

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. ANDERSON

) OTA Case No.: 21108757
) CDTFA Case ID: 2-208-094
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: D. Anderson

For Respondent: Jason Parker, Chief of Headquarters Ops.

K. LONG, Administrative Law Judge: On May 30, 2024, 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 a petition for redetermination filed by D. Anderson (appellant) of a Notice of Determination (NOD) dated June 30, 2020. The NOD is for \$41,490 in tax, plus applicable interest, and a penalty of \$4,148.95 for the period October 1, 2015, through September 30, 2018.

In the Opinion, OTA considered CDTFA’s audit of appellant, who is a retailer of wedding gowns, dresses, and accessories making sales via her website in California and in interstate commerce and from a storefront in Arizona. During OTA’s appeals process, appellant provided evidence that resulted in a reaudit by CDTFA. During the reaudit, CDTFA adjusted the ratio of sales made in Arizona and California, which reduced the measure of unreported taxable sales by \$203,190, from \$564,811 to \$361,621.² OTA ordered that CDTFA reduce the measure of unreported taxable sales in accordance with the reaudit and make corresponding changes to the tax, interest, and negligence penalty. Otherwise, OTA found that appellant had not provided sufficient evidence to warrant a further reduction.

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 The result of this adjustment was to increase the percentage of appellant’s sales in Arizona. As appellant’s sales in Arizona increased, the measure of unreported taxable sales in California decreased.

On June 27, 2024, appellant timely petitioned for a rehearing with OTA to present additional evidence and a complete set of books and records to show that the audit measure is incorrect. OTA concludes that the grounds set forth in this petition do not constitute a basis for granting a new hearing.

OTA will grant a rehearing where one of the following grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the appeal proceedings which occurred prior to 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 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 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 Riedel*, 2024-OTA-004P.)

In the context of newly discovered evidence, 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.) To find that there is an insufficiency of 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.)

In the petition for rehearing, appellant requests a rehearing to present additional evidence and a complete set of books that were “not taken into account during the initial appeals process.” Appellant does not provide the evidence with her PFR but argues that the additional evidence would result in a fairer result. However, appellant had the opportunity to provide a complete set of books and records prior to the issuance of the Opinion and chose not to do so. Appellant has not provided any explanation for why she failed to provide a complete set of books and records during the audit and appeal, or to show that the evidence was newly discovered and previously unavailable. Thus, OTA finds no basis for a rehearing on this ground.

To the extent that appellant asserts there is insufficient evidence to justify the Opinion, OTA examined CDTFA’s audit and reaudits of appellant. OTA notes that during the appeal, appellant provided evidence in the form of Arizona sales and use tax returns, which resulted in a reduction to the taxable measure by CDTFA. Specifically, OTA found that, considering the

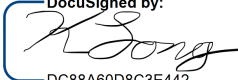
incomplete books and records provided by appellant during the audit, it was reasonable and rational for CDTFA to use appellant's Form 1099-K information and bank statements to calculate a credit card sales ratio. Further, OTA found that it was reasonable and rational for CDTFA to make reductions to appellant's taxable sales based on claimed sales in interstate commerce, despite the fact that appellant did not provide shipping documents. Additionally, OTA noted that in the reaudit, it was reasonable for CDTFA to further reduce the taxable measure based on appellant's submission of Arizona sales and use tax returns showing that she made sales in Arizona.

OTA also considered additional documentation provided by appellant including the following: a spreadsheet provided by appellant detailing sales for the period September 27, 2016, through December 12, 2018; and order forms created by appellant in Excel, which purport to show appellant's nontaxable sales in interstate commerce during the fourth quarter of 2015 (4Q15).

With respect to appellant's spreadsheet, OTA found that the sales recorded by appellant appeared incomplete because the sales reported on appellant's federal Form 1099-K information exceeded the sales recorded on appellant's spreadsheet by \$400,988.20. OTA also noted that the spreadsheet's evidentiary value was diminished because transaction numbers were missing. Finally, OTA noted a lack of original documentation to support the spreadsheet.

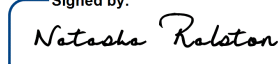
Next, OTA considered whether an adjustment was warranted based on appellant's submission of order forms for 4Q15. However, OTA found that the order forms were not supported by shipping documents to show that the sales were shipped out of this state or that appellant otherwise made a nontaxable sale in interstate commerce. OTA also noted that there was no way to verify whether appellant's order forms were complete. Thus, OTA found that documents submitted by appellant were insufficient to support any further adjustment.

Based on the foregoing, OTA finds that there was sufficient evidence to support the use of the credit card sales ratio by CDTFA, which was then reduced to account for appellant's nontaxable sales in interstate commerce and appellant's Arizona sales. Accordingly, appellant's petition for rehearing is denied.

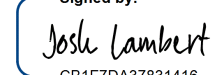
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Keith T. Long
Administrative Law Judge

We concur:

Signed by:

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Natasha Ralston
Administrative Law Judge

Signed by:

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Josh Lambert
Administrative Law Judge

Date Issued: 12/16/2024