



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.)

### Contrary to Law

The “contrary to law” standard of review involves a review of 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 which 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 Martinez Steel Corporation*, 2020-OTA-074P.) 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.*) The question before OTA on a PFR does not involve examining the quality or nature of the reasoning behind OTA’s Opinion, but whether that Opinion can be valid according to the law. (*Ibid.*)

Appellants contend the Opinion mischaracterized their position, improperly relied on “unverified data,” improperly disregarded affidavits that appellants had provided during the appeal, and improperly imposed a frivolous appeal penalty. In the Opinion, OTA evaluated the parties’ arguments, weighed the evidence, and made factual findings and legal conclusions based on the evidence and the applicable law. (See Cal. Code Regs., tit. 18, §§ 30102(n), 30214(f).) Appellants’ PFR fails to correctly identify any aspect of the Opinion that was contrary to law. Appellants’ dissatisfaction with the Opinion and attempts to reargue issues that the Opinion already considered and decided are not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Thus, OTA concludes that appellants have failed to show that the Opinion is contrary to law. Accordingly, OTA cannot grant a rehearing on this basis.

### Error in Law

A procedural “error in law” shall mean an error in the OTA appeals hearing or proceeding, other than a legal error in the Opinion. (Cal. Code Regs., tit. 18, § 30604(b).) An error in law is a claim of a procedural wrong, or error in the appeals proceeding, such as an erroneous ruling on the admission or rejection of evidence. (See *ibid.*; *Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P, at fn. 2.) Here, appellants state that the same grounds they identify

as “contrary to law” (discussed above) also constitute an error in law. However, appellants have not identified any procedural wrong or error in the appeals proceeding. Consequently, appellants have not established an error in law, and OTA cannot grant a rehearing on this basis.

### Insufficiency of Evidence

To find that there is an 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. (*Appeals of Swat-Fame, Inc., et al, supra*; Code Civ. Proc., § 657.) OTA considers the evidence in the light most favorable to the prevailing party (here, FTB). (*Appeals of Swat-Fame Inc., et al., supra.*)

Appellants set forth various arguments, including that OTA accepted inadmissible hearsay in violation of the rules of evidence, that the evidence did not satisfy the Federal Rules of Evidence, and that OTA misapplied the burden of proof. Appellants cite federal and state statutes that are irrelevant and inapplicable to this appeal.

Contrary to appellants’ contentions, the Federal Rules of Evidence are not applicable in OTA proceedings. (Gov. Code, § 15679.5; Cal. Code Regs., tit. 18, § 30214(f).) OTA’s Rules for Tax Appeals specify that all relevant evidence shall be admissible in OTA proceedings.<sup>1</sup> (Cal. Code Regs., tit. 18, § 30214(f)(1), (f)(3).) Moreover, except as otherwise specifically provided by law, the burden of proof is on the appellant as to all issues of fact (Cal. Code Regs., tit. 18, § 30219(a)); in an action for refund, the taxpayer has the burden of proving entitlement to a refund by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; Cal. Code Regs., tit. 18, § 30219(a), (b).) When FTB proposes a tax assessment based on an estimate of income, FTB’s initial burden is to show that the proposed assessment was reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.)

Here, as explained in the Opinion, FTB met its initial burden, and appellants failed to provide any evidence to overturn FTB’s proposed assessment. There is no merit to appellants’ positions in the PFR regarding OTA’s consideration of the evidence and application of the burden of proof. Appellants’ arguments in the PFR do not reveal the Opinion should have reached a different conclusion. (See *Appeals of Swat-Fame, Inc., supra.*) Thus, appellants have not established that there was insufficient evidence to justify the Opinion.

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<sup>1</sup> For purposes of OTA proceedings, evidence is defined as any information contained in the record that the panel may consider when deciding an appeal. (Cal. Code Regs., tit. 18, § 30102(n).) The California Evidence Code and the California Code of Civil Procedure shall not apply to OTA proceedings, although the panel may use the California rules of evidence when evaluating the weight to give evidence. (Cal. Code Regs., tit. 18, § 30214.)

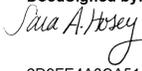
Due Process Violations

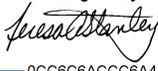
In addition, the PFR argues that the Opinion’s findings violate appellants’ right to due process under the U.S. Constitution. OTA is generally precluded from considering constitutional arguments and has no jurisdiction to provide a remedy for an agency’s actual or alleged violation of any substantive or procedural right to due process under the law.<sup>2</sup> (Cal. Code Regs., tit. 18, § 30104; see Cal. Const., art. III, § 3.5.)

In light of all of the above, OTA finds that appellants have not satisfied the requirements for granting a rehearing. Accordingly, the PFR is denied.

Signed by:  
  
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Suzanne B. Brown  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 10/27/2025

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<sup>2</sup> There are limited exceptions to OTA’s jurisdiction to review alleged due process violations; however, none are applicable in this matter. (Cal. Code Regs., tit. 18, § 30104(e).)