OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **E. ARSLAN**	OTA Case No.: 221211998 CDTFA Case ID: 2-900-449

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Mitchell Stradford, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

S. RIDENOUR, Administrative Law Judge: On November 4, 2025, the Office of Tax Appeals (OTA) issued an Opinion in the matter of the appeal of E. Arslan (appellant). The Opinion sustained a decision by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's petition for redetermination of a Notice of Dual Determination (NODD) issued on June 14, 2021. The NODD is for tax of $148,511.79, plus applicable interest, and penalties of $29,702.41, for the period April 10, 2015, through December 31, 2017. The NODD reflects CDTFA's determination that appellant is personally liable for the unpaid tax liabilities of Cali Ventures LLC (Cali Ventures) pursuant to Revenue and Taxation Code (R&TC) section 6829.

On November 18, 2025, appellant timely filed a petition for a rehearing with OTA on the basis that OTA's Opinion is contrary to law. 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 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.

The “contrary to law” standard of review shall involve a review of the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) 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;” that is, the record would justify a directed verdict against the prevailing party. (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907; *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) 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. (*Appeal of Shanahan*, 2024-OTA-040P.) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can be valid according to the law. (*Appeals of Swat-Fame, Inc., et al*., 2020-OTA-045P.) A rehearing may be granted when, examining the evidence in the light most favorable to the prevailing party (here, CDTFA), with all legitimate inferences to uphold the Opinion, the petitioning party (here, appellant) establishes that the Opinion incorrectly stated or applied the law and, therefore, is contrary to law. (*Ibid*.)

In the Opinion, OTA held that the Notice of Determination (NOD) issued to Cali Ventures should not be cancelled. Specifically, the Opinion found that since Cali Ventures timely filed a petition for redetermination to commence its appeal of the NOD before the applicable statute of limitations would have barred the NOD, any argument that appellant may have regarding defective service of the NOD is rendered moot. The Opinion also held that appellant is personally liable for Cali Ventures’ unpaid tax liabilities pursuant to R&TC section 6829.[1]

Appellant contends that the Opinion contains “material errors of law”[2] that require correction and rests on legal analyses that conflict with statutory requirements, due-process principles, and binding OTA precedent. Appellant argues that the “central defect” in the Opinion is OTA finding that Cali Ventures filing a petition for redetermination effectively “cures” CDTFA’s “failure to comply” with the requirements of R&TC section 6486.[3] Appellant contends that R&TC

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[1] Regarding the Opinion’s holding that appellant is personally liable, appellant only asserts that “because the underlying NOD was not validly issued under [R&TC] section 6486,” the resulting NODD issued to appellant and the derivative liability “cannot stand.” As such, this Opinion on Petition for Rehearing will not address the R&TC section 6829 holding further.

[2] Appellant uses the term “errors of law;” however, since appellant asserts the Opinion reached a decision in conflict with the law, it appears appellant means “contrary to law.” “Contrary to law” involves a review of the Opinion for consistency with the law, while “error in law” involves procedural error rather than a legal error in the Opinion. (Cal. Code Regs., tit. 18, § 30604(b).)

[3] The Opinion did not opine as to whether the NOD met the requirements of R&TC section 6486, stating that: “It is not necessary for OTA to decide whether [CDTFA]’s mailing of the NOD to the Newhope Street address complied with R&TC section 6486 because it is undisputed that Cali Ventures received actual notice of the determination, as evidenced by its timely-filed petition for redetermination.”

section 6486 requires CDTFA to give written notice of its determination by mailing the NOD to the taxpayer's address of record and that CDTFA mailed the NOD to the wrong address. Appellant asserts that R&TC section 6486 does not allow CDTFA to substitute mailing a notice to taxpayer's address of record with actual notice, constructive notice, or a taxpayer's later discovery of the determination. Appellant argues that the Opinion's holding rewrites the statute and nullifies the California Legislature's mandate. Appellant also contends that "the dissent,"[4] finding that appellant's failure to raise the issue of proper notice as an affirmative defense in the petition for redetermination constituted a waiver, is irreconcilable with OTA precedent, such as *Appeal of Farrell*, 2023-OTA-095P.[5]

Appellant's position is unconvincing. As stated in the Opinion, it is well established that defective service can be waived, either by express agreement or by voluntarily appearing and contesting the merits of the matter. The Opinion cited *Altafulla v. Ervin* (2015) 238 Cal.App.4th 571, as authority. In *Altafulla v. Ervin*, the Fourth Circuit Court of Appeal[6] said that "[i]t is axiomatic that defects in service may be waived by a responding party either expressly or by appearing in an action and contesting the merits of the claims asserted." (*Altafulla v. Ervin* (2015) 238 Cal.App.4th, *supra*, at pp. 577-578.) As elucidated in the Opinion, to find otherwise would place form above substance. (See *Fireman's Fund Ins. Co v. Sparks Const. Co.* (2004) 114 Cal. App.4th 1135, 1148.)

Similarly, the Ninth Circuit Court of Appeals in *Clodfelter v. Commissioner* (9th Cir. 1975) 527 F.2d 754 (*Clodfelter*), found that a notice of deficiency not sent to the taxpayers' last known address was nevertheless valid since the taxpayers timely filed a petition for redetermination. While *Clodfelter* is a federal income tax case that is not controlling in the present California business tax matter, it nevertheless is persuasive authority due to analogous statutory notice

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[4] While appellant refers to the Opinion as having a dissent, OTA notes that the Opinion has a concurrence. The difference generally is that in a concurrence, the panel member agrees with the holding reached by the majority, but states separate reasoning for reaching the agreed-upon holding, while in a dissent the panel member disagrees not only with the reasoning, but also with the holding. (See 19 Witkin, Cal. Procedure (6th ed. 2025) Determination on Merits, §§ 837, 840.)

[5] Since the majority's opinion controls in a matter, OTA will not address appellant's contentions regarding the concurrence further. (See Cal. Code Regs., tit. 18, § 30501(d).)

[6] The Fourth Circuit of Appeal that decided *Altafulla v. Ervin*, *supra,* is a California appeals court; whereas, the Ninth Circuit Court, discussed below, is a federal appeals court.

provisions regarding the tax agency mailing[7] taxpayers notice of a tax determination.[8] The Internal Revenue Code (IRC) requires the IRS to mail the notice of deficiency to the "taxpayer at [the taxpayer's] last known address"[9] (IRC, § 6212(b)(1)), and the R&TC requires CDTFA to mail the notice of its determination to the taxpayer's "address as it appears in the records of [CDTFA]" (R&TC, § 6486(a)). For both the IRS and CDTFA, if the tax agency fails to timely provide the taxpayer with proper notice of the tax determination before the applicable statute of limitations expires, the tax liability is barred.[10] (See *Appeal of AMG Care Collective*, 2020-OTA-0229P; see also *Mulvania v. Commissioner* (9th Cir. 1985) 769 F.2d 1376.)

In *Clodfelter*,[11] the couple moved after the tax years at issue and their attorney informed the IRS of the move but provided the incorrect street number. Subsequently, the IRS received the correct address for the Clodfelters; however, that information was not relayed to the division assigned to the Clodfelters' case. Consequently, the IRS mailed the Clodfelters a notice of deficiency to the incorrect address. Despite the incorrect street number, the notice successfully reached the Clodfelters who timely petitioned the U.S. Tax Court (Tax Court) for redetermination, with their principal contention being that the notice of deficiency was not properly sent to the correct address and, thus, the assessment was barred by the statute of limitations.

The Tax Court, in denying the Clodfelters' motion to dismiss for lack of jurisdiction, stated that the objective of the notice and related procedure is to inform the taxpayer that the tax agency means to assess additional taxes against the taxpayer, and to provide time for the taxpayer to file a petition for a redetermination. (*Clodfelter v. Commissioner* (1971) 57 T.C. 102.) Since the Clodfelters filed a timely petition for redetermination, the Tax Court found that they "suffered no damage and lost no right as a result of the error in the address" (*id*. at p. 107,

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[7] As noted in the Opinion, an NOD may also be served by personal delivery. (R&TC, § 6486(b).) Similarly, personal delivery has been found to achieve notice of a federal deficiency. (See *Clodfelter*, *supra*; see also *Tenzer v. Commissioner* (9th Cir. 1960) 285 F.2d 956.)

[8] Notice of the tax agency's determination is called a "notice of deficiency" in the Internal Revenue Code (IRC) (see IRC, § 6212) and a "notice of determination" in the R&TC (see R&TC, § 6486).

[9] Treasury Regulation 301.6212-2(a) defines "last known address" as "the address that appears on the taxpayer's most recently filed and properly processed Federal tax return, unless the [IRS] is given clear and concise notification of a different address."

[10] There are some exceptions, such as a signed waiver extending the statute of limitations for issuing the notice, or in the case of fraud. (See R&TC, §§ 6487, 6488; Cal. Code Regs., tit. 18, § 1698.5(b)(3); IRC, § 6501(c)(1), (c)(4)(A).)

[11] The events in the background summary were obtained from both *Clodfelter*, *supra*, and the preceding U.S. Tax Court case, *Clodfelter v. Commissioner* (1971) 57 T.C. 102.

citing *Heaberlin v. Commissioner* (1960) 34 T.C. 58, 59) and "were not prejudiced in any way by the error" (*id*. at p. 107). Subsequently, the Ninth Circuit Court of Appeals, in affirming the Tax Court, noted that the purpose of the notice requirement is to afford the taxpayer notice and an opportunity to contest the determination. (*Clodfelter*, *supra*.) The court stated that "the important thing is that the taxpayer have actual notice and not that the [taxpayer] have it in any particular way." (*Id.* at p. 757, citing *Boren v. Riddell* (9th Cir. 1957) 241 F.2d 670.)

The Ninth Circuit, in distinguishing the Clodfelters' situation from cases where it discussed the importance of the notice being mailed to the taxpayer's last known address, noted that in those cases the taxpayer's receipt of notice was not proved (e.g., the taxpayer did not timely file a petition for redetermination).[12] The court stated that in "cases where actual notice did not result or was not proved to have resulted from a mailing, or where delivery of mail was delayed to the prejudice of the [taxpayer] in seeking redetermination, mailing to suffice under [IRC section] 6212(b) must be to the last known address." (*Clodfelter*, *supra*, 527 F.2d at p. 757.) Conversely, the Ninth Circuit concluded that if mailing results in actual notice without prejudicial delay, it satisfies the notice requirements of IRC section 6212, regardless of the address to which the notice was sent. (*Ibid*.)

Here, CDTFA mailed Cali Ventures the NOD on April 26, 2018. Five days later, on May 1, 2018, Cali Ventures timely filed a petition for redetermination, thereby commencing its appeal of the NOD. In other words, regardless of the address CDTFA used to mail Cali Ventures the NOD, Cali Ventures received notice without prejudicial delay. Here, the purpose of the notice requirement, to afford Cali Ventures notice and an opportunity to contest the determination, was met and Cali Ventures suffered no damage and lost no right as a result of the error in the address. Moreover, it is axiomatic that defects in service may be waived by a responding party (here, appellant) either expressly or by appearing in an action and contesting the merits of the matter (such as timely filing a petition for redetermination). Consequently, despite appellant's contention to the contrary, Cali Ventures waived any defect in the mailing of the NOD when it filed a timely petition for redetermination.

[12] The Ninth Circuit mentioned *DeWelles v. U.S.* (9th Cir. 1967) 378 F.2d 37 and *Cohen v. U.S.* (9th Cir. 1962) 297 F.2d 760. (*Clodfelter*, *supra*.)

For the aforementioned reasons, OTA finds that appellant has not established that a ground for rehearing exists pursuant to Regulation section 30604(a). Furthermore, as to appellant's repeated arguments that the Opinion considered and rejected, they do not constitute grounds for rehearing. (See *Appeal of Shanahan*, *supra*.) Likewise, appellant's dissatisfaction with the outcome of the appeal is not grounds for a rehearing. (*Ibid*.)

Accordingly, appellant's petition for rehearing is denied.

DocuSigned by:
Susana Seyller
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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

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Andrew Wong
Administrative Law Judge

Date Issued: 5/14/2026