

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21037381
SHAPROW FUNDING, LLC)
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: John E. Russi, CPA
For Respondent: Pamela W. Bertani, Attorney

V. LONG, Administrative Law Judge: On April 14, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) proposed assessment of tax. In the Opinion, OTA held that: (1) appellant had not established error in FTB’s adjustment to increase gross receipts to include security deposits; and (2) that appellant had not established error in FTB’s depreciation and deduction adjustments and resulting increase in gain on the sale of business assets for the 2014 taxable year. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19048. Upon consideration of appellant’s petition, OTA concludes it has not established a basis for rehearing.

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, material 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.)

New evidence is material when it has the potential to change the holding or disposition of an appeal before OTA. (Cal. Code Regs., tit. 18, § 30102(s); *see Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728; *Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764.)

In the petition for rehearing, appellant states that it disagreed with two of the findings of fact stated in the Opinion and provides extracts of a worksheet to support its contention that the Opinion was wrongly decided.¹ Although appellant does not refer to any specific grounds for rehearing as set forth in OTA's regulation section 30604, it appears appellant may be asserting newly discovered, material evidence, insufficient evidence to justify the written opinion, or that the opinion is contrary to law as grounds for a rehearing.

The findings of fact referenced by appellant state FTB's determinations to explain the amount in dispute on appeal. The findings of fact do not contain any determination or conclusion of OTA and are taken from the audit and protest appeals record provided by FTB on appeal. In addition, the worksheets provided by appellant in its petition for rehearing are excerpts of a larger worksheet provided by appellant to FTB, presumably during the audit or protest processes. Accordingly, the worksheets do not constitute newly discovered evidence.

To the extent that appellant's petition for rehearing asserts that there was insufficient evidence to justify the written opinion, or that the opinion is contrary to law, OTA considered appellant's assertions in its Opinion, as well as FTB's, and determined that appellant had not demonstrated error in FTB's assessment. The question of whether an Opinion is contrary to law is not one that involves a weighing of the evidence, but instead requires a finding that the Opinion is "unsupported by any substantial evidence." (*Appeal of Graham and Smith*, 2018-OTA-154P.) In its petition, appellant sets forth arguments and facts that they previously made during the appeal. These arguments, discussed above, were considered by OTA at length and decided upon in a written opinion. The opinion gave appropriate consideration to the

¹ Specifically, the findings of fact which appellants disagree with state: "4. FTB accepted appellant's adjustments to reduce the cost basis of the assets for the 2014 taxable year but determined that the prior taxable year depreciation figures were not carried over correctly, resulting in overstated depreciation expenses. FTB disallowed the claimed \$154,336 'other deduction' and the additional \$197,461 in claimed depreciation expense on the ground that it related to assets that were disposed of in earlier taxable years. FTB permitted a depreciation expense adjustment in the amount of \$74,948 for the active leases. These adjustments resulted in an increase in the gain on the sale of business assets of \$414,541.

5. FTB also determined that appellant underreported gross receipts by \$594,686 by omitting the sum of retained security deposits. Appellant asserted that this sum should be deducted from gross receipts because appellant erroneously included the security deposits as income in prior taxable years."

evidence and arguments presented by appellant on appeal in reaching its conclusions. Appellant’s dissatisfaction with the outcome of the appeal, and the attempt to reargue the same issues a second time, is not grounds for a rehearing. Appellant’s contentions fail to show error in FTB’s position, and appellant has not shown that the Opinion created an “injustice based on a mistake of law or misunderstanding of facts.” (*Ibid.*) Appellant has not demonstrated that there was insufficient evidence to justify the opinion or that the opinion is contrary to law.

Based on the foregoing, appellant has not shown that a rehearing should be granted under the grounds of newly discovered evidence. Consequently, the petition for rehearing is denied.

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

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Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 1/19/2024