

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
E. SAGE) OTA Case No. 21088303
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: E. Sage
For Respondent: Sarah Fassett, Attorney
Kendall Keshtkar, Graduate Student Assistant

J. JOHNSON, Administrative Law Judge: On February 11, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board denying appellant’s claims for refund for the 2015 and 2016 tax years as being untimely. Respondent timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19334 solely for the purpose of requesting a substantive change to reflect that “respondent is allowing as a refund/credit appellant’s \$1,726 overpayment for the 2016 tax year and to respectfully request that the 2016 tax year be removed from the issues, facts, discussion and the posted Holding in the Opinion.”¹

Respondent’s concession as to the 2016 tax year represents a departure from its position taken in the underlying appeal, decided on the record without an oral hearing. Given this new information, which is material to the outcome of the appeal, respondent has supported its request for further action in this matter. Respondent’s full concession as to the 2016 tax year removes that year from consideration by OTA, and thus the original Opinion is unsupported by the record to the extent it sustained respondent’s action denying the 2016 tax year claim for refund.

¹ While appellant’s 2016 California income tax return reported an overpayment of \$2,307, respondent denied a renter’s credit of \$120 and a demand penalty was imposed of \$461, resulting in an overpayment amount of \$1,726. Appellant’s appeal to OTA listed an amount at issue for the 2016 tax year of \$1,726, and therefore respondent’s concession covers the entire amount reported in the Opinion as being at issue for the 2016 tax year.

2024-OTA-100SCP
Nonprecedential

(See Cal. Code Regs., tit. 18, § 30604(a)(4) & (5).)² Accordingly, OTA grants respondent’s petition for the limited purpose of including respondent’s concession as to the refund claim for the 2016 tax year.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

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Huy "Mike" Le
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Huy “Mike” Le
Administrative Law Judge

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Teresa A Stanley
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Teresa A. Stanley
Administrative Law Judge

Date Issued: 12/20/2023

² In this unique situation, where a party has made a concession after an opinion is issued but before it becomes final, and that concession impacts the holding of the Opinion, the underlying Opinion no longer reaches the correct conclusion as the facts of the matter have been altered (i.e., here, respondent is no longer denying the claim for refund for the 2016 tax year as reported in Factual Finding 10 of the Opinion), and the Opinion no longer is legally accurate as it attempts to exert jurisdiction over a matter that is resolved by the parties and no longer before OTA.