

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

DESIGN HOME CENTER, INC.

) OTA Case No. 20066251
) CDTFA Case ID: 089-008
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:

Carlos Chait, Representative

For Respondent:

Jason Parker, Chief of Headquarters Ops.

K. LONG, Administrative Law Judge: On February 7, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision by respondent California Department of Tax and Fee Administration (CDTFA). CDTFA’s decision denied a petition for redetermination filed by Design Home Center (appellant) of a Notice of Determination (NOD) dated October 12, 2017. The NOD is for \$93,456.58 in tax, plus applicable interest, and a negligence penalty of \$9,345.69, for the period July 1, 2013, through June 30, 2016 (liability period).

Appellant timely petitioned for a rehearing under California Code of Regulations, title 18, (Regulation) section 30604 with OTA claiming that OTA failed to consider relevant evidence prior to issuing the Opinion. OTA concludes that the ground set forth in this petition does not constitute a basis for granting 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.)

Appellant's petition for rehearing fails to identify any of these grounds for rehearing. Instead, appellant focuses on whether OTA considered relevant evidence. Appellant also reiterates its contentions regarding the accuracy of the audit.¹

Here, OTA carefully considered the evidence that appellant provided prior to the hearing and afforded it the weight it deserves, considering that it conflicted with contemporary tax documents provided by CDTFA. (Cal. Code. Regs., tit. 18, § 30213.5(f)(4).) For example, appellant provided a sales report for the period July 2013 through June 2016. However, appellant did not provide any further evidence to show the report's accuracy. Moreover, as stated in the opinion, the sales recorded on appellant's sales report for the period July 2013 through June 2016 are less than the sales reported on appellant's federal tax returns for the tax years 2013, 2014, and 2015, and less than the credit card sales reported in appellant's form 1099-K information. As such, OTA afforded little weight to appellant's sales reports.

OTA also considered the audit working papers (a portion of which were submitted by appellant as an exhibit).² OTA found that CDTFA met its minimal burden of showing that the audit method was both reasonable and rational. (See *Appeal of Talavera*, 2020-OTA-022P.) OTA rejected appellant's arguments regarding the markup method because the audit was not based on a markup; the audit was based on the difference between the amounts reported on appellant's federal income tax returns and the amounts reported on appellant's sales and use tax returns. OTA also rejected appellant's contentions that credit card sale information recorded on form 1099-K was incorrect because appellant did not provide any evidence that its credit card sales were from anything other than the sales of tangible personal property. Appellant's dissatisfaction with the Opinion and attempt to reargue the same issues a second time does not constitute grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.)


Finally, appellant provided additional evidence with its petition for rehearing. A rehearing may be granted if there is newly discovered, relevant evidence, which the filing party

¹ Appellant also questions OTA's integrity and suggests that the Opinion was prepared by CDTFA. However, OTA is an independent and neutral agency. OTA's Opinion was prepared based on the briefing and exhibits provided prior to the hearing, as well as the arguments and testimony given at the hearing.

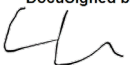
² CDTFA provided a complete copy of the audit working papers and revised audit working papers as an exhibit prior to the appeal hearing.

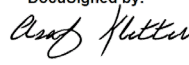
could not have reasonably discovered and provided prior to the issuance of the written Opinion. (Cal. Code Regs., tit. 18 § 30604(a)(3).) However, that is not the case here. Appellant provided email correspondence with the auditor, federal income tax returns, and profit and loss statements with its petition for rehearing.³ Appellant provided no explanation for why this information, to the extent newly submitted, was not previously provided. In absence of evidence or argument to the contrary, OTA finds that these documents must have been available prior to this appeal based on the dates contained therein or the years to which they apply. Thus, this evidence could have reasonably been discovered and provided prior to OTA’s issuance of its February 7, 2022 Opinion. Consequently, OTA finds that there are no grounds for a rehearing.

In summary, OTA denies appellant’s petition for rehearing.

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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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Asaf Kletter
Administrative Law Judge

Date Issued: 7/25/2022

³ OTA notes that many of these documents were previously submitted during the audit and appeals processes. However, appellant provided its 2013 profit and loss statement and its 2016 federal income tax return dated February 25, 2020. Based on the dates alone, these documents must have been available prior to the December 2021 appeals hearing. With respect to the profit and loss statement, appellant did not provide any supporting documentation. Thus, the outcome of the appeal would be unchanged because there is no way to verify the statement’s accuracy.