

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 20127066
WORLD OF AWNINGS & CANOPIES)	CDTFA Case ID 381-652
)	
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Abdul R. Lala, CPA

For Respondent: Jason Parker, Chief of Headquarters Ops.

A. WONG, Administrative Law Judge: On December 14, 2023, the Office of Tax Appeals (OTA) issued an Opinion modifying a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).¹ CDTFA's decision denied World of Awnings & Canopies's (appellant's) petition for redetermination of a Notice of Determination (NOD) dated August 17, 2018. The NOD is for sales tax of \$108,472, plus applicable interest, for the period October 1, 2013, through September 30, 2016 (audit period), and is based on an aggregate deficiency measure of \$1,211,624. Of this amount, appellant contested \$287,789, which represented unreported taxable sales of manufacturing labor. While this case was before OTA on appeal, CDTFA performed a reaudit that reduced the deficiency measure at issue by \$54,474, from \$287,789 to \$233,315. In its Opinion, OTA sustained CDTFA's action reducing the deficiency measure at issue by \$54,474 and otherwise denying appellant's petition for redetermination, which included a request for relief of taxes due to advice from CDTFA.

On January 13, 2024, appellant timely petitioned OTA for a rehearing on the basis that OTA's Opinion is contrary to law. OTA concludes that the ground set forth in this petition does not constitute a basis for a new hearing.

¹ The State Board of Equalization (BOE) formerly administered the sales and use taxes. On July 1, 2017, BOE administrative functions relevant to this case transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, all references to "CDTFA" refer to BOE.

OTA will grant a rehearing where one of the following grounds exists and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the appeal proceedings that 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, 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 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).)

In its petition, appellant contends that OTA's Opinion is contrary to Revenue and Taxation Code (R&TC) section 6596, which provides for relief of sales and use taxes based on a person's reasonable reliance on written advice from CDTFA. Appellant alleges that R&TC section 6596 requires a person to first request advice from CDTFA as a condition for being relieved of taxes. Appellant states that it made no such request for advice. Rather, a team from CDTFA's Statewide Compliance and Outreach Program (SCOP) visited appellant's business in January 2011 and advised appellant to file amended quarterly returns that would report increased taxable sales. Appellant alleges that CDTFA recommended that appellant raise the percentage of gross receipts that it was reporting as taxable from 44 percent to 55 percent. Appellant contends that it is entitled to tax relief on this basis and that OTA's failure to so conclude in its Opinion is contrary to law, entitling appellant to a rehearing.


The "contrary to law" standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) The question of whether the 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; that is, the record would justify a directed verdict against the prevailing party. (*Appeal of Riedel*, 2024-OTA-004P.) This requires a review of the Opinion in a manner most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the Opinion if possible. (*Ibid.*) OTA will grant a rehearing when the petitioning party establishes that the Opinion incorrectly stated or applied the law and, therefore, is contrary to law. (*Appeal of Shanahan*, 2024-OTA-040P.) On a petition for rehearing, the question before OTA does not involve

examining the quality of the reasoning behind OTA's Opinion, but whether that Opinion can be valid according to the law. (*Appeal of Riedel, supra.*)

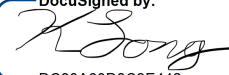
The modern doctrine of equitable estoppel descends from the ancient equity doctrine that if one party makes a representation to another party who "deals upon the faith of it," then the former must make the representation good if he or she knew or was bound to know it was false. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 398-399.) However, "[u]nder well-settled rules of law[,] state officers and state agencies have no power to estop the state from collecting a validly owed tax." (*Fischbach & Moore, Inc. v. State Bd. of Equalization* (1981) 117 Cal.App.3d 627, 632.) Specifically, "the state is not estopped from collecting a tax which was due and owing, even though the state's representatives may have previously adopted an incorrect interpretation of the law and advised the public that no taxes would become due on a particular transaction or transactions." (*Ibid.*) R&TC section 6596, which became effective on January 1, 1985, is the exception to that general rule, basically codifying an estoppel doctrine into the Sales and Use Tax Law. (See *People ex rel. Franchise Tax Bd. v. Superior Court* (1985) 164 Cal.App.3d 526, 564 (conc. & dis. opn. of Lui, J.), disapproved on another ground in *Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 11.)

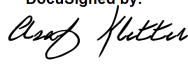
According to R&TC section 6596(b)(1) and (2), a person may be relieved of sales and use taxes only if he or she requests in writing advice from CDTFA, and CDTFA in turn responds in writing to that person's request for advice. Furthermore, that person must file under penalty of perjury a statement of the facts on which the person is claiming tax relief. (R&TC, § 6596(c)(2).)

In the Opinion, OTA noted that appellant conceded to making unreported taxable sales of \$923,835 and then concluded that appellant validly owed tax measured by an additional deficiency measure of \$233,315 for unreported taxable sales of manufacturing labor. Although appellant reasserts that it adhered to what a CDTFA SCOP team orally advised it to report as its taxable sales for the audit period at issue, it is undisputed that appellant did not satisfy the conditions set forth in R&TC section 6596, which is the only authorized means of estopping CDTFA from collecting validly owed sales and use taxes. Thus, OTA concludes that the Opinion correctly stated and applied R&TC section 6596 and is therefore not contrary to law. Accordingly, OTA denies appellant’s petition for rehearing.

DocuSigned by:

8A4294817A67463
Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:

DC88A60D8C3E442
Keith T. Long
Administrative Law Judge

DocuSigned by:

D17AFEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

Date Issued: 6/20/2024