

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**MOTIVO ENGINEERING, LLC**

) OTA Case No. 220510300  
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**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant:

Birgit Snodgrass, CFO

For Respondent:

Jason Riley, Attorney

A. KLETTER, Administrative Law Judge: On October 22, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining the actions of respondent Franchise Tax Board (FTB) proposing additional tax of \$27,715 and applicable interest for the 2015 tax year, additional tax of \$59,329 and applicable interest for the 2016 tax year, and additional tax of \$42,047 and applicable interest for the 2017 tax year. In the Opinion, OTA held that appellant made a valid, binding election to claim the California Alternative Incremental Credit (AIC) for the 2013 tax year, and that appellant failed to revoke its California AIC election for the 2015, 2016, and 2017 tax years (Years at Issue).

On January 13, 2025, Appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19048. 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 Shanahan*, 2024-OTA-040P.)

Appellant seeks a rehearing on the grounds of conformity with federal tax law and absence of clear state guidance. OTA interprets this as a request for a rehearing on the ground that the Opinion is contrary to law.<sup>1</sup> Upon consideration of appellant's petition, OTA concludes that the ground set forth in this petition does not constitute a basis for granting a new hearing.

The contrary to law standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) A holding is contrary to law "only if it was 'unsupported by any substantial evidence, i.e., [if] the entire evidence [was] such as would justify a [holding] against the part[y] in whose favor the [holding was] returned.'" (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907.)<sup>2</sup> This requires indulging "in all legitimate and reasonable inferences" to uphold the Opinion. (*Ibid*; see also *Appeals of Swat-Fame Inc. et al.*, 2020-OTA-045P.) The question does not involve "examining the quality or nature of the reasoning behind [OTA's Opinion], but whether [the Opinion] can or cannot be valid according to the law." (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976, at p. \*5.) A rehearing may be granted when, examining the evidence in the light most favorable to the prevailing party (here, FTB), with all legitimate inferences to uphold the Opinion, the petitioning party (here, appellant) establishes that the Opinion incorrectly stated or applied the law and, therefore, is contrary to law. (*Appeal of NASSCO Holdings, Inc.*, *supra*.)

The Opinion carefully considered appellant's contention that IRS regulations should prevail in the absence of contrary state laws or binding regulations. The Opinion found that appellant's premise was mistaken as R&TC section 23609(h)(2), concerning the California AIC election, plainly provides that "[former] IRC section 41(c)(4)(B) shall not apply." R&TC section 23609(h)(2) is not ambiguous. As described in the Opinion, appellant filed timely California returns for the Years at Issue and attached to the return for each respective tax year a research credit form which used the regular credit method of determining the research credit. Appellant used the regular credit method on its 2014 California return<sup>3</sup> filed with FTB, which it urged should count as deemed consent to revoke its California AIC under federal authorities.

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<sup>1</sup> Appellant states that it submits its petition with the intent to present additional material facts. Appellant has not explained the additional facts or whether they implicate other grounds for rehearing. Appellant emphasizes the fundamental purpose and objective of the research and development credit and emphasizes the punitive effect of OTA's determination. Neither emphasis is grounds for a rehearing.

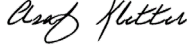
<sup>2</sup> As provided in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a new hearing.

<sup>3</sup> The 2014 tax year was not on appeal, but appellant asserted that it revoked the California AIC election in that tax year. OTA considered the 2014 tax year in reaching its conclusion.

(See Treas. Reg. § 1.41-8.) However, the Opinion noted that, where R&TC section 23609(h)(2) specifically decouples from former IRC section 41(c)(4)(B), it is inappropriate to look for federal guidance for that statutory section to interpret the revocation procedure for California purposes. Finally, the Opinion considered whether following a federal revocation procedure is effective under California law and held that it was ineffective under R&TC section 23609(h)(2).

The Opinion also addressed appellant's contention that FTB failed to provide guidance for the Years at Issue to explain how to obtain FTB's consent to revoke its California AIC election. The Opinion found that appellant's premise was mistaken as FTB's September 2006 edition of *Tax News* explains the procedure to follow, the forms to complete, and the address to which a taxpayer should send a California AIC revocation, among other information. It was undisputed that appellant did not request that FTB revoke appellant's California AIC election prior to filing the returns for the Years at Issue. While the Opinion determined that FTB's guidance is not binding law, it did not excuse appellant's failure to take any steps to contact FTB to revoke its California AIC election, as R&TC section 23609(h)(2) plainly requires. As described in the preceding paragraph, appellant filed timely California returns for the Years at Issue and attached to its original returns the research credit form with the regular credit method complete. This is the federal method of revocation, to which California does not conform. (See Treas. Reg. § 1.41-8; R&TC, §23609(h)(2).) The Opinion explained that, even though FTB's guidance was not binding, it did not validate appellant's erroneous revocation method of using the federal revocation procedure for California purposes.

Appellant, in its petition, offers no new evidence or legal authorities to support its claims that OTA's legal determinations were erroneous. Rather, appellant urges OTA to reconsider its determination. Appellant's dissatisfaction with the outcome of its appeal, and the attempt to reargue the same issues a second time, is not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Based on the foregoing, appellant has not shown that grounds exist for a new hearing as required by the authorities referenced above. Accordingly, appellant's petition is hereby denied.

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Asaf Kletter  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 5/23/2025