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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals[1] of: **YOGURT TIME, LLC**	OTA Case Nos. 18012048, 18011830 CDTFA Case IDs 870553, 625348

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Amin Kazemini, Attorney

For Respondent: Jason Parker, Chief of Headquarters Ops.

T. STANLEY, Administrative Law Judge: On January 18, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining decisions issued by respondent California Department of Tax and Fee Administration (CDTFA).[2] CDTFA's decisions denied petitions for redetermination filed by Yogurt Time, LLC (appellant) of Notices of Determination (NODs) dated July 23, 2012, and April 23, 2015.[3] For the audit period from January 1, 2008, through March 31, 2011 (first audit period), the NOD dated July 23, 2012, assessed a tax liability of $82,730.79, plus accrued interest, and a negligence penalty of $8,273.07. For the audit period from June 1, 2011, through June 30, 2014 (second audit period), the NOD dated April 23, 2015, assessed a tax liability of $31,753.79, plus accrued interest, and a negligence penalty of $3,175.51.

On February 18, 2023, appellant timely petitioned for a rehearing with OTA on the basis that an irregularity in the proceedings occurred that prevented fair consideration of the appeal,

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[1] In its petition for rehearing, appellant claims that it was error to consolidate the appeals without notice to appellant. That assertion will be addressed below.

[2] Sales and use taxes were formerly administered by the State Board of Equalization (BOE). In 2017, functions of BOE 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 BOE.

[3] OTA sustained CDTFA's final decisions that modified the NODs by reducing the tax liabilities, removing a measure of use tax, deleting the negligence penalties, and granting partial interest relief.

there is insufficient evidence to support the Opinion, the Opinion is contrary to law, and there were errors in law that occurred during the appeals proceeding or hearing. OTA concludes that the grounds set forth in this petition do not constitute a basis for a new hearing. Each assertion will be addressed herein.

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.)

As provided in *Appeal of Wilson Development, Inc.*, *supra*, it is appropriate for OTA to look to Code of Civil Procedure (CCP) section 657 and applicable case law as relevant guidance in determining whether a ground has been met to grant a new hearing.

Irregularity in the Proceedings

An irregularity in the proceedings is any departure by OTA from the due and orderly method of disposition of an action by which the substantial rights of the party have been materially affected. (*Appeal of Graham and Smith*, 2018-OTA-154P.) The irregularity must be such that appellant was prevented from having a fair consideration of their appeal. (*Appeal of Wilson Development, Inc.*, *supra*.) Included in the classification of irregularities is an "overt act of the trial court ... or adverse party, violative of the right to a fair and impartial trial." (*Russell v. Dopp* (1995) 36 Cal.App.4th 765, 779, citing *Gray v. Robinson* (1939) 33 Cal.App.2d 177, 182.)

Appellant asserts several irregularities occurred in the proceedings: (1) appellant's right to due process was violated because its ongoing case with the State Board of Equalization (BOE) was closed, and OTA opened a new appeal; (2) OTA required that appellant comply with "strict guidelines," while CDTFA was given leeway with deadlines; (3) OTA requested that appellant resubmit documents it had already submitted to BOE during its appeal with that agency; (4) the burden of proof, as applied by OTA, unconstitutionally favors CDTFA; (5) OTA denied

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appellant's request to subpoena an auditor "without consideration;"[4] and (6) appellant's request for a physical, paper copy of OTA's file was denied.

Appeal Transfer from BOE to OTA

First, appellant alleges that "OTA's actions of dismissing [six] years of [a]ppellant's appeal with the State Board of Equalization and starting a completely new appeal" while allowing CDTFA to continue to accrue interest violated its constitutional rights. The Rules for Tax Appeals, as modified on March 1, 2021, generally provide that OTA has no jurisdiction to provide a remedy for an agency's actual or alleged violation of any substantive or procedural right to due process under the law. (Cal. Code Regs., tit. 18, § 30104(d).) OTA and its predecessor, BOE, have a long-established policy of abstaining from deciding constitutional issues. (*Appeal of Acosta and Castro*, 2022-OTA-235P; *Appeal of Aimor Corp.* (83-SBE-221) 1983 WL 15592.) The policy is based on the absence of any specific statutory authority that would allow the taxing agency, here CDTFA, to obtain judicial review in such cases. OTA has consistently followed that policy based on the belief that judicial review should be available to all parties when there are issues of constitutional importance. (*Appeal of Acosta and Castro*, *supra*.) Moreover, matters that occurred while this appeal was before OTA's predecessor do not constitute errors in OTA's proceedings. OTA was statutorily granted the authority to hear appeals beginning January 1, 2018; prior to that date, appeals were within the jurisdiction of BOE. (Gov. Code, § 15674.) As such, appellant's actual or perceived violation of a constitutional right is not a basis for granting a rehearing.[5]

Applicable Deadlines

Appellant next asserts that OTA established different filing deadlines for appellant than it did for CDTFA. Appellant contends an irregularity occurred when OTA accepted an additional brief filed by CDTFA after issuing a letter stating that briefing was complete. Appellant also

[4] Appellant alleges that OTA's denial of its request to subpoena a CDTFA auditor constitutes both an irregularity in the proceedings and an error in law. OTA did not deviate from its procedures in deciding appellant's motion, and thus denial of the subpoena does not constitute an irregularity in the proceedings. OTA addresses, below, appellant's allegation that denial of its request constituted an error in law.

[5] Appellant alleges additional constitutional violations and that OTA erred in not addressing its constitutional claims in the Opinion. For the reasons discussed above, appellant's constitutional arguments are unavailing.

claims its rights were materially affected because it did not receive a copy from CDTFA of the additional brief.

OTA's July 12, 2018 letter states that briefing is complete for this appeal *unless* additional briefing is requested. Upon receipt of CDTFA's additional brief, OTA treated it as a request to file additional briefing and gave appellant 30 days to respond. OTA issued a letter to the parties accepting the additional brief and giving appellant 30 days to respond. OTA included a copy of the additional brief with that letter, curing any alleged failure by CDTFA to copy appellant. On March 20, 2019, appellant timely filed its reply brief. Notably, appellant's response acknowledges that it received a copy of CDTFA's additional brief, making it clear that appellant was not harmed if, as alleged, the additional brief was not sent to appellant by CDTFA. Moreover, OTA explained to appellant that its regulations allow additional briefing when good cause exists, following which appellant did reply to CDTFA's additional brief. In its reply brief, appellant made the same claims that it makes in its petition for rehearing; namely, that OTA violated appellant's rights by not allowing it to incorporate by reference the documents submitted to BOE. Because appellant clearly received CDTFA's additional brief, no irregularity in the proceedings occurred, appellant's rights were not materially affected by allowing CDTFA to submit an additional brief, and this is not a basis for granting a rehearing.

Resubmitting Documents to OTA

Appellant further contends it was an irregularity in the proceedings to require appellant to re-submit documents to OTA that it has already submitted to BOE while the appeal was pending with that agency. OTA is an independent appeals agency that was newly created and only given authority over appeals beginning on January 1, 2018. (Gov. Code, § 15674.) Because the appeal was still pending as of that date, OTA was required by law to open a case and decide the appeal. OTA is not affiliated with BOE and does not have access to its records, which requires that the parties submit documentation that the party wants OTA to use to consider when deciding an appeal. (See former Cal. Code Regs., tit. 18, § 30832(d).) The requirement applies equally to both parties to an appeal. Thus, OTA finds that this requirement did not create an irregularity in the proceedings, nor has appellant explained how resubmitting documentation to OTA materially affected its substantive rights, and it is therefore not a basis for granting a rehearing.

Burden of Proof

Appellant asserts an irregularity in the proceedings because the burden of proof was improperly shifted to appellant because OTA found CDTFA's methodologies and resulting liabilities to be reasonable and rational. Appellant claims that the standard of proof should be a showing that a party's position is more likely than not correct. According to appellant, CDTFA's position was "unfounded, unsubstantiated, and fraudulent," and that shifting the burden to appellant was "unconstitutional."

In appeals before OTA, the burden of proof is upon appellant as to all issues of fact unless specifically provided by law. (Cal. Code Regs., tit. 18, § 30219(a).) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) For appeals from decisions by CDTFA, the agency has an initial minimal burden to show that its determination was reasonable and rational. (*Appeal of Martinez Steel Corp.*, 2020-OTA-073P.) The Opinion properly found that CDTFA met its initial burden of proof; thus, the burden shifted to appellant to prove, by a preponderance of the evidence, that a differing result was warranted. As such, placing the burden of proof on appellant does not constitute a basis for granting a rehearing.

Paper Copy of File Request Denied

Lastly, appellant argues that there was an irregularity in the proceedings because OTA did not provide it with a paper copy of OTA's entire file, but rather sent a hyperlink so appellant could access the entire file. Appellant states that it needs a paper file in order to appeal the Opinion in Superior Court.

Appellant did not make its request for a copy of the entire file until September 2022, after the hearing. As such, whether appellant has a paper copy of its file has no bearing on the proceedings and does not constitute a basis for granting a rehearing.

<u>Insufficient Evidence to Justify the Opinion</u>

As relevant here, good cause for a new hearing may be shown where there was insufficient evidence to justify the opinion such that the substantial rights of the complaining

party are materially affected. (Cal. Code Regs., tit. 18, § 30604(d); *Appeal of Martinez Steel Corp.*, *supra*.)

Appellant alleges that there was insufficient evidence to support the Opinion because (1) the Opinion refers to "the Consolidated Appeals of Yogurt Time, LLC" although the appeals were never consolidated, (2) OTA incorrectly found that appellant denied further observation tests for the second audit period, (3) CDTFA's determination was not reasonable and rational because it only used three quarters of point-of-sale (POS) data although appellant provided the POS data starting first quarter of 2012 (1Q12), (4) the Opinion incorrectly states that appellant did not provide complete records because appellant provided all documents "in its possession," and (5) the Opinion failed to mention relief of interest for the second audit period.

Consolidation of Appellant's Appeals

A review of OTA's records indicates appellant is correct that OTA did not follow its procedures for promptly notifying the parties of the consolidation of these appeals. (See Cal. Code Regs., tit. 18, § 30212(a).) However, appellant fails to show how combining the appeals into one record, one hearing, and one opinion, caused the evidence to be insufficient to support the Opinion. Beginning in early 2019, OTA and the parties began to refer to both appeals in one document. Appellant never objected to combining the appeals in the four years prior to or at the hearing. Appellant has not demonstrated how consolidation of the appeals materially affected appellant's substantial rights so as to warrant a rehearing.

Findings of Fact Regarding One-Day Observation Test

The Opinion does not state, as alleged, that appellant denied observation tests for the second audit period. The finding referenced by appellant only states that appellant denied further observation tests by CDTFA, without specifying a particular audit period. Moreover, CDTFA ultimately did not use any observation tests for either audit period. Initially, CDTFA used its observation tests, but after appellant submitted POS data, CDTFA used that to determine a taxable sales ratio, using the observation test only for the purpose of determining the reliability of appellant's POS records. Thus, appellant's allegation does not demonstrate insufficient evidence to justify the opinion. In addition, even if its allegation were true, appellant does not show how this affected the sufficiency of the evidence upon which the Opinion is based.

Reasonableness of Using Three Quarters of POS Data

CDTFA initially used the one-day observation test to determine that only three quarters (4Q13 through 2Q14) contained reliable data because those three quarters were close to what CDTFA observed. For both audit periods, CDTFA modified its position and used POS data for which the taxable sales ratios did not vary by more than 10 percent. As a result, for the Summerfield Lane location, CDTFA used appellant's POS records for 1Q13 through 2Q14, which resulted in a reduction in the taxable sales ratio from 38.24 percent to 35.65 percent. For the Farmer's Lane location, CDTFA used appellant's POS records for 2Q12 through 2Q14, which resulted in a reduction in the taxable sales ratio from 27.96 percent to 25.97 percent. For the Mark West location, CDTFA used appellant's POS records for 4Q13 through 2Q14, which resulted in no change to the 22.79 percent taxable sales ratio as it included the same three quarters as it had previously used. For the Healdsburg location, CDTFA used appellant's POS records from 1Q12 through 11/27/13 (when the location closed), which resulted in a reduction in the taxable sales ratio from 9.77 percent to 7.29 percent. Therefore, whether or not appellant would have allowed further observation tests for either audit period does not undermine the sufficiency of the evidence. Substantial evidence that CDTFA used appellant's most reliable records to calculate the taxable sales ratio supports OTA's Opinion.

Appellant reiterates the same arguments with respect to the Opinion's finding as it did in briefing and during the hearing. As stated above, CDTFA need only make a minimal showing before the burden of proof shifts to appellant to show error. The record on appeal reveals an abundance of evidence to support OTA's conclusion. Appellant's dissatisfaction with the outcome of the appeal is not grounds for granting a rehearing. (*Appeal of Graham and Smith*, *supra*.)

Appellant contends that the Opinion incorrectly stated that appellant failed to provide complete records for the audits because it provided documents "in its possession." Again, appellant fails to show how its nuanced distinction means that the facts in the record are insufficient to support the Opinion. The conclusions in the Opinion were supported by records that appellant *did* submit, not those it did not submit. Thus, this contention does not support granting a rehearing.

Relief of Interest for Audit Period 2

Appellant's final contention with respect to insufficiency of evidence is that the Opinion did not mention relief for the second audit period. The law allows CDTFA to grant interest relief

"in its discretion," provided certain elements are met. (Revenue and Taxation Code (R&TC), § 6593.5.) There is no statutory right to interest relief. (R&TC, § 6593.5.) As such, in these circumstances OTA will generally not second-guess the standard timeframes determined by CDTFA for purposes of granting discretionary interest relief and will instead defer to CDTFA's decision absent evidence of an abuse of discretion. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

As stated in the Opinion, OTA reviewed the briefing and timelines presented by both parties for both audit periods and concluded that "relief of accrued interest is warranted only for Audit Period 1 from December 23, 2015, through June 23, 2016, and for the time period conceded by CDTFA, from April 1, 2016, through December 31, 2017." The Opinion otherwise did not find that CDTFA abused its discretion and sustained CDTFA's decision to not grant interest relief outside of those periods, including the entire second audit period. The Opinion states in footnote 17 that "[i]nterest relief only applies to the first audit." The record more than adequately supports OTA's finding that no interest relief was warranted for the second audit period. Appellant's dissatisfaction with the outcome of the not a ground for granting a rehearing. (*Appeal of Graham and Smith*, *supra*.)

<u>Contrary to Law</u>

The "contrary to law" standard of review involves a review of the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) To find that the opinion is contrary to law, OTA must determine whether the opinion is unsupported by any substantial evidence. (*Appeal of Graham and Smith*, *supra*.) This requires a review of the opinion to indulge in all legitimate and reasonable inferences to uphold the opinion. (*Appeals of Swat-Fame, Inc.*, *et al.*, 2020-OTA-045P.) 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. (*Ibid.*) In this review, OTA must examine the evidence in the light most favorable to the prevailing party. (*Ibid.*)

Appellant contends that the Opinion is contrary to law because (1) the taxability of frozen yogurt is ambiguous, (2) sorbet is not a food product, (3) appellant relied on verbal advice of a CDTFA employee that it did not need a seller's permit, and (4) appellant did not collect sales tax reimbursement during the first audit period.

Taxability of Sales of Frozen Yogurt

Appellant claims there is an ambiguity in the statute because if "the State of California wished to specifically name frozen yogurt as taxable, they would have amended the statutes to reflect accordingly." Appellant further asserts that yogurt does not constitute a "meal" and that appellant does not provide yogurt to customers and instead gives customers a pint-size cup so customers can prepare "their own creation of frozen yogurt."

The Opinion correctly stated the law regarding the taxability of sales of frozen yogurt:

> A retailer's gross receipts are all presumed subject to tax unless the retailer can prove otherwise. (R&TC, § 6091.) R&TC section 6359 generally exempts the sale of food products from taxation. However, the law provides several exceptions to the exemption for the sale of food products. (R&TC, § 6359(d).) Specifically, R&TC section 6359(d)(2) provides that sales of food products for consumption on the premises of the retailer are not exempt and are subject to tax.

The law is clear that the presumption is that appellant's gross receipts are presumed taxable unless appellant establishes that there is an exemption. The law, as stated in the Opinion, is clear and unambiguous that the sale of food, including frozen yogurt, is taxable when consumed on appellant's premises. The distinction that appellant makes between self-service and over the counter service has no merit under the law. Clearly, appellant is selling frozen yogurt, not just a cup, to its customers. Moreover, the Opinion clearly stated that the sale of food served on appellant's premises is taxable regardless of whether it constitutes a meal. Consequently, appellant has not established that the Opinion's finding is contrary to law.

Taxability of Sales of Sorbet

Appellant repeats its arguments regarding why it did not initially obtain a seller's permit and why it did not collect sales tax reimbursement from its customers during the first audit period.

The Opinion correctly stated the law with respect to the taxability of sales of sorbet. Pursuant to California Code of Regulations, title 18 (Regulation), section 1601(a)(1), the definition of "food products" specifically includes "flavored ice products, including popsicles and snow cones." Appellant did not establish during the proceedings or in the current petition how sorbet can be distinguished from food products. Additionally, the Opinion noted that

appellant's own argument with respect to sorbet confirms that sorbet is not an exempt food product:

> [I]f a product is inconsistent with the category of items described in R&TC section 6359(b)(2) and (b)(3), then the sale of the product does not qualify for the exemption and is taxable. In arguing that sorbet is not included in the category of items listed in R&TC section 6359(b)(2) and (b)(3), appellant is essentially arguing that the exemption for sales of food products does not apply to its sales of sorbet and that all its sorbet sales are taxable.

Appellant has therefore not established that finding sorbet to be a taxable food product is contrary to law.

Reliance on Verbal Advice

With respect to its argument that CDTFA verbally advised appellant that frozen yogurt is not a taxable food product, appellant fails to explain how such advice or appellant's failure to collect sales tax reimbursement makes the Opinion contrary to law. The law requires retailers of non-exempt food products, such as appellant's sales of food to-go, to pay sales tax on sales whether or not the retailer collects sales tax reimbursement. (See R&TC, § 6051.) OTA is bound to follow the law in its determinations and has no authority to invalidate the application of statutes and regulations based on incorrect advice or on a taxpayer's action in reliance on that alleged advice. As such, appellant has not established that the alleged verbal advice requires a finding that the Opinion is contrary to law.

Appellant Did Not Collect Sales Tax Reimbursement

Appellant did not collect sales tax reimbursement, initially because of its claim of reliance on verbal advice by CDTFA. However, appellant's failure to collect sales tax reimbursement does not alter its obligation to pay sales tax pursuant to the Sales and Use Tax Law. (See R&TC, § 6051.) Thus, appellant has not stated grounds for rehearing based on the Opinion being contrary to law.

Error in Law

Courts have found that a new trial may be granted based on an error in law if the court's original ruling as a matter of law was erroneous. (*Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 17-18, citing *Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391,

397.) A claim on a petition for rehearing that there was an error in law is a claim of procedural wrong. For example, courts have found an error in law occurred when there was an erroneous denial of a jury trial (*Johnson v. Superior Court* (1932) 121 Cal.App. 288), an erroneous ruling on the admission or rejection of evidence (*Nakamura v. Los Angeles Gas & Elec. Corp*. (1934) 137 Cal.App. 487), an erroneous application of the law by a jury (*Shapiro v. Prudential Property & Casualty Co*. (1997) 52 Cal.App.4th 722), and an erroneous instruction to a jury (*Maher v. Saad* (2000) 82 Cal.App.4th 1317). Error in law pursuant to Regulation section 30604(a)(6) generally refers to errors that occurred during the course of the proceedings. As stated in CCP section 657, in the judicial context an error in law "occurring at the trial and excepted to by the party making the application," is grounds for a new trial. This includes situations where, for example, the trial court made an erroneous evidentiary or procedural ruling. (See, e.g., *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138; *Ramirez v. USAA Casualty Ins. Co.*, *supra*, 234 Cal.App.3d 391.)

Appellant alleges an error in law because the observation test conducted in the first audit was not in compliance with CDTFA's audit manual. Appellant further asserts that CDTFA did not comply with Regulation section 1698.5 by (1) holding the appeal in abeyance pending conclusion of the second audit, (2) not having an audit plan, and (3) not holding an exit conference. Lastly, appellant contends that OTA made errors in law by consolidating its two appeals, denying a subpoena of an auditor, allowing ex parte communication with CDTFA, and allowing additional briefing after issuing a letter stating that briefing was complete.

With respect to appellant's first two assertions, the alleged violations of CDTFA's audit manual and of Regulation section 1698.5 occurred during the audit process, not during the appeals process. As such, the errors, if true, were not made in the course of the proceedings and cannot be errors in law, as defined, in OTA's appeals process. As stated above, OTA did fail to follow the proper procedures to consolidate appellant's two appeals; however, appellant does not explain how that error materially affected appellant's substantial rights, as required by Regulation section 30604. Moreover, appellant never requested that the appeals be deconsolidated and never raised any objection to holding one hearing instead of two. Appellant's claim does not establish that an error in law occurred.

At the prehearing conference, appellant requested that CDTFA produce an auditor for questioning at the hearing. In its petition, appellant claims that OTA denied its subpoena request

"without explanation." OTA treated appellant's request as a request to issue a subpoena for an auditor to attend the hearing. OTA, in its Minutes and Orders of the prehearing conference, fully explained the decision to deny appellant's request.

> In evaluating good cause for issuance of a subpoena, one factor that OTA considers is the probative value of the evidence in relation to the probability that its admission will necessitate undue consumption of time. Here, OTA finds that all actions taken by the auditor are reflected in the audit working papers and in the CDTFA decisions where the audit staff was present, and both parties presented their positions to CDTFA. Moreover, years after completion of the audit working papers, they are the best record of the auditor's contemporaneous rationale, findings, and conclusions. Thus, the auditor's testimony would likely be repetitive of the audit working papers and necessitate undue consumption of time. In light of all circumstances, OTA denies appellant's request for a subpoena. Appellant may impeach the auditor's notes, reports, conduct, etc., at the oral hearing.

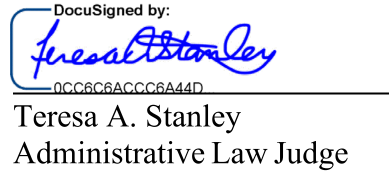
Appellant has not shown that it was unable to present its case without the presence of a CDTFA auditor, and there is no error in the proceedings based on OTA's ruling denying a subpoena.

Appellant's contention that an error in the proceedings occurred because OTA allowed ex parte communication with CDTFA and allowed additional briefing after issuing a letter stating that briefing was complete also has no merit. OTA did receive additional briefing from CDTFA by letter dated April 25, 2019, but included appellant in its response to CDTFA's submission and provided appellant with a copy of that additional brief. Appellant was given an opportunity to respond in full to CDTFA's submission and did file a reply brief with OTA. Thus, OTA's acceptance of the brief was not an error in the proceedings; even if appellant's assertion were true, it has not shown that its substantial rights were materially affected. As for the allegation that OTA did not follow its regulations regarding briefing timelines, briefing can be reopened at any time for good cause pursuant to those same regulations. Additionally, for an appearance matter (where a hearing is scheduled and held), Regulation section 30420 gives the parties up until 15 days prior to the hearing to submit exhibit lists and copies of exhibits. In its prehearing conference Minutes & Orders, OTA reiterated the deadline to submit exhibits was June 8, 2022, or 15 days prior to the hearing. Furthermore, pursuant to appellant's request, OTA held the record open after the hearing to allow the parties to submit additional briefing with respect to appellant's request for relief from interest. As such, OTA's acceptance of CDTFA's additional

brief was not an error in the proceedings, nor has appellant shown that these circumstances materially affected its substantial rights.

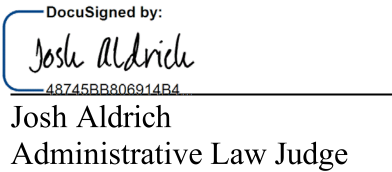
Conclusion

As discussed above, appellant has not established any grounds for granting a rehearing. Appellant's petition is therefore denied.

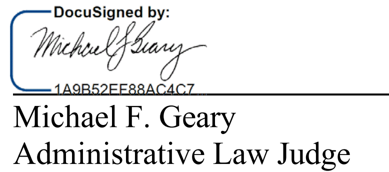


Teresa A. Stanley
Administrative Law Judge

We concur:



Josh Aldrich
Administrative Law Judge



Michael F. Geary
Administrative Law Judge

Date Issued: 6/27/2023