

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: B+B COLLISION & COACHWERKS, INC., dba Bell's Auto Sport)))))	OTA Case No.: 230914311 CDTFA Case ID: 14-119
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:	Gail Bell, Representative
For Respondent:	Jason Parker, Chief of Headquarters Ops.

A. WONG, Administrative Law Judge: On December 24, 2024, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision by respondent California Department of Tax and Fee Administration (CDTFA).¹ CDTFA’s decision denied, in part, a petition for redetermination filed by B+B Collision & Coachwerks, Inc., dba Bell’s Auto Sport (appellant) of a Notice of Determination (NOD) dated April 24, 2018. The NOD was for \$69,886.65 in tax, plus applicable interest, and two penalties totaling \$6,998.66 for the period January 1, 2015, through December 31, 2017 (liability period). Following two reaudits, CDTFA reduced the tax to \$47,949, deleted one of the penalties, and reduced the other penalty. After OTA’s Opinion sustained CDTFA’s action, appellant timely petitioned OTA for a rehearing, alleging that CDTFA’s audit of the liability period suffered from numerous flaws and that the tax liability should be further reduced to \$17,350.54.² In support, appellant provided additional documentation marked as Exhibits A through O.

OTA will grant a rehearing where at least one of the following six grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing: (1) an

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.

² In its petition for rehearing, appellant also contested CDTFA’s audit for the period October 1, 2018, through September 30, 2021 (audit period). However, OTA’s Opinion did not address this audit period because it was beyond the scope of the appeal. For that same reason, OTA will also not address the audit period here.

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).)

In its petition for rehearing, appellant does not refer to any of these six grounds for rehearing. However, OTA construes the petition's assertions and accompanying exhibits as appellant's request for a rehearing based on the following two grounds: (1) newly discovered material evidence; and (2) insufficient evidence to justify the Opinion. For the reasons explained below, OTA concludes that neither of these two grounds constitutes a basis for granting a new hearing.

Newly Discovered Material Evidence

Exhibits A through O contain analyses/spreadsheets by appellant and a third-party CPA, along with supporting emails, schedules, statements, orders, and invoices.

A party seeking a rehearing based on newly discovered material evidence 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.)³ Newly discovered evidence is looked upon with suspicion and disfavor, and the party must make a showing of the necessary requirements to support rehearing on this ground. (See *Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 138.) A general averment of diligence is insufficient; the party seeking rehearing must specify the particular acts or circumstances that establish diligence. (See *In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 154.)

Here, appellant failed to show that Exhibits A through O constitute evidence that was newly discovered after the Opinion. Further, appellant failed to specify how (or even whether) it exercised diligence in discovering and producing these additional documents. Appellant's failure to satisfy these two elements is sufficient for OTA to conclude that a rehearing based on newly discovered material evidence is not warranted.

³ 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.)

Insufficient Evidence

In its petition for rehearing, appellant asserts six flaws in CDTFA's audit. OTA finds that these alleged flaws together constitute appellant's assertion that insufficient evidence justifies the Opinion.⁴ OTA will address each of the six asserted flaws below after describing the insufficiency of evidence ground for rehearing.

To find that there is insufficient evidence to justify the Opinion, the OTA Panel considering a 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.) The OTA Panel has the affirmative duty to independently appraise the evidence and to grant the petition for rehearing where the preponderance of the evidence is opposed to the findings in the Opinion. (See *Byrne v. City and County of San Francisco* (1980) 113 Cal.App.3d 731, 739.) The OTA Panel may disbelieve witnesses, reweigh the evidence, and draw reasonable inferences therefrom that are contrary to the factual findings in the Opinion. (See *Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1159-1160.)

First, appellant claims that CDTFA's comparison of appellant's federal income tax returns (FITRs) to sales and use tax returns (SUTRs) did not account for the fact that appellant reported federal income taxes on a cash basis and sales and use taxes on an accrual basis.

However, appellant has failed to show how this directly resulted in an incorrect tax assessment. To satisfy its burden of proof, a taxpayer must prove both that the tax assessment is incorrect and what the proper amount of tax should be. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) During the audit, CDTFA examined appellant's FITRs and SUTRs for discrepancies to determine whether further examination was warranted. But CDTFA did not base appellant's determined tax liability on this preliminary examination; rather, CDTFA ultimately based it on the markup method. Thus, OTA is not convinced that appellant's first argument undermines the evidentiary basis for the determination at issue.

Second, appellant alleges that CDTFA's comparison of bank deposits to SUTRs did not account for deposits relating to car restoration jobs that took years to complete; as a result, CDTFA allegedly erroneously concluded that recorded deposits exceeded reported total sales.

⁴ Although not entirely clear, appellant's petition for rehearing listed at least nine (possibly ten) arguments against CDTFA's audit. Two arguments related to the newly discovered material evidence ground for rehearing, which OTA discussed and dismissed above. In describing the remaining arguments in the context of the insufficiency of evidence ground, OTA consolidated and reorganized them for coherence and clarity.

Here, appellant's second argument suffers from the same flaw as its first: this was another preliminary examination technique used by CDTFA to determine whether further examination was warranted, and CDTFA did not directly rely upon it in determining appellant's tax liability. Accordingly, OTA finds appellant's second argument unpersuasive as well.

Third, appellant argues that CDTFA's examination of appellant's profit and loss statements did not account for works in progress (WIPs) for which appellant had already purchased parts, leading CDTFA to erroneously find negative markups. Appellant concedes that most of the documents supporting its WIPs argument have been destroyed, but appellant provided one WIPs report from the liability period, marked as Exhibit H, that it managed to find.

Here, appellant concedes that it mostly lacks documentation to support its third argument. Further, in the prior section, OTA found that Exhibit H was among the exhibits that did not qualify as newly discovered evidence justifying a rehearing. For these reasons, OTA finds appellant's third argument unpersuasive.

Fourth, appellant asserts that it provided CDTFA with "boxes" of sales invoices, but CDTFA failed to utilize them in computing an erroneous markup of 36.98 percent. Appellant also appears to argue that CDTFA impermissibly applied this markup, which was based on one quarter, to the entire liability period. Appellant further contends that CDTFA miscalculated the 36.98 percent markup, and that the markup should have averaged 19.965 percent based on 47 additional invoices.

Here, appellant mistakenly identifies the markup CDTFA ultimately applied to determine appellant's tax liability. CDTFA based the 36.98 percent markup on eight invoices from the first quarter of 2015 (1Q15) during a reaudit. But during CDTFA's internal appeals process, its Appeals Bureau ordered a second reaudit to increase the number of invoices used to calculate the markup. Ultimately, CDTFA applied an average weighted markup of 35.53 percent based on 31 out of 60 invoices from 3Q19, a test period agreed upon by both parties. Moreover, the reason for the difference between appellant's alleged markup of 19.965 percent and CDTFA's applied markup of 35.53 percent is that the former is based on a simple average (i.e., weighing all invoices equally), whereas the latter is based on a weighted average (i.e., assigning more weight/importance to invoices with larger dollar volumes), which is more accurate given the facts here. For these reasons, OTA finds appellant's fourth argument lacks merit.

Fifth, appellant repeats an argument regarding markups in the range of 20 to 25 percent allegedly paid by large car insurance companies. However, OTA's Opinion already addressed and dismissed this argument, so OTA will not address it again here. Appellant's dissatisfaction

with the outcome of its appeal, and its attempt to reargue the same issue a second time, is not a ground for rehearing. (See *Appeal of Graham and Smith*, 2018-OTA-154P.)

Sixth, appellant asserts that CDTFA failed to provide it with allowances for the following: taxes paid on purchases resold; taxes paid with respect to nontaxable services; and bad debts that appellant never claimed. However, appellant fails to identify, and OTA is not aware of, anything in the evidentiary record to support this assertion. Accordingly, for lack of substantiation, OTA finds appellant’s sixth argument unpersuasive.

Finally, after finding appellant’s asserted flaws regarding CDTFA’s audit (and reaudits) unpersuasive, this OTA Panel independently reviewed both the evidentiary record and OTA’s Opinion and finds that a preponderance of the evidence still justifies the Opinion. Therefore, OTA concludes that no ground for rehearing exists and denies appellant’s petition for rehearing.

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Andrew Wong
Administrative Law Judge

We concur:

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Suzanne B. Brown
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 10/24/2025