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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **PARTNERSHIP OF M. PEREZ JR. AND F. GOMEZ,** **dba Tulare's Finest Smoke Shop**	OTA Case No.: 241017880 CDTFA Case ID: 4-950-971

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: M. Perez
F. Gomez

For Respondent: Sunny Paley, Attorney

N. RALSTON, Administrative Law Judge: On December 1, 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 denied a petition for redetermination filed by Partnership of M. Perez, Jr. and F. Gomez (appellant) of a Notice of Determination (NOD) dated January 31, 2024. The NOD reduced the 30-day license suspension to a zero-day license suspension and upheld a $1,000 fine for violations of Business and Professions Code (B&PC) sections 22974 and 22974.3(b).

On December 31, 2025, appellant timely petitioned for a rehearing with OTA on the basis that OTA's Opinion contains an error in law. 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

[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.

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.)

Error in Law

A procedural "error in law" means an error in the OTA appeals hearing or proceeding, other than a legal error in the Opinion. (Cal. Code Regs., tit. 18, § 30604(b).) An error in law is a claim of a procedural wrong, or error in the appeals proceeding, such as an erroneous ruling on the admission or rejection of evidence. (See *Appeals of Swat-Fame, Inc., et al*., 2020-OTA-045P, at fn. 2.)

Appellant asserts that an error in law arose from OTA's appeals process because it does not provide legal representation and meaningful access to resources for low-income small business owners. Appellant further contends that OTA's appeals process raises significant due process concerns because there is an imbalance of resources between the State of California and self-represented small business owners.

Regarding appellant's arguments about lack of representation and resources, OTA is an independent administrative agency whose authority is limited by its enabling legislation. (*Appeal of Eric H. Liljestrand Irrevocable Trust*, 2019-OTA-012P.) OTA's enabling legislation, the Taxpayer Transparency and Fairness Act of 2017, does not provide for any taxpayer funded legal representation of parties that appeal tax disputes to OTA. (Stats. 2017, ch. 16; Gov. Code, § 15672.) OTA's hearings, however, are informal in nature and the rules for the introduction of evidence are relaxed so as to facilitate self-represented parties a fair opportunity to have their objections to tax assessments heard and considered by subject matter experts. (See Cal. Code Regs., tit. 18, § 30216.) Nevertheless, parties may choose to be represented in their appeal by any authorized person of their choosing as long as the chosen representative is at least 18 years of age. (Cal. Code Regs., tit. 18, § 30211(a).) OTA also provides several resources on its publicly available website, including access to an ombudsperson,[2] who is available to answer procedural questions for appellants, and links to respondent's Tax Appeals Assistance Program, which provides legal representation for some appellants.[3]

[2] https://ota.ca.gov/ombudsperson/

[3] https://ota.ca.gov/resources/

In addition, to the extent that appellant argues that these circumstances raise due process concerns, OTA is generally precluded from determining whether 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. (Cal. Code Regs., tit. 18, § 30104.) Moreover, due process generally requires notice and an opportunity to be heard prior to a tax levy becoming final (*Wightman v. Franchise Tax Board* (1988) 202 Cal.App.3d 966), but in the absence of a person's physical liberty being at stake, there is simply no right to the effective assistance of counsel in a civil case. (See *Lassiter v. Department of Social Services of Durham County, N.C.* (1981) 452 U.S. 18, 26-27.)

While OTA is sympathetic to appellant's situation, OTA is unable to grant appellant's petition for rehearing, as appellant as failed to identify any procedural wrongs or errors in OTA's appeals proceeding.

Contrary to Law

Appellant asserts that OTA's Opinion contains material errors of fact and law that directly affected the outcome of the decision. OTA takes this to mean that appellant is arguing that OTA's Opinion is contrary to 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*, *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. (*Ibid*.)

Appellant asserts that OTA's Opinion states that appellant purchased or possessed unlicensed tobacco products. Appellant argues that it did not knowingly purchase unlicensed tobacco products, but rather the licensed distributor sold appellant counterfeit products. In support of this contention, appellant provided an invoice which purports to show that appellant paid tax to a licensed distributor. OTA's Opinion considered and ultimately rejected this argument. As stated in the Opinion, the invoice appellant provided is not sufficient to establish that appellant did not violate B&PC section 22974 because, per appellant's own admission, the invoice was not available at the time of the inspection as required by the regulations. (B&PC,

§ 22974.) Moreover, because the invoice appears to be for products other than those that were seized by respondent, the invoice is insufficient to establish that appellant did not possess, store, own or make retail sales of tobacco products for which tax is due but has not been paid. (B&PC § 22974.3(b).) Respondent seized vape products that were salt flavored, while the invoice does not contain any salt-flavored vape products.

Based on the foregoing, OTA's Opinion is based on substantial evidence and is valid according to the law.

Considering all of the above, OTA finds that appellant has not satisfied the requirements for granting a rehearing. Accordingly, the petition for rehearing is denied.

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

Date Issued: 8/3/2026