

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21027307
SAFAR & SAFAR BROTHERS, INC.) CDTFA Case ID 521-923; 2-341-823
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Harpreet Dhaliwal, Owner and Representative
Amanda Bui, Owner and Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

M. GEARY, Administrative Law Judge: On November 16, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining a Decision by the California Department of Tax and Fee Administration (respondent) to deny, in part, Safar & Safar Brothers, Inc.’s (appellant’s) petition for redetermination of an October 18, 2018 Notice of Determination for \$198,129 in tax, plus accrued interest, and a \$19,753.51 negligence penalty for the period July 1, 2015, through June 30, 2018.¹

On December 18, 2023, appellant filed a timely petition for rehearing (PFR). OTA may grant a rehearing where any of the following grounds is established and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the appeal proceedings that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred during the appeal proceedings, 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 Opinion; (4) insufficient evidence to justify the Opinion; (5) the

¹ The Decision deleted the negligence penalty and reduced the tax to \$176,680, as recommended by respondent.

Opinion is contrary to law; or (6) an error in law that occurred during the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6).) Appellant relies on grounds (1), (2), (3), and (5), described above. OTA concludes that appellant has not established any grounds for a new hearing.

An irregularity in the proceedings

Generally, an irregularity in the proceedings occurs when OTA meaningfully departs from the fair and orderly conduct of the proceedings. (*Appeal of Graham and Smith*, 2018-OTA-154P; *Appeal of Shanahan*, 2024-OTA-040P.) Appellant has not identified any such departure. Consequently, appellant is not entitled to a new hearing on this basis.

Accident or surprise

In this context, the terms “accident” and “surprise” have substantially the same meaning. (*Appeal of Shanahan*, *supra*, citing *Kauffman v. De Mutiis* (1948) 31 Cal.2d 429, 432.) In order to prevail on this ground, the party requesting a rehearing must have been unexpectedly placed in a detrimental condition or situation without any negligence on its part. (*Appeal of Le Beau*, 2018-OTA-061P.) The only surprise alleged in appellant’s PFR pertains to respondent’s purported reliance on average fuel prices published by the Department of Energy (DOE). However, respondent’s “reliance” on DOE data could not have been a surprise to appellant. It was identified in the reaudit, and appellant had a copy of the reaudit workpapers long before the OTA hearing. But more importantly, and as stated during the hearing and in OTA’s Opinion, respondent accepted appellant’s recorded sales prices as accurate and based its calculations on those prices. Respondent referred to the DOE data only to confirm its belief that the determination was reasonable. OTA therefore finds that appellant has not shown that it is entitled to a new hearing on this basis.

Newly discovered evidence

Generally, courts have concluded that new evidence is material when it is likely to produce a different result. (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, 779.) In order to prevail on this ground, the PFR would have to show that there is evidence that is both newly discovered (i.e., appellant could not have reasonably discovered and provided


the evidence prior to issuance of the Opinion) and that will likely lead to a different result. The PFR fails on both counts. On that basis, OTA finds that appellant has no newly discovered evidence that warrants a new hearing.

Opinion contrary to law


For this ground, OTA is required to review the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) Fair consideration of the PFR does not demand that OTA reweigh the evidence, but instead it requires that OTA review the Opinion in a manner most favorable to the prevailing party, indulging in all legitimate and reasonable inferences to uphold the Opinion if possible. (*Appeal of Riedel*, 2024-OTA-004P.) OTA may grant a new hearing on this basis if it concludes that the Opinion is unsupported by any substantial evidence. (*Ibid.*)


The arguments that appellant makes in support of this ground are the same arguments that it made – and that OTA addressed – at the hearing. The arguments are no more persuasive now than they were then. The record shows that respondent proved that its determination was reasonable and rational. Appellant failed to show that respondent’s determination was incorrect, failed to establish a measure of unreported sales that was more accurate than respondent’s determination, and failed to demonstrate that respondent’s refusal to grant additional interest relief was an abuse of discretion.²

Accordingly, the PFR is denied.

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Michael F. Geary
Administrative Law Judge

We concur:

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Andrew Wong
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 5/21/2024

² Respondent granted appellant interest relief for April 2019, October 2019, March through June 2020, and November 2020.