2026-OTA-416
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **AA KITCHEN APPLIANCE, INC.**	OTA Case No.: 231014566 CDTFA Case ID: 3-849-689

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Stephen Ho, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

K. WILSON, Hearing Officer: On January 23, 2026, the Office of Tax Appeals (OTA) issued an Opinion sustaining a decision issued by respondent California Department of Tax and Fee Administration (CDTFA). CDTFA's decision denied, in part, a petition for redetermination filed by AA Kitchen Appliance, Inc. (appellant) of a Notice of Determination (NOD) dated April 21, 2022. The NOD is for tax of $83,963, plus applicable interest, and a penalty of $8,396.28 for the period July 1, 2017, through June 30, 2020 (liability period). CDTFA subsequently prepared a reaudit that decreased the determined tax by $650 from $83,963 to $83,313, and the corresponding negligence penalty was reduced by $65.

On February 23, 2026, appellant timely petitioned OTA for a rehearing on the basis that OTA's Opinion is contrary to law and there was an error in law in the OTA appeal process. OTA concludes that the grounds set forth in this 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 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).)

<u>Contrary to Law</u>

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 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 be valid according to the law. (*Appeal of Riedel*, *supra*.)

Appellant continues to argue that CDTFA's method of basing the audit partially on a cash basis and partially on an accrual basis was arbitrary and violated the accounting principle of consistency and resulted in overstating taxable sales. Appellant requests that the quarters be treated on one basis, either cash or accrual.

The Opinion previously considered this argument and found it unpersuasive. OTA reviewed CDTFA's analysis of the sales test (accrual basis) and found that if CDTFA had used the sales test, then the tax liability would have been higher. Appellant's dissatisfaction with the outcome of its appeal, and the attempt to reargue the same issues a second time, is not a ground for a rehearing. (See *Appeal of Graham and Smith*, 2018-OTA-154P.) Appellant is not entitled to a rehearing on this ground.

<u>Error in Law</u>

Courts have found that a new trial may be granted based on an error in law if its original ruling as a matter of law was erroneous. (*Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 17-18, citing *Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391, 397.) A claim on a petition for rehearing that there was an error in law is a claim of procedural wrong. For example, courts have found an error in law occurred when there was an erroneous denial of a jury trial (*Johnson v. Superior Court* (1932) 121 Cal.App. 288), an erroneous ruling on the admission or rejection of evidence (*Nakamura v. Los Angeles Gas & Elec. Corp.* (1934) 137 Cal.App. 487), an erroneous application of the law by a jury (*Shapiro v. Prudential Property*

& Casualty Co. (1997) 52 Cal.App.4th 722), and an erroneous instruction to a jury (*Maher v. Saad* (2000) 82 Cal.App.4th 1317).

Here, appellant alleges that an error in law occurred during OTA's proceedings but did not explain what error occurred and when it occurred. OTA finds that there was not an error in law in the appeals proceedings. Appellant is not entitled to a rehearing on this ground.

In conclusion, OTA finds that the grounds set forth in this petition do not constitute a basis for granting a new hearing.

DocuSigned by:
Phyllis Mallard
91249DEC8EC84E4... For
Kim Wilson
Hearing Officer

We concur:

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K Long
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Phyllis Mallard
91249DEC8EC84E4... For
Andrew Wong
Administrative Law Judge

Date Issued: 6/15/2026