

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 230413041
PARTNERSHIP OF C. DENIZ AND)	CDTFA Case ID 01-138-138
J. NUNEZ,)	
dba Casa de Oro Mexican Restaurant)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	C. Deniz, President
For Respondent:	Jason Parker, Chief of Headquarters Operations

T. STANLEY, Administrative Law Judge: On April 19, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).¹ CDTFA’s decision partially denied an administrative protest filed by the Partnership of Deniz and Nunez dba Casa de Oro Mexican Restaurant (appellant) of a Notice of Determination (NOD) dated April 15 2019.² The NOD is for \$112,641 in tax, plus applicable interest, and a negligence penalty of \$11,264.11 for the period January 1, 2015, through December 31, 2017.

On May 17, 2024, appellant timely petitioned for a rehearing with OTA on the basis that there is insufficient evidence to support OTA’s written Opinion. OTA concludes that the ground set forth in this petition does 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 the issuance of the Opinion and prevented 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

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

² CDTFA relieved the finality penalty.

discovered evidence, material to the appeal, 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).)

Appellant’s petition requests a rehearing because there was insufficient evidence to justify the Opinion, specifically with respect to the credit-card-sales ratio CDTFA used to determine appellant’s unreported taxable sales.

To find that there is insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different opinion.

(Appeals of Swat-Fame, Inc., et al., 2020-OTA-045P.)

Here, appellant disputed the credit-card-sales ratio used by CDTFA in the audit of appellant’s business. CDTFA used appellant’s own records, recorded over a 14-day period, to determine the ratio. Appellant claimed CDTFA did not monitor its employees and there were errors in the data resulting in an incorrect ratio. OTA considered appellant’s argument and determined that appellant failed to provide “any verifiable evidence supporting a credit-card-sales ratio greater than 62.12 percent.” OTA’s record contains sufficient evidence to support the conclusion in the Opinion. Appellant’s repeated arguments, which OTA considered and rejected in the Opinion, do not constitute grounds for a rehearing. (See *Appeal of Graham and Smith*, 2018-OTA-154P.) Accordingly, appellant’s petition for rehearing is denied.

We concur:

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

Date Issued: 9/10/2024