

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 22019386
C. BEATTY)	
)	
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	C. Beatty
For Respondent:	Christopher T. Tuttle, Tax Counsel III

T. LEUNG, Administrative Law Judge: On October 11, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining the actions of the Franchise Tax Board (respondent) denying appellant's 2015, 2016, and 2019 claims for refund.

In the Opinion, the panel held that: (1) appellant's refund claim for the 2015 taxable year was untimely; (2) respondent's actions denying appellant's 2015, 2016, and 2019 refund claims and recovering erroneous refunds it issued for the 2016 and 2019 taxable years were proper; and (3) OTA did not have jurisdiction to consider appellant's appeal of the frivolous amended return penalties.

Appellant filed this petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19334. Upon consideration of the petition, this panel concludes that appellant has not established a basis for rehearing.

A rehearing may be granted when 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.) This petition is grounded on numbers four and five, insufficiency of evidence and contrary to law, respectively.

To find that there is an insufficiency of evidence to justify the Opinion, this panel must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the Opinion should have reached a different conclusion. (Code Civ. Proc., § 657; *Bray v. Rosen* (1959) 167 Cal.App.2d 680, 683-684 (*Bray*)). To find that the Opinion is against (or contrary to) law, this panel must determine whether the Opinion is “unsupported by any substantial evidence.” (*Appeal of Graham and Smith*, 2018-OTA-154P, citing *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*)). This requires a review of the Opinion to indulge “in all legitimate and reasonable inferences” to uphold the Opinion. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can or cannot be valid according to the law. (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976.) In contrary to law review, this panel is required to consider the evidence in the light most favorable to the prevailing party (here, respondent). (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907; *Appeals of Swat-Fame Inc. et al.*, 2020-OTA 045P.)

Here, appellant repeats many of the arguments made in the original appeal. For example, appellant continues to contend that she received nontaxable pay and nontaxable wages. In addition, appellant asks this panel to revisit the frivolous submission penalty, which OTA has no jurisdiction over because it has not yet been paid. (See R&TC, §§ 19179, 19180(b), 19322.) Appellant also raises violations of various federal laws, such as extortion, which are not applicable to respondent. Such arguments are not persuasive and do not satisfy the *Bray* and *Sanchez-Corea* standards.


In light of the above, appellant has not shown that there is insufficient evidence to support the Opinion or that the Opinion was contrary to law. Therefore, a rehearing on the grounds of insufficiency of evidence to support the Opinion or that the Opinion is contrary to law is not warranted.

Hence, appellant has not satisfied the requirements for granting a rehearing and, as such, the petition is denied.

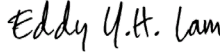
DocuSigned by:

0C90542BE88D4E7

Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:

48745BB806914B4

Josh Aldrich
Administrative Law Judge

DocuSigned by:

1EAB8BDA3324477

Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 2/6/2023