

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:)	OTA Case Nos.: 241017689; 241017692
CONTRA COSTA FARMS LLC AND)	CDTFA Case IDs: 5-510-931; 5-504-787
RIO VISTA FARMS LLC)	
)	
)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	Charles M. Wesley, Managing Member
For Respondent:	Jennifer Barry, Attorney

J. LAMBERT, Administrative Law Judge: On November 12, 2025, the Office of Tax Appeals (OTA) issued an Opinion in the matter of the consolidated appeals of Contra Costa Farms LLC (Contra Costa) and Rio Vista Farms LLC (Rio Vista) (collectively, appellants). The Opinion sustained a decision by respondent California Department of Tax and Fee Administration (CDTFA) partially denying appellants’ timely petitions for redetermination of two Notices of Determination (NODs) issued to appellants.¹

Appellants timely filed a petition for rehearing (PFR). Pursuant to California Code of Regulations, title 18, (Regulation) section 30604(a)(1)-(6), OTA will grant a rehearing where one of the following grounds 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.

¹ The first NOD was issued on December 29, 2023, to Contra Costa for tax of \$2,979,636, plus applicable interest, and a negligence penalty of \$297,963.60 for the period January 1, 2020, through December 31, 2022. The second NOD was issued on January 2, 2024, to Rio Vista for tax of \$525,954, plus applicable interest, and a negligence penalty of \$52,595.40 for the period January 1, 2020, through December 31, 2022. In its subsequent decisions, CDTFA deleted the negligence penalties but denied the petitions for redetermination as to the remaining amounts in each case.

At the hearing, appellants stated that the non-taxable service fees were like tips or gratuities. The Opinion concluded that appellants provide no evidence establishing that the services fees were nontaxable tips. In their PFR, appellants contend that the Opinion incorrectly held that its “service fees” are not exempt from taxation. Appellants contend that CDTFA told them that the fees were tax-exempt if added to receipts and optional. Appellants assert that the fees were not tips or for cost recovery, but were an optional customer expression of gratitude for exceptional dispensary experience. As support, appellants provide CDTFA Publication 115 (*Tips, Gratuities, and Service Charges*), which references legal authorities pursuant to Regulation section 1603.


Appellants’ arguments appear to be that a rehearing is warranted because there is insufficient evidence to justify the Opinion and that the Opinion is contrary to law. To find that there is insufficient evidence to justify the Opinion, OTA must find, after weighing the evidence in the record, including reasonable inferences from that evidence, that OTA clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) To find that the Opinion is contrary to law, OTA must determine whether the Opinion is unsupported by any substantial evidence. (*Ibid.*) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can or cannot be valid according to the law. (*Ibid.*)

An optional payment designated as a tip, gratuity, or service charge is not subject to tax. (Cal. Code Regs., tit. 18, § 1603(h).) To be non-taxable, the payment must also be separately stated. (*Ibid.*) The record includes only a few receipts for the sale of cannabis products that state the transaction includes all state, local, excise, sales tax, and services fees. However, the receipts do not separately state the alleged services fees. In addition, the exemption under Regulation section 1603 applies to the optional payments related to the sale of meals, food, and drinks that include services. (*Ibid.*) However, food products do not include cannabis, so Regulation section 1603 is not applicable.² (See Revenue and Taxation Code (R&TC), § 6359(c).) Appellants provide no further evidence to support their contention.

As to appellants’ assertion that CDTFA advised them that the services fees would be nontaxable if optional and itemized separately on receipts, appellants alleged the advice occurred after the audit period, and appellants acknowledged that they did not receive any written advice from CDTFA. (See R&TC, § 6596.) Therefore, as explained in the Opinion, there is no basis to conclude that appellants reasonably relied on written advice from CDTFA.


² The Opinion noted that operational costs and expenses are part of the taxable sales price for cannabis products and are not exempt even if separately stated. (See R&TC, § 6012(a)(2), (b)(1).)

Accordingly, appellants have not established that there is insufficient evidence to justify the Opinion, that the Opinion is contrary to law, or that any ground exists to warrant a rehearing. As a result, appellants' PFR is denied.

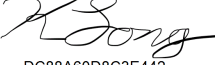
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Josh Lambert
Administrative Law Judge

We concur:

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Andrew Wong
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 3/4/2026