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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No.: 240115150
EAST WEST BANK	CDTFA Case ID: 90-597

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Roger Wang, CPA

For Respondent: Jennifer Barry, Attorney

T. STANLEY, Administrative Law Judge: On July 16, 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 claim for refund filed by East West Bank (appellant) on July 1, 2014.[2] The claim for refund is for $10,822.88 in tax, plus applicable interest.

On September 22, 2025, OTA issued an Opinion sustaining CDTFA's action denying appellant's claim for refund. On October 17, 2025, appellant timely petitioned for a rehearing with OTA on the basis that there is insufficient evidence to support OTA's written Opinion and that the Opinion is contrary to law. OTA concludes that the grounds set forth in the 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

[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] CDTFA's decision (consisting of a Decision dated May 30, 2023, and a Supplemental Decision dated December 21, 2023) denied appellant's claim for refund of $10,822.88, which was the disputed portion of the claim for refund. CDTFA's decision also granted a separate, undisputed portion of appellant's claim for refund, which is not at issue in the original Opinion or in this petition.

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.)

In the Opinion, OTA found that the tax charged for tangible personal property Enterprise Network Solutions, Inc. (ENS) sold to appellant was sales tax reimbursement instead of, as asserted by appellant, use tax. The crux of the dispute between the parties is the treatment of a refund of use tax and sales tax reimbursement. In a claim for refund action, excess sales tax reimbursement must generally be returned to the party who remitted the excess tax reimbursement (such as ENS) and then refunded or credited to the person who paid it (i.e., appellant). (Revenue and Taxation Code (R&TC), § 6901(a).) On the other hand, CDTFA must refund or credit any overpayment of use tax to the purchaser (appellant). (R&TC, § 6901(b).)

Insufficiency of the 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. (Code Civ. Proc. § 657; *Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.)[3]

Appellant asserts that there is insufficient evidence to justify the Opinion because OTA failed to consider the fact that ENS, a nonresident corporation, held a California Certificate of Registration – Use Tax (certificate). Appellant contends that because ENS held such a certificate, the tax collected on the transaction at issue was presumptively use tax, and that CDTFA did not rebut that presumption.

OTA did in fact consider the certificate held by ENS. The Opinion, however, did not weigh this fact as the most important, but rather looked at the many facts that supported a conclusion that ENS charged sales tax on the transaction. The Opinion noted that neither California use tax nor California sales tax applies to the sale of tangible personal property by an Arizona vendor to a California resident (appellant) for use in Arizona. Thus, ENS incorrectly charged tax on appellant's purchase, and the fact that ENS held a certificate was not dispositive

[3] 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.

since ENS clearly erred in charging any type of California tax. The Opinion considered that appellant contracted to pay California sales tax reimbursement (separately listed on the invoice) and that when ENS claimed a refund of the sales tax reimbursement from CDTFA, it notified appellant that it applied for a refund of *sales tax*, and appellant signed a form agreeing that the *sales tax* refund should be refunded to appellant. The invoice constitutes the terms of the agreement for sale from ENS to appellant, which clearly shows that appellant contracted to pay sales tax reimbursement rather than use tax. Whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale, here the invoice. (Cal. Code Regs., tit. 18, § 1700(a)(1).)

Once CDTFA refunds excess sales tax reimbursement, the retailer must refund the excess collections to the purchaser. (Cal. Code Regs., tit. 18, § 1700(b)(2).) To establish that it refunded the excess amounts to appellant, ENS may show that credit was allowed appellant as an offset against an existing indebtedness, such as the Arizona sales tax here. (Cal. Code Regs., tit. 18, § 1700(b)(3)(A)(2).) The fact that ENS credited the refund against Arizona taxes owed by appellant and provided a store credit for the remainder does not negate the fact that appellant contracted with ENS for payment, and later refund, of sales tax reimbursement. ENS was within its statutory authority to refund or credit excess tax reimbursement refunded to ENS. (See *Ibid.*)

Appellant points to no authority wherein a presumption of use tax applies whenever a retailer holds a certificate. The Opinion correctly analyzed that fact amongst several other facts that supported the conclusion that the refund was for excess sales tax reimbursement and was properly refunded to the retailer that paid it, instead of to the customer.

Contrary to Law

The question of whether a decision is contrary to law is not one that involves a weighing of the evidence but instead requires a finding that the decision is "unsupported by any substantial evidence." (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907 (*Sanchez-Corea*).) The fact that appellant is dissatisfied with the outcome of her appeal is not grounds for a rehearing.

To find that the opinion is against (or contrary to) law, we must determine whether the opinion is "unsupported by any substantial evidence." (*Appeal of Graham and Smith*, 2018-OTA-154P, citing *Sanchez-Corea*, *supra*, 38 Cal.3d at p. 906.) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can

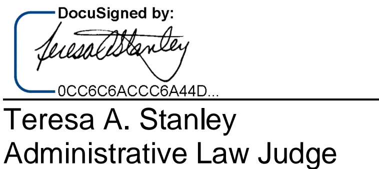
or cannot be valid according to the law. (*Appeals of Swat-Fame, Inc. et. al.*, *supra*.) OTA must consider the evidence in the light most favorable to the prevailing party (here, CDTFA). (*Sanchez-Corea*, *supra*, 38 Cal.3d at p. 907.)

Appellant contends that OTA's Opinion incorrectly interpreted the law in finding that the tax at issue was sales tax instead of use tax. Appellant concedes that a buyer and seller of tangible personal property may contract for payment of sales tax, but asserts that no provision of law allows CDTFA to offset taxes owed to another state, only those owed to CDTFA.

OTA properly held that the evidence supported a contract between appellant and ENS for payment of sales tax reimbursement by the buyer (appellant). CDTFA fully refunded the excess sales tax reimbursement to ENS, and ENS, not CDTFA, credited the refund against sales tax owed by its customer to the State of Arizona. ENS also credited the remainder to appellant's account, and it was appellant's choice not to use that credit or request that ENS refund it. The only issue here is whether CDTFA properly issued a refund to the correct person, here the retailer, which based on the law and evidence, CDTFA did.

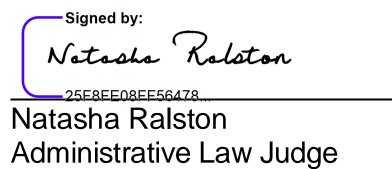
As noted above, appellant's dissatisfaction with the outcome of the appeal, and the attempt to reargue the same issues a second time, is not grounds for a rehearing. (*Appeal of Graham and Smith*, *supra*.) Substantial evidence supports OTA's conclusion that the tax at issue was sales tax reimbursement, and CDTFA correctly issued a refund to the retailer (ENS).

Based on the foregoing, appellant has not established it is entitled to a rehearing.

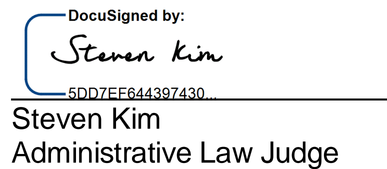


Teresa A. Stanley
Administrative Law Judge

We concur:



Natasha Ralston
Administrative Law Judge



Steven Kim
Administrative Law Judge

Date Issued: 2/24/2026