

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. HAMBARDZUMYAN,
dba The Fav Smoke Shop

) OTA Case No.: 230813957
) CDTFA Case ID: 02-342-761
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Grigor Demirchyan, Representative
For Respondent: Jennifer Barry, Attorney

T. STANLEY, Administrative Law Judge: On May 14, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA). CDTFA’s decision denied a petition for redetermination filed by D. Hambarzumyan (appellant) of a Notice of Determination (NOD) dated November 20, 2025. The NOD is for tax of \$187,328, plus applicable interest, and a negligence penalty of \$18,732.75 for the period February 4, 2018, through March 31, 2019 (liability period).

On July 23, 2025, OTA received a timely petition for rehearing (petition) filed by appellant. Appellant’s petition is based on the grounds that the Opinion is not supported by sufficient evidence, and the Opinion is contrary to applicable law. 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).)

Insufficient Evidence

To find that there is 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, the panel clearly should have reached a different opinion. (Code Civ. Proc. § 657; *Bray v. Rosen*, 167 Cal.App.2d 680, 684.) As provided in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 5806654, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable case law as relevant guidance in determining whether a ground has been met to grant a new hearing.

Appellant asserts there was insufficient evidence to support the Opinion because OTA did not consider the following asserted “facts”: (1) CDTFA never confirmed that appellant was present when they made on-site visits to the business; (2) when CDTFA came to the business site, it encountered a female employee who was unaware of who the owner was; (3) CDTFA handed the audit engagement letter to an individual named “John” because CDTFA believed John was an employee as he was behind the counter; (4) CDTFA must have spent at least a half hour at the business site but only observed one customer; (5) in a footnote in CDTFA’s opening brief, appellant was misquoted; (6) CDTFA’s decision states that the markup of 66.67 percent, calculated using appellant’s records, was too low for appellant’s type of business, but CDTFA presented an exhibit that shows the average markup for a medical marijuana club was 66.4 percent; and (7) the sign on the door during one of CDTFA’s site visits said “The Fav” but appellant’s dba was “The Fav Smoke Shop.” OTA considers each argument in turn.

OTA’s record supports appellant’s claim that CDTFA never observed him personally at the business location. However, that fact is irrelevant to CDTFA’s audit results. As set forth in the Opinion, substantial evidence supports OTA’s conclusion that appellant was still operating the business when CDTFA conducted its observations tests in May 2019. Similarly, the facts that a female employee did not know who owned the business and that CDTFA handed John the audit engagement letter do not persuade OTA that appellant was not the owner and operator of the business. OTA finds it likely that the female employee did not inquire about who owned the business when she was hired as an employee. When CDTFA handed John the audit engagement letter, John informed CDTFA that he would pass it along to appellant, and appellant apparently did get the letter. Lastly, OTA did not “miss” these facts as they were recorded in CDTFA’s audit working papers; rather, the Opinion either noted the facts or disregarded them as irrelevant.

CDTFA's audit working papers do not list the amount of time CDTFA spent at appellant's business location when it delivered the audit engagement letter. CDTFA's visit was not intended to serve as an observation test, and nothing in the record supports appellant's claim that CDTFA stayed for at least a half hour or how many customers came and went during that time.

Regarding the alleged misquote in footnote 2 of CDTFA's opening brief, OTA did not rely on that when deciding the appeal. A brief contains a party's arguments; it is not evidence. The Opinion did not rely on a footnote in a brief for any finding of fact.

Appellant's argument that CDTFA contradicted itself when asserting that in CDTFA's experience a markup of 66.7 percent was too low for appellant's type of business is also unavailing. The exhibit to which appellant refers surmises that for certain small, medical cannabis businesses the gross profit per day is approximately \$6,604. The article does not bill its analysis as a reflection of average cannabis markups. Rather, it states that "the numbers presented are examples only to give you an idea of the income potential from marijuana clubs." The exhibit does not contradict CDTFA's audit findings, which were not based on a markup but rather based on observation tests.

Appellant's final argument is that CDTFA observed a sign with "The Fav" on the business when it visited in May 2019, but appellant's dba is "The Fav Smoke Shop." The record reflects several instances where appellant's business is referred to as "The Fav" without objection by appellant. For example, the websites admitted as exhibits refer to the business as "The Fav," audit working papers refer to appellant's business as "The Fav," and CDTFA's decisions refer to appellant's business as "The Fav." Appellant did not object to using that shortened name for his business for the past six years while the audit and post-audit proceedings continued.

For the reasons discussed above, OTA finds that there was sufficient evidence to justify the Opinion; therefore, OTA cannot grant a rehearing based on this ground.

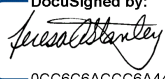
Contrary to Law

The contrary to law standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) A holding is contrary to law only if it was unsupported by any substantial evidence, i.e., if the entire evidence would justify a holding against the party in whose favor the holding was returned. (*Appeal of Shanahan, supra.*) This requires indulging in all legitimate and reasonable inferences to uphold the Opinion. (*Ibid.*) 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. (*Ibid.*) A rehearing may be granted when, examining the evidence in the light most favorable to the prevailing party (here, CDTFA), 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. (*Ibid.*)


Appellant contends that OTA misapplied Revenue & Taxation Code section 6481 because a deficiency determination for a closed business must be a “liability arising out of that business.” Appellant reargues the points that he asserts show he did not operate the business after early January 2019. However, OTA found that more likely than not appellant continued to operate a cannabis business at the same location until sometime in May 2019, and correctly applied the law based on this fact. Consequently, this is not a ground for a rehearing.

For the aforementioned reasons, OTA finds that appellant has not established that a ground exists for a rehearing pursuant to California Code of Regulations, title 18, section 30604(a). Furthermore, as to appellant’s repeated arguments which were considered and rejected in the Opinion, they do not constitute grounds for rehearing. (See *Appeal of Shanahan, supra.*) Likewise, appellant’s dissatisfaction with the outcome of his appeal is not grounds for a rehearing. (*Ibid.*) Accordingly, appellant’s petition is denied.


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Teresa A. Stanley
Administrative Law Judge

We concur:

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Steven Kim
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 11/3/2025