

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 240115248
DEUTSCHE BANK SECURITIES INC.	)	
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	)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Kelly Rocke, Assistant Vice President
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For Respondent:	Topher Tuttle, Attorney
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E. PARKER, Hearing Officer: On April 25, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$308,111.51. In the Opinion, OTA held that appellant has not shown grounds to abate the late payment and underpayment of estimated tax (estimated tax) penalties for the 2021 tax year.

Appellant timely filed a petition for rehearing (petition) with OTA under Revenue and Taxation Code (R&TC) section 19334 on the grounds that the evidence is insufficient to justify the Opinion and the Opinion is contrary to law.¹ Upon consideration of appellant's petition, OTA concludes that the grounds set forth in its 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 (here, appellant) 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

¹ Appellant requests a rehearing only on the issue of abatement of the late payment penalty and not the estimated tax penalty. Appellant does not specifically state the grounds for rehearing, but OTA interprets its assertions—that it was impossible for appellant to know its tax liability and that the Opinion found reasonable cause existed prior to July 2022—to fall within these two grounds.

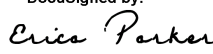
evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Shanahan*, 2024-OTA-040P.)

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, the panel clearly should have reached a different opinion. (*Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.) To find that the Opinion is contrary to law, OTA must determine whether the Opinion is unsupported by any substantial evidence. (*Ibid.*) This requires a review of the Opinion to indulge in all legitimate and reasonable inferences to uphold the Opinion. (*Ibid.*) 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.*) In OTA's review, the evidence is considered in the light most favorable to the prevailing party, here FTB. (*Ibid.*)

Here, appellant's 2021 California corporate tax liability was due April 15, 2022; however, appellant untimely paid the balance of its tax liability on November 30, 2022. Consequently, FTB properly imposed the late payment penalty. Appellant requested abatement of the penalty due to reasonable cause because it asserts the results of an IRS examination for the 2017 and 2018 tax years, which impacted the 2021 tax year, were not known as of the April 15, 2022 payment deadline. In July 2022, appellant agreed with the IRS's determination that its hedging transactions were not properly reported for the 2017 and 2018 tax years, which resulted in an increase of \$624,882,849 to its federal taxable income for the 2021 tax year at issue. Because California conformed to these adjustments, appellant's California tax liability increased, which led to the underpayment for the 2021 tax year. OTA, however, found appellant was not entitled to abatement of the penalty.

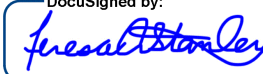
In the Opinion, with respect to the late payment penalty, OTA noted that appellant's argument that it was unable to determine its tax liability until July 2022 did not explain why it did not pay the balance due until November 30, 2022, especially when appellant had filed its return on November 14, 2022, and unequivocally knew the tax liability due by that date. The Opinion found reasonable cause must exist until payment is remitted and therefore it was unnecessary for OTA to determine whether the conclusion of the IRS examination in July 2022 established reasonable cause for the period between April 15, 2022, and July 2022, citing *Appeal of Moren*, 2019-OTA-176P. Additionally, for this reason, appellant's belief that the Opinion found reasonable cause existed prior to July 2022 is incorrect, because OTA made no such finding. In its petition, appellant concedes that reasonable cause did not exist after July 2022, further supporting the Opinion's conclusion that reasonable cause did not exist before payment was

ultimately made. The Opinion thus properly held that appellant had not established reasonable cause for the abatement of the late payment penalty. Accordingly, since appellant has not provided any basis to establish that the Opinion is contrary to law, that there is insufficient evidence to justify the Opinion, or that any ground exists warranting a rehearing, appellant's petition is denied.

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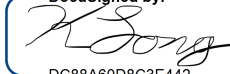
Erica Parker
Hearing Officer

We concur:

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 9/30/2025

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Keith T. Long
Administrative Law Judge