

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 230312779
M. PLASIL)	CDTFA Case ID 3-154-832
)	
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: M. Plasil

For Respondent: Vanessa Bedford, Attorney

N. RALSTON, Administrative Law Judge: On August 29, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by the California Department of Tax and Fee Administration (respondent).¹ Respondent's decision denied appellant's claim for refund of \$1,045 in use tax for a vehicle with a purchase date of September 20, 2019.

On September 24, 2023, appellant timely filed a petition for rehearing (PFR) with OTA. Appellant's PFR does not clearly identify any of the six grounds for rehearing, but OTA reasonably infers that appellant is alleging that the Opinion was contrary to law. OTA concludes that the grounds set forth in this 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 proceedings which occurred prior to issuance of the Opinion and prevented the fair consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, which the party could not have reasonably discovered and provided prior to issuance of the Opinion; (4) insufficient evidence to justify the

¹ 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 respondent. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, all references to "respondent" shall refer to the board.

Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the OTA 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 section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a new hearing.

Appellant's PFR contends that OTA's Opinion contains various alleged factual errors. 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*, 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. (*Appeals of Swat-Fame, Inc. et. al.* 2020-OTA-045P.) OTA must consider the evidence in the light most favorable to the prevailing party (here, respondent). (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.)

There was substantial evidence to support OTA’s Opinion. As discussed in the Opinion, appellant failed to meet his burden to show that use tax did not apply to appellant’s purchase of the vehicle and also failed to show that he overpaid the use tax due on this purchase. In reaching its conclusions, OTA reviewed all of the documentation and arguments provided by the parties and issued an Opinion which gave appropriate consideration to the evidence and arguments appellant presented on appeal. Appellant has failed to provide any arguments or evidence in the PFR that would constitute a basis for rehearing under California Code of Regulations, title 18, section 30604. Appellant’s dissatisfaction with the Opinion does not constitute grounds for a rehearing. (*Appeal of Graham and Smith, supra.*) Accordingly, appellant has not established grounds for a new hearing, and the PFR is denied.

DocuSigned by:
Natasha Ralston
25F8FE08FF56478...
Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy “Mike” Le
Administrative Law Judge

DocuSigned by:
Eddy Y. H. Lam
1EAB8BDA3324477...
Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 3/21/2024