

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: OJOGHO AMERICAN ENTERPRISES, INC.)))))	OTA Case No.: 18042588, 18124124 CDTFA Case IDs: 716170, 873160
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Wilfred I. Aka, Attorney
For Respondent:	Jason Parker, Chief of Headquarters Ops.

A. WONG, Administrative Law Judge: On August 27, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining two decisions issued by respondent California Department of Tax and Fee Administration (CDTFA).¹ CDTFA's first decision partly denied Ojogho American Enterprises, Inc.'s (appellant's) petition for redetermination of a Notice of Determination (NOD) dated January 29, 2013. This NOD was for tax of \$644,208.59, plus applicable interest, and a 10 percent negligence penalty of \$64,420.80 for the period October 1, 2008, through December 31, 2011. CDTFA subsequently reduced this NOD's tax amount to \$536,840.65 with a corresponding decrease to the negligence penalty. CDTFA's second decision (and related supplemental decision) denied appellant's petition for redetermination of an NOD dated April 17, 2015. This NOD was for tax of \$239,220.63, plus applicable interest, and a 10 percent negligence penalty of \$23,922.12 for the period January 1, 2012, through December 31, 2014. CDTFA subsequently increased this NOD's tax amount to \$517,146.23 with a corresponding increase to the negligence penalty. As relevant here, OTA's Opinion concluded that reducing these NODs' taxes due to alleged nontaxable sales in interstate commerce was unwarranted because appellant failed to provide supporting evidence.

¹ The State Board of Equalization (board) formerly administered sales and use taxes. On July 1, 2017, the board's administrative functions relevant to this case transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, if this Opinion refers to events occurring before July 1, 2017, "CDTFA" refers to the board.

On September 26, 2024, appellant petitioned OTA for a rehearing based on the following three grounds: (1) newly discovered material evidence; (2) insufficient evidence to justify the Opinion; and (3) OTA's Opinion is contrary to law. OTA concludes that the three bases alleged in appellant's petition for rehearing do not constitute grounds for granting a new hearing.

OTA will grant a rehearing where one of the following six 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).)

Newly Discovered Material Evidence

With respect to the ground of newly discovered material evidence, appellant asserts that CDTFA overstated audited total sales, claiming that sales recorded in its bank statements and reported on its federal income tax returns (FITRs) were accurate.

Regarding newly discovered material evidence, a party seeking a rehearing on this ground must show the following: (1) the evidence is newly discovered; (2) the party exercised reasonable diligence in discovering and producing it; and (3) the evidence materially affects the substantial rights of the party. (See *Doe v. United Air Lines, Inc.* (2008) 160 Cal.App.4th 1500, 1506.)²

Here, the bank statements and FITRs appellant references are not new evidence—appellant provided them upon audit. Thus, appellant has failed to identify any new evidence in its petition for rehearing, let alone shown that it satisfied any of the three elements listed above. Accordingly, OTA cannot grant a rehearing on this basis.

Insufficiency of Evidence

Regarding the insufficient evidence ground, appellant alleges that CDTFA included nontaxable international sales made to customers in Japan, Mexico, Australia, and Great Britain

² Since California Code of Regulations, title 18, (Regulation) section 30604 is based on Code of Civil Procedure section 657, case law pertaining to that statute's operation constitutes relevant guidance in interpreting Regulation section 30604. (See *Appeal of Wilson Development, Inc.* (94-SBE-007) 1595 WL 1320; see also *Appeal of Do*, 2018-OTA-002P.)

in the amount of unreported taxable sales used to calculate appellant's tax liabilities. For support, appellant alludes to "[e]vidence traceable to bank deposits," but does not actually identify any specific bank deposit or transaction.

To find that there is insufficient evidence to justify the Opinion, the OTA Panel considering the petition for rehearing must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the Opinion clearly should have reached a different result. (*Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.)

Here, appellant has failed to substantiate its allegations of nontaxable international sales. And after reappraising the evidentiary record, OTA fails to find supporting evidence of them either; rather, a preponderance of the evidence supports the Opinion's findings and holdings. Thus, OTA concludes that appellant has not demonstrated that there was insufficient evidence to justify the Opinion; accordingly, a rehearing based on insufficient evidence is unwarranted.

Contrary to Law


Regarding the contrary to law ground, appellant contends that including nontaxable international sales in the amount of unreported taxable sales is unconstitutional and contrary to law.

The contrary to law standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) The question of whether the Opinion is contrary to law is not one that involves a weighing of the evidence, but instead, requires a finding that the Opinion is unsupported by any substantial evidence; that is, the record would justify a directed verdict against the prevailing party. (*Appeal of Riedel*, 2024-OTA-004P.) This requires a review of the Opinion in a manner most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the Opinion if possible. (*Ibid.*) On a petition for rehearing, the question before OTA does not involve examining the quality of the reasoning behind OTA's Opinion, but whether that Opinion can be valid according to the law. (*Ibid.*)

OTA's Opinion found that appellant failed to substantiate claims that it had made nontaxable sales in interstate commerce. Upon petition for rehearing, appellant has also failed to substantiate any nontaxable international sales allegedly included in the amount of unreported taxable sales undergirding its tax liabilities. And after reviewing the Opinion in the light most favorable to the prevailing party (here, CDTFA), OTA concludes that the Opinion is

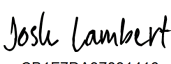
consistent with, not contrary to, the law and is thus valid. Accordingly, a rehearing based on the contrary to law ground is not warranted.

Having found that none of the three grounds alleged by appellant exists, OTA denies appellant's petition for rehearing.


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Andrew Wong
Administrative Law Judge

We concur:

Signed by:

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Josh Lambert
Administrative Law Judge

Signed by:

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Suzanne B. Brown
Administrative Law Judge

Date Issued: 8/29/2025