**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of:<br>**PRESS BOX, INC.,**<br>**dba Press Box Sports Grill** | OTA Case No.: 230212554<br>CDTFA Case ID: 679-918 |

**OPINION ON PETITION FOR REHEARING**

Representing the Parties:

For Appellant: Thomas Miller, President

For Respondent: Jason Parker, Chief of Headquarters Ops.

A. WONG, Administrative Law Judge: On September 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 petition for redetermination filed by Press Box, Inc. (appellant) of a Notice of Determination (NOD) dated October 1, 2018. The NOD is for tax of $52,770, plus applicable interest, for the period April 1, 2014, through March 31, 2017.

On October 10, 2025, appellant timely petitioned for a rehearing with OTA on the following two bases: (1) there is insufficient evidence to justify OTA's Opinion; and (2) the Opinion is contrary to law.[2] OTA concludes that the grounds appellant set forth in its 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 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

[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] In its petition, appellant states that its name is now "Press Boxes, Inc."

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).)

*Insufficiency of Evidence*

In its petition for rehearing, appellant contends that OTA upheld CDTFA's determination without sufficient evidentiary support. Specifically, appellant alleges that CDTFA made unsupported assumptions during its audit and included in its determination of audited taxable sales nontaxable service fees and capital inflows related to the construction of new restaurants. Appellant also claims that it consistently asserted these explanations and provided all requested records during the audit and appeal.

To find that there is insufficient evidence to justify the Opinion, the OTA Panel considering the petition for rehearing must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the Opinion clearly should have reached a different result. (*Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.)

Here, OTA has reviewed the evidentiary record and fails to find any evidence substantiating appellant's allegations that CDTFA either made unsupported assumptions or failed to make any warranted adjustments. During the audit, CDTFA reasonably used the gross receipts appellant reported on its federal income tax returns as a proxy for recorded sales because of inconsistencies in appellant's sales tax reporting to the state. And CDTFA adjusted the determination for nontaxable admission charges. Further, appellant's contention that it consistently asserted the allegations in its petition for rehearing and provided supporting evidence during the audit and appeal contradicts OTA's record. The argument regarding capital inflows appears new, and appellant has yet to provide any evidence supporting any of the claims appellant made during these OTA appeal proceedings. As a result, OTA concludes that appellant has not demonstrated that there was insufficient evidence to justify the Opinion, so a rehearing based on an insufficiency of evidence is not warranted.

*Contrary to Law*

In its petition for rehearing, appellant contends that the prolonged duration of this matter raises concerns under statute of limitations and due process principles. Specifically, appellant alleges that this matter's "extended timeline" prejudiced appellant by complicating record retention and increasing accrued interest, contrary to the intent of Revenue and Taxation Code (R&TC) section 6487, which generally limits assessments to three years for filed returns. Appellant argues that, under the California Constitution, this excessive delay undermines the fairness of the proceedings and warrants abating CDTFA's assessment as a matter of equity and law.

The "contrary to law" standard of review involves reviewing 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 that 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 Riedel*, 2024-OTA-004P.) 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*.) On a petition for rehearing, the question before OTA does not involve examining the quality of the reasoning behind OTA's Opinion, but whether that Opinion can or cannot be valid according to the law. (*Ibid*.; see also *Appeals of Swat-Fame Inc., et al.*, *supra*.)

OTA does not have jurisdiction to determine whether an appellant is entitled to a remedy for an agency's actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal. (Cal. Code Regs., tit. 18, § 30104(e).)

Here, CDTFA timely issued its NOD under R&TC sections 6487 and 6488 because appellant waived the applicable statute of limitations during the audit. As for appellant's other claims of due process violations, appellant has failed to show how such alleged violations affected the validity of CDTFA's determination or the amount at issue, so OTA lacks the jurisdiction to address the alleged violations.[3] Otherwise, after reviewing the Opinion in the light most favorable to the prevailing party (i.e., CDTFA), OTA concludes that the Opinion is consistent with, and not contrary to, the law and is thus valid. Accordingly, a rehearing based on the contrary to law ground is not warranted.

[3] Notably, during OTA's appeal proceedings, it was appellant who requested and received various extensions to provide additional information and/or supporting documentation, so it appears disingenuous of appellant to now claim that these extensions prejudiced appellant to a degree that violated its due process rights.

Because none of the grounds alleged by appellant exists, OTA denies appellant's petition for rehearing.

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Andrew Wong
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 3/20/2026