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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

MCDONELL LANE, INC.

OTA Case No.: 240115255

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Richard Shamberg, President

For Respondent: Christopher T. Tuttle, Attorney

J. LAMBERT, Administrative Law Judge: On May 28, 2025, the Office of Tax Appeals (OTA) issued an Opinion in the matter of the appeal of McDonell Lane, Inc. (appellant). The Opinion reversed the Franchise Tax Board's (FTB's) action proposing tax of $800, a late filing penalty of $200, a notice and demand penalty of $200, a filing enforcement cost recovery fee of $86, and interest, for the 2020 tax year.

FTB 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.

In its PFR, FTB argues that there is insufficient evidence to justify the Opinion and 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*.)

FTB contends that appellant, an Alaska-based S corporation, was doing business in California under R&TC section 23101(a), which states that doing business means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. FTB asserts that this is demonstrated by the activities of appellant's officers in California, which included attending virtual meetings, signing checks, executing a memorandum of action, filing tax returns, and keeping records. FTB asserts that these activities demonstrate that appellant was doing business in California, citing cases such as *Hise v. McColgan* (1944) 24 Cal.2d 147 (*Hise*), and *Appeals of Kleefeld & Son Construction Co., Inc. and Don Ja Ran Construction Co., Inc.* (60-SBE-013) 1960 WL 1392 (*Kleefeld*).

However, the cases cited by FTB involved active engagement in transactions for the purpose of financial or pecuniary gain or profit in California. (*Hise*, *supra*, 24 Cal.2d at p. 151 [activities, including sales, rentals, and transfers of assets, and collections upon notes and other obligations done in the course of liquidation in order to obtain the best price for assets and to realize the most financial gain]; *Kleefeld*, *supra* [activities including conducting negotiations, assembling plans and data, preparing execution of formal agreements related to future construction of houses].)

As discussed in the Opinion, appellant's receipt of proceeds occurred in Alaska, not California, and were from the sale of property located in Alaska pursuant to a sale executed in Alaska in a prior year. After examining the evidence, the Opinion concluded that the activities by appellant or its officers in California were administrative formalities that were not intended to, and did not, affect the continued receipt of the automatic payments in Alaska. Overall, FTB provides the same or similar arguments that were considered and rejected in the Opinion, and which OTA continues to find to be unpersuasive. (See *Appeal of Graham and Smith*, 2018-OTA-154P.)

Accordingly, FTB has 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, FTB's PFR is denied.

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Signed by:
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Hans Famularo
Administrative Law Judge

Date Issued: 3/17/2026