OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **DIGIMAX PRODUCTIONS LLC**	OTA Case No.: 231014565 CDTFA Case ID: 3-652-943

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Steven J. Mandel, CPA

For Respondent: Jason Parker, Chief of Headquarters Ops.

T. STANLEY, Administrative Law Judge: On June 10, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).[1] CDTFA's decision denied a petition for redetermination filed by Digimax Productions LLC (appellant) of a Notice of Determination (NOD) dated March 2, 2022. The NOD is for net tax of $33,569,[2] plus applicable interest, for January 1, 2017, through December 31, 2019 (liability period). CDTFA subsequently prepared a reaudit that reduced the measure of unreported taxable sales by $18,367, from $305,556 to $287,189, and the net tax by $1,709, from $33,659 to $31,950.[3]

On July 8, 2025, appellant timely filed a petition for rehearing (petition) with OTA on the bases that there is insufficient evidence to justify the Opinion, and there was an error in law in the OTA appeals hearing or proceeding. 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

[1] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[2] The NOD reflects total tax of $44,297 and a credit of $10,638, resulting in a net tax of $33,659.

[3] The reaudit report reflects total tax of $44,297 and a credit of $12,347, resulting in a net tax of $31,950.

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); *Appeal of Riedel*, 2024-OTA-004P.)

Insufficient Evidence to Support the Opinion

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. (Code Civ. Proc. § 657; *Bray v. Rosen* (1959) 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 lists several reasons why the Opinion is unsupported by sufficient evidence: (1) in Findings of Fact (FF) #2, OTA found that appellant provided incomplete sales invoices, but appellant alleges it did not use consecutively numbered invoices due to voided sales and other things; (2) in FF #5, OTA found that appellant did not report beginning and ending inventories on its federal income tax returns while appellant asserts it was not required to do so and that it accounted on a cash basis; (3) FF #6 fails to consider that appellant's sales vary and may have different markups (appellant states that OTA "ignored" this fact); (4) FF #8 is incorrect because appellant did explain the bank deposits difference to CDTFA; (5) FF ## 10, 13, and 14 are incorrect because CDTFA did not ask appellant to increase the shelf test, and appellant has several types of revenue; and (6) appellant is not a grocer, drop shipper, or retail store, and each project is different. Appellant contends that neither CDTFA nor OTA understands the business. OTA will address each contention in turn.

OTA correctly found that appellant did not provide complete sales invoices for the audit. If appellant voided or otherwise canceled an invoice, those canceled invoices could have been provided for audit to show CDTFA that appellant maintained a complete set of invoices. It is appellant's burden to show that its records were reliable, and just stating it is an unsupported

assertion cannot satisfy appellant's burden of proof. (See *Appeal of AMG Care Collective*, 2020-OTA-173P.)

Despite appellant's assertion, FF #5 is accurate. Appellant may account on a cash rather than accrual basis, but it nevertheless did not report its beginning and ending inventory to CDTFA to enable the auditor to account for sales and purchases outside of the liability period that may have been included in sales during the liability period. Once again, it is appellant's burden to *show* that it made purchases or sales outside of the liability period that were included in sales during the liability period, which appellant has not done. A single picture submitted by appellant is insufficient to establish the amount of inventory at any given point in time.

The fact that appellant's sales vary and may have different markups also does not support the need for a rehearing. CDTFA separately conducted a shelf test for equipment and hardware sold under time and materials contracts, with specific markups in the reaudit ranging from 62.48 percent to 117 percent. CDTFA did not treat these as the same sort of sales but rather used a weighted average markup of 95.29 percent, which CDTFA then applied to appellant's audited cost of goods sold. Therefore, the evidence supports that CDTFA and OTA considered that appellant's markups for different sales varied, and appellant has not established that a rehearing is warranted on this basis.

Appellant, without more, asserts that OTA incorrectly found that appellant could not explain the discrepancy between bank deposits and federal gross receipts for 2017 and 2018. Appellant does not provide a clue as to what that explanation might have been. Ultimately, those discrepancies did not influence the shelf test that was used to calculate appellant's underreported taxable sales. This assertion, too, fails to provide a basis to grant a rehearing.

Appellant's assertion that FF ## 10, 13, and 14 are incorrect because CDTFA did not ask appellant for a higher number of sales invoices is also unavailing. FF #10 simply states the results of the audit when the average weighted markup is applied to audited cost of goods sold. FF ## 13 and 14 reflect documents that appellant provided on appeal that were ultimately rejected by CDTFA as unreliable and insufficient to refute the audit results. Appellant may be referring to the fact that CDTFA requested that appellant provide, during the audit, 17 sales invoices and their associated purchase invoices, but appellant only provided 9 sales invoices, approximately half of what was requested. Only those invoices provided by appellant were used in the audit; consequently, whether more were requested or not is of no value to the results of the audit. Nor does the discrepancy raise a ground for rehearing.

Lastly, appellant contends that CDTFA and OTA do not understand its business. Appellant asserts it is not a grocer, drop shipper, or retailer. CDTFA did not treat appellant as a

grocer or drop shipper. Appellant is a "retailer," which Revenue and Taxation Code section 6015 defines in part as any seller who makes retail sales of tangible personal property. Both CDTFA's audit working papers and decision, and OTA's Opinion, make it clear that appellant was understood to be a retailer and installer of tangible personal property, such as audio and video equipment, computer hardware and software, and security systems. These are the types of tangible personal property that appeared in the invoices used for the shelf test. Appellant has not explained how the alleged misunderstanding of appellant's business materially affected its substantial rights. Appellant has therefore not shown that a rehearing is warranted, either on this basis or on any other claimed basis discussed above.

Error in Law

Courts have found that a new trial may be granted based on an error in law if its original ruling as a matter of law was erroneous. (*Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 17-18, citing *Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391, 397.) A claim on a petition for rehearing that there was an error in law is a claim of procedural wrong. For example, courts have found an error in law occurred when there was an erroneous denial of a jury trial (*Johnson v. Superior Court* (1932) 121 Cal.App. 288), an erroneous ruling on the admission or rejection of evidence (*Nakamura v. Los Angeles Gas & Elec. Corp.* (1934) 137 Cal.App. 487), an erroneous application of the law by a jury (*Shapiro v. Prudential Property & Casualty Co.* (1997) 52 Cal.App.4th 722), and an erroneous instruction to a jury (*Maher v. Saad* (2000) 82 Cal.App.4th 1317). Error in law pursuant to Regulation section 30604(a)(6) generally refers to errors that occurred during the course of the proceedings. As stated in Code of Civil Procedure section 657,[4] in the judicial context, an error in law "occurring at the trial and excepted to by the party making the application," is grounds for a new trial. This includes situations where, for example, the trial court made an erroneous evidentiary or procedural ruling. (See, e.g., *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138; *Ramirez v. USAA Casualty Ins. Co., supra*.)

The only evidence cited by appellant in its petition to show an error in law during the appeals hearing or proceeding is that the cover letter for the Opinion was dated June 10, 2025, but appellant allegedly did not receive it until June 26, 2025, which gave appellant less than 30 days to file a timely petition However, it is well known that mail is not typically received on the

[4] As provided in *Appeal of Wilson Development, Inc.*, (94-SBE-007) 1994 WL 580654, it is appropriate for OTA to look to Code of Civil Procedure section 657 and applicable caselaw as relevant guidance in determining whether a ground has been met to grant a new hearing.

date a letter is mailed, meaning that mail received after the date of mailing is a regular occurrence and does not create an error in the application of the law. Moreover, the alleged error in law during the appeals proceedings must have materially affected appellant's substantial rights, which it clearly did not as appellant filed a timely PFR. Therefore, this is not sufficient grounds for a rehearing.

Based on the foregoing, appellant has not provided any valid ground for granting a rehearing. As such, OTA denies appellant's petition.

DocuSigned by:
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:
1B8E50433E1D4D5...
Greg Turner
Administrative Law Judge

DocuSigned by:
6ZE043D83EE547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 11/26/2025