant held a different job during the audit period. These facts do not appear to be in dispute. Indeed, appellant's argument that the business was a partnership is largely based on her husband's operation of Sebastopol Fast Gas. Appellant requested that her seller's permit be closed as of June 30, 2010, after the audit period. Thereafter, Sebastopol Fast Gas was added (or transferred) as a sublocation to the seller's permit of Kenwood Food & Gas, a partnership, at appellant's request. Nevertheless, appellant held the seller's permit for Sebastopol Fast Gas during the audit period and is therefore liable for the tax. This is consistent with Regulation section 1699(f)(2), which states that a person holding a seller's permit will be held liable for any taxes, interest, and penalties incurred, through the date on which CDTFA is notified to cancel the permit, by any other person who, with the permit holder's actual or constructive knowledge, uses the permit in any way. (Cal. Code Regs., tit. 18, § 1699, subd. (f)(2); see also *Appeal of Pasatiempo Investments, Ltd.*, 2020-OTA-069P.) Based

on the foregoing, appellant has not shown that there is insufficient evidence to justify the Opinion or that the Opinion is contrary to law.

Accordingly, we find that appellant failed to establish that a rehearing is warranted, and therefore the PFR is denied.

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Keith T. Long
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 3/15/2022