OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **STAR OF INDIA, LLC,** **dba Holiday Inn Bar and Lounge**	OTA Case Nos.: 18083610, 21088499 CDTFA Case IDs: 627341, 80-114

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Kai Mickey, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

N. RALSTON, Administrative Law Judge: On August 26, 2025, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by California Department of Tax and Fee Administration (respondent).[1] Respondent's decision partially denied a petition for redetermination filed by Star of India, LLC (appellant) of a Notice of Determination (NOD) dated July 11, 2012. The NOD is for $149,528 in tax, plus applicable interest, a negligence penalty of $11,270.78 and a penalty of $14,728.22 for failure to remit sales tax collected for the period April 1, 2008, through March 31, 2011 (First Liability Period). In its subsequent decision, respondent made no adjustment to the tax liability, replaced the penalty for failure to remit sales tax collected with a negligence penalty, which increased the negligence penalty by $3,682.02 to $14,952, and denied the remainder of the petitioned amount.

Appellant also appealed a separate decision issued by respondent denying appellant's administrative protest of an NOD issued on January 28, 2016. The NOD is for tax of $131,595.52, plus applicable interest, and a negligence penalty of $13,159.55 for the period October 1, 2012, through September 30, 2015 (Second Liability Period). Pursuant to Revenue and Taxation Code section 6565, an additional 10 percent penalty of $13,159.55 was added to

[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 respondent. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "respondent" shall refer to the board.

the NOD for appellant's failure to timely pay the NOD before it became final (finality penalty). In a subsequent decision, respondent prepared a reaudit that reduced the taxable measure by $466,261, from $1,759,490 to $1,293,229.

On September 25, 2025, appellant timely petitioned for a rehearing with OTA. While appellant's petition for rehearing (PFR) does not state the grounds upon which it is based, it states that OTA's Opinion disregarded certified declarations that appellant submitted with its appeal; that the Opinion completely misunderstood a significant area of the audit; and that the Opinion showed bias by using the word "assert" and disregarding a document that appellant submitted. OTA interprets these statements as contentions that OTA's Opinion is contrary to law. OTA concludes that the PFR does not establish any 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 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.)

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*, *supra*.) 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 PFR, the question before OTA does not involve examining the quality of the reasoning behind OTA's Opinion, but whether that Opinion can be valid according to the law. (*Ibid*.)

In its PFR, appellant makes several arguments, many of which OTA previously considered and rejected.

Purported Sales Related to Breakfast Coupons

At the hearing, appellant argued that it provided breakfast to patrons of the hotel who presented a coupon from the hotel. Appellant contended that per its agreement with the hotel, the hotel was to reimburse appellant for the cost of these breakfasts, but that the hotel failed to do so. To support this claim, appellant provided three declarations from persons involved in appellant's business. In its PFR, appellant argues that OTA did not provide these declarations with the weight they deserved.

OTA considered these declarations as well as the evidence provided by respondent. Respondent's assessment was based on appellant's own records, including records that were contemporaneously prepared. Thus, based on the entire record before OTA, OTA determined that appellant failed to show that additional reductions to the measure of unreported taxable sales were warranted. In essence, appellant's PFR reargues the case presented to OTA and decided in the Opinion. Upon its PFR, appellant has failed to substantiate additional adjustments to unreported taxable sales and has failed to establish that a ground for rehearing exists.

Negligence Penalty

OTA determined that respondent correctly imposed the negligence penalty due to the large error rate respondent computed by comparing appellant's audited understatement to reported taxable sales. OTA also considered the fact that appellant failed to provide source documents and claimed 79 percent of its reported total sales as exempt without providing any documentation of exempt sales. Furthermore, OTA considered the fact that appellant had collected sales tax reimbursement on sales of $497,009. In its PFR, appellant correctly points out that while OTA's Opinion indicates that the amount of sales tax reimbursement that appellant collected, but did not remit, was $497,009, the $497,009 amount was in actuality the measure of sales for which sales tax reimbursement was collected but not remitted. Appellant asserts that correcting this statement would result in removal of the negligence penalty because this is appellant's first audit.

As stated above, OTA is required to review the Opinion in the light most favorable to the prevailing party. In this case, respondent is the prevailing party. Further, OTA must indulge in all legitimate and reasonable inferences to uphold the Opinion if possible. (*Appeal of Riedel*, *supra*.) While this was appellant's first audit, substantial evidence supports imposing the negligence penalty. As noted in the Opinion, the audited understatement of $1,908,447 represented 624 percent (rounded) of reported taxable sales of $305,880 and was quite substantial. Additionally, appellant failed to provide source documents, such as guest checks, to support amounts recorded in the daily sales sheets, and it claimed 79 percent of its reported total sales as exempt ($1,139,188 ÷ $1,445,068) without providing any documentation of exempt sales or even a plausible explanation of why it believed the vast majority of its sales were not subject to sales tax. The incomplete records and the failure to provide documentation to support claimed deductions is evidence of negligence. Further appellant's failure to report sales tax reimbursement collected on sales of $497,009 is substantial and represents an error ratio of 319.64 percent. OTA finds there is sufficient evidence to conclude that the negligence penalty was warranted, despite this being appellant's first audit. Thus, appellant has failed to establish that this factor is a ground for rehearing.

Additional Taxable Sales Based on a Markup

At the hearing, appellant provided a document that purports to show that respondent's calculation of purchases subject to the markup for the year 2013 erroneously included labor cost consisting of wages of $69,876. In OTA's Opinion, when describing this document, OTA stated "Appellant asserts that $204,947…" Appellant takes issue with OTA's use of the word "asserts." In its PFR, appellant states that the word "asserts" has "a biased and unjustified connotation" associated with it. Appellant also argues that OTA disregarded the supporting document provided.

Appellant has not provided any evidence to show that the word "assert" has a biased and unjustified connotation associated with it. Nor is OTA aware of any biased or unjustified connotations of the word "assert." OTA used this word several times in its Opinion in conjunction with statements made by appellant and respondent. OTA's use of this word is neutral and not intended to convey any negative or positive connotations but simply to convey the arguments made by the parties in the course of this appeal. Thus, the Opinion's use of the word "assert" is not contrary to law and is not a basis for a rehearing.

Furthermore, OTA reviewed and considered the provided document when formulating the Opinion and determined that, due to appellant's failure to provide purchase information to support its reported cost of goods sold, OTA was unable to verify the reported information. Therefore, the provided document alone was not sufficient to warrant any adjustments.

Adjustments for Coupons Included in Recorded vs. Reported Differences

Appellant resubmits its exhibits 2 and 3 and attempts to reargue the same arguments that it made at the hearing and which were addressed in the Opinion. Appellant has failed to provide any new evidence or argument that would warrant a rehearing.

Appellant has failed to show that the Opinion cannot be valid according to the law. Accordingly, OTA finds that appellant has not established that a ground exists for a rehearing pursuant to California Code of Regulations, title 18, section 30604(a). Appellant's dissatisfaction with the outcome of this appeal is not grounds for a rehearing. (*Appeal of Shanahan,* 2024-OTA-039P.) Appellant's PFR is denied.

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
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Andrew Wong
Administrative Law Judge

Date Issued: 4/6/2026