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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **INVESTORS ALLEY CORP.**	)	OTA Case No. 240215306

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Cassandra L. Tuchscher, Attorney
Lance Einstein, Attorney

For Respondent: Nancy Parker, Attorney

V. LONG, Administrative Law Judge: On April 10, 2026, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying Investor Alley Corp.'s (appellant's) claim for refund of $74,782.05 for the 2021 tax year. In the Opinion, OTA held that appellant had not established a basis to abate the late payment penalty and that appellant had not established a basis to abate the underpayment of the estimate tax penalty.

On May 11, 2026, appellant timely filed a petition for rehearing (PFR) with OTA under Revenue and Taxation Code section 19334 on the basis that there is insufficient evidence to support OTA's Opinion and that OTA's Opinion is contrary to law. Upon consideration of appellant's PFR, OTA concludes that the grounds set forth in this PFR 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); *Appeal of Shanahan*, 2024-OTA-040P.)

In its PFR, appellant argues that: OTA did not consider FTB's Exhibit D, there is insufficient evidence to justify the Opinion, and the Opinion is contrary to law. To find that there is insufficient evidence to justify an opinion, OTA must find, after weighing the evidence in the record, including reasonable inferences from that evidence, that OTA clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) To find that an opinion is contrary to law, OTA must determine whether the opinion is unsupported by any substantial evidence. (*Ibid*.) The relevant question is not over the quality or nature of the reasoning behind the opinion, but whether the opinion can or cannot be valid according to the law. (*Ibid*.)

Appellant contends that a letter from appellant's CPA dated December 1, 2022, requesting that FTB abate the penalties imposed, which is attached to FTB's opening brief as Exhibit D, shows that appellant relied on the substantive advice of its CPA regarding payment of the pass-through entity elective tax (PTET). The letter from appellant's CPA asserts that there is reasonable cause to abate the penalties because FTB had the funds due, but the funds were simply under the wrong account, i.e., the personal account of appellant's sole shareholder, rather than appellant's account. This argument was addressed in the Opinion, which concluded that although FTB was unharmed by the late payment, that fact alone does not establish that appellant's actions were those of an ordinarily intelligent and prudent businessperson. Contrary to appellant's contention, the letter from appellant's CPA does not assert, let alone establish by a preponderance of the evidence, that appellant relied on the substantive advice of its CPA and that its reliance led to the late payment.[1] In the Opinion, OTA stated that, to the extent appellant's late payment arose from the advice of appellant's CPA, a taxpayer may establish that reasonable cause for the late payment exists if the taxpayer can show that it reasonably relied on a tax professional for substantive tax advice and that the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. *(Appeal of Summit Hosting LLC*, 2021-OTA-216P.) The Opinion stated that there was no evidence in the record documenting the content, or timing, of any substantive advice from appellant's advisor on which appellant may have relied regarding appellant's payment of the PTET, and that unsupported assertions are not sufficient to satisfy a taxpayer's

[1] The burden of proof is on appellant as to all issues of fact and that burden requires proof by a preponderance of the evidence, unless otherwise provided. (Cal. Code Regs., tit. 18, § 30219(a)-(b).)

burden of proof. (*Appeal of Moren*, 2019-OTA-176P.) Accordingly, appellant's contention regarding the letter from appellant's CPA does not present a basis for rehearing.

Appellant next contends that there is insufficient evidence to justify the Opinion because the Opinion summarily concluded that "[t]he determination of whether reasonable cause exists for the late payment requires an analysis of an appellant's actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence, such as an ordinarily intelligent and prudent businessperson would have performed under similar circumstances." Appellant contends that it provided an analysis that was not discussed by OTA. In asserting that there is insufficient evidence to justify the Opinion on this basis, it appears that appellant confuses argument with evidence; appellant's arguments are not evidence and cannot be considered as such by OTA.[2] As stated in the Opinion, appellant has the burden of proof as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) Notably, appellant did not provide any evidence, such as exhibits or witness testimony, in this appeal. The Opinion analyzed the evidence, which in this appeal was presented solely by FTB, and determined that appellant had not met its burden of proof. Accordingly, OTA finds that there is sufficient evidence to justify the Opinion.

Appellant's final contention is that the Opinion is contrary to law because the Opinion states that "[w]hile it is undisputed that appellant derived no benefit from the late payment and that FTB was unharmed by the late payment, that fact alone does not establish that that appellant's actions were those of an ordinarily intelligent and prudent businessperson." Appellant contends this statement supports that the lack of benefit to appellant and harm to FTB, when considered with other facts, may establish reasonable cause. However, as stated in the Opinion, appellant did not provide evidence of other facts that, taken together, could establish reasonable cause. As stated in the Opinion, to establish reasonable cause, appellant must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence, and the determination of whether reasonable cause exists requires an analysis of appellant's actions leading up to the late payment. (*Appeal of Moren*, *supra*.) In this appeal, appellant presented no evidence in support of its arguments. Based on this, the Opinion held that appellant did not establish a basis to abate the penalties. Accordingly, OTA finds that the Opinion is not contrary to law.

[2] Unsworn statements, such as statements contained in a party's brief or arguments made by representatives during an oral hearing, cannot be the basis for a finding of fact. (Cal. Code Regs., tit. 18, § 30214(f)(5).)

Accordingly, appellant has not established that there is insufficient evidence to justify the opinion or that the opinion is contrary to law. As a result, appellant's PFR is denied.

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

Signed by:
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Hans Famularo
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 8/18/2026