

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20096668  
**PREMIER WHEELS/PRO TIRE, INC.** ) CDTFA Case ID 289-221  
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: Marc Brandeis, 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 sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).<sup>1</sup> CDTFA’s decision denied, in part, a petition for redetermination filed by Premier Wheels/Pro Tire, Inc. (appellant) of a Notice of Determination (NOD) dated July 2, 2018. The NOD was for a tax liability of \$1,391,797, plus applicable interest, and a negligence penalty of \$139,179.73 for the period January 1, 2013, through September 30, 2017. The tax liability was based on a deficiency measure of \$15,480,889 in unreported taxable sales. CDTFA’s decision ordered a reaudit, which reduced the deficiency measure by \$944,247 (from \$15,480,889 to \$14,536,642),<sup>2</sup> the tax liability by \$84,902 (from \$1,391,797 to \$1,306,895), and the negligence penalty by \$8,490.25 (from \$139,179.73 to \$130,689.48), but otherwise denied appellant’s petition for redetermination.

On January 16, 2024, appellant timely petitioned OTA for a rehearing on the basis that the Opinion is contrary to law. OTA concludes that the ground appellant sets forth in its petition does not constitute a basis for a new hearing.

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<sup>1</sup> The State Board of Equalization (BOE) formerly administered the sales and use taxes. On July 1, 2017, BOE 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, “CDTFA” will refer to the board.

<sup>2</sup> The Opinion erroneously stated that the reduction was \$944,244.

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 that occurred during the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6).)


In its petition for rehearing, appellant generally contends that OTA did not follow “CDTFA policy” and misapplied the Sales and Use Tax Law in sustaining CDTFA’s decision. Specifically, appellant contends that CDTFA should have reduced the deficiency measure by allowances for shrinkage, self-consumption, and bad debts, as well as for “questioned” nontaxable sales for resale, in accordance with CDTFA’s Audit Manual. Appellant also contends that OTA misapplied the applicable burden of proof in concluding that appellant had failed to substantiate these various allowances and alleged nontaxable sales for resale. Finally, regarding the negligence penalty, appellant notes that its deficiencies in recordkeeping related only to transactions it believed were nontaxable (i.e., sales for resale and fabrication labor sales), and that, after the audit at issue, appellant invested in a computerized accounting system, which should be considered when deciding whether to apply the negligence penalty.

The “contrary to law” standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) Whether an Opinion is contrary to law does not involve reweighing the evidence but instead requires a finding that the Opinion is not supported by any substantial evidence. (*Appeal of Le Beau*, 2018-OTA-061P.) This in turn requires reviewing the Opinion in the light most favorable to the prevailing party, while indulging in all legitimate and reasonable inferences to uphold the Opinion. (*Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.) 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. (*Ibid.*)


Here, OTA’s Opinion has already addressed appellant’s argument regarding CDTFA’s Audit Manual by citing to relevant, controlling authority, which appellant has not shown to be


invalid or superseded by contrary authorities. Regarding the burden of proof, OTA’s Opinion found that CDTFA carried its minimal, initial burden of showing that its determination was reasonable and rational, and the burden of proof then shifted to appellant to establish that a different result was warranted. However, on appeal, appellant failed to carry its burden of proving that CDTFA’s tax assessment was incorrect or what the proper amount of tax should be. In its petition for rehearing, appellant has only offered unsupported assertions, which are not sufficient to satisfy its burden of proof. As for appellant’s arguments regarding the negligence penalty and its recordkeeping deficiencies, “the state is entitled to some documentation in the regularly kept records that the claimed sales were in fact tax exempt” (*Paine v. State Bd. of Equalization* (1982) 137 Cal.App.3d 438, 443); however, on appeal, appellant did not provide credible evidence supporting either claimed nontaxable sales for resale at issue or its fabrication labor sales, which appellant allegedly believed to be nontaxable. Finally, appellant’s prospective improvements to its recordkeeping are not relevant to past, repeated deficiencies. Accordingly, OTA concludes that appellant has failed to show that the Opinion is contrary to law.

Appellant’s petition for rehearing is denied.

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Andrew Wong  
Administrative Law Judge

We concur:

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Suzanne B. Brown  
Administrative Law Judge

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 7/11/2024