OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 21088424
	) CDTFA Case ID 2-247-670
HEAVENLY COUTURE, INC. [1]	)
	)
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: James Han, CPA

For Respondent: Mari Guzman, Tax Counsel III
Chad T. Bacchus, Tax Counsel IV
Jason Parker, Chief of Headquarters Ops.

A. KWEE, Administrative Law Judge: On October 24, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).[2] CDTFA's decision denied J. Ha's (appellant's) timely claim for refund of $282,791.23, which was applied to fully satisfy the unpaid taxes, interest, penalties, and fees incurred by Heavenly Couture, Inc. (Heavenly). It is undisputed that Heavenly incurred $282,791.23 in unpaid liabilities to CDTFA.[3] Heavenly terminated its business and is not a party to this appeal.

On November 21, 2022, appellant timely petitioned for a rehearing on the basis that there is insufficient evidence to support the Opinion or that the Opinion is contrary to law. OTA

[1] Both parties agree that the appellant in this appeal is J. Ha, an individual, not Heavenly Couture, Inc., and that J. Ha timely filed the claim for refund at issue in this appeal. Nevertheless, the jurisdictional document identifies Heavenly Couture, Inc. as the taxpayer in the case caption because the funds were applied to its account with CDTFA. Accordingly, for purposes of consistency, this matter is identified as "Appeal of Heavenly Couture, Inc."

[2] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[3] The record does not indicate the specific allocation of appellant's payment to Heavenly's unpaid liabilities. Such a breakdown is immaterial for purposes of resolving appellant's petition.

concludes that the grounds set forth in appellant's 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 appeal proceedings which occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise that occurred during the appeal proceedings and prior to the issuance of the Opinion, 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 Opinion; (4) insufficient evidence to justify the 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); see also, *Appeal of Do*, 2018-OTA-002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.) A ground for a rehearing is material when it is likely to produce a different result. (See, e.g., *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728.)

To find that there is insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record in the light most favorable to the prevailing party, including reasonable inferences therefrom, that the Opinion clearly should have reached a different result. (*Appeal of Swat-Fame, Inc.*, 2020-OTA-045P.)

Effective March 1, 2021, OTA's Rules for Tax Appeals split the ground for a rehearing due to "insufficient evidence to justify the written opinion or the opinion is contrary to law" into two separate and distinct grounds. (Cal. Code Regs., tit. 18, § 30604(a)(4)-(5) [on and after March 1, 2021]; former Cal. Code Regs., tit. 18, § 30604(d) [January 2, 2019, to February 28, 2021].) This may be relevant, for example, because to the extent that the evidence is undisputed or sufficient evidence is deemed to exist when the evidence is viewed in the light most favorable to the prevailing party, the appeal might then turn on the purely legal question of whether the Opinion correctly applied the law. In its review to determine if the Opinion is contrary to law, OTA must indulge "in all legitimate and reasonable inferences" and ascertain whether the Opinion is supported by any substantial evidence. (See *Appeal of Swat-Fame, Inc.*, *supra*; *Appeal of Graham and Smith*, 2018-OTA-154P; *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907.) The legal question on a petition for rehearing does not involve examining the quality or nature of the reasoning behind OTA's Opinion, but whether the

Opinion is valid according to the law. (*Appeal of NASSCO Holdings, Inc*. (2010-SBE-001) 2010 WL 5626976.)

Sufficiency of the Evidence

Appellant contends that there is insufficient evidence to justify the Opinion because "the evidence established that [a]ppellant was informed that he was personally liable, and he was pressured into making the [p]ayment." Appellant also concedes that the available written evidence "fails to indicate that [CDTFA] informed [a]ppellant in telephone conversations that he was personally liable." Instead, appellant refers to oral arguments raised during the hearing by appellant's representative (which do not constitute evidence), stating that CDTFA informed appellant that he was personally liable. However, the burden was on appellant to establish that his payment was not made voluntarily, and appellant presented no witnesses or sworn testimony during the oral hearing to attest to appellant's allegedly involuntary payment. (See Cal. Code Regs., tit. 18, § 30219(a).) Appellant also submitted no sworn declarations for consideration. As such, and considering that it is undisputed the written documentation does not show otherwise, there is no evidence in the record, written or oral, from which the Opinion could have reasonably concluded that the payment was other than voluntary, as contended by appellant.

To the contrary, CDTFA provided documentary evidence of its conversations with appellant. Based on a review of the contact history, there was insufficient evidence to conclude that CDTFA ever informed appellant that he was personally liable for Heavenly's liabilities. In finding that appellant's payment was made voluntarily, the Opinion also relied on documentary evidence showing that appellant directed CDTFA to apply his payment to Heavenly's account. The Opinion examined appellant's payment reference notes and the payment at issue was made in response to a billing notice (notice of determination) issued to Heavenly. There were no statements in the underlying notice indicating that appellant was personally liable. Based on the above, the Opinion concluded that appellant's payment to CDTFA was made voluntarily and, as such, there was no erroneous or illegal collection within the meaning of R&TC section 6901. This conclusion is supported by sufficient and substantial evidence, as summarized above. Based on all the above, we find that the Opinion was supported by sufficient and substantial evidence and a new hearing is not warranted on this ground.

Contrary to Law

Appellant contends that the Opinion is contrary to the law because the Opinion "assum[es] that there is no collection activity by the government unless the government formally determines that a taxpayer is personally liable" and because "the only credible and possible reason for [a]ppellant making the [p]ayment using his own funds is that the [CDTFA] informed him that he was personally liable."

Appellant has misunderstood the Opinion. The Opinion applied R&TC section 6901 to determine whether the claim for refund was properly denied. Application of this law required the Opinion to weigh the available evidence to determine whether CDTFA's acceptance of appellant's payment constituted an illegal or erroneous collection, and whether CDTFA engaged in any involuntary collection actions, such as a lien, levy, or wage garnishment, against appellant. The Opinion did not conclude that collection activity can only exist when the government formally determines or informs the taxpayer that the taxpayer is personally liable. Instead, the Opinion referred to the lack of billing statements issued to appellant *as evidence* that CDTFA did not engage in involuntary collection activities or an illegal or erroneous collection against appellant. Therefore, appellant's disagreement is with an evidentiary finding in the Opinion, which is essentially a challenge to the sufficiency of the evidence, not an allegation that the Opinion is contrary to law.

Appellant's assertion that the "the only credible and possible reason for [a]ppellant making the [p]ayment using his own funds is that the [CDTFA] informed him that he was personally liable," is similarly a challenge to the sufficiency of the evidence. Appellant's contentions regarding the sufficiency of the evidence are addressed above, and OTA declines to discuss these contentions further, except to reiterate that appellant had the burden to prove that he did not make a voluntary payment, but appellant offered no evidence to support his position.

In addition, appellant asks OTA to consider why appellant would have voluntarily made the payment, which requires engaging in speculation. It is not OTA's role or responsibility to speculate why appellant made the payment, whether due to a belief (mistaken or not) that he could be held liable, an incorrect understanding of the law, or other motivation. Such reasoning is not relevant.

In summary, OTA finds that appellant failed to establish a ground for rehearing and appellant's petition for rehearing is denied.

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Andrew Kwee
Administrative Law Judge

We concur:

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Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

DocuSigned by:
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Richard Tay
Administrative Law Judge

Date Issued: 3/8/2023