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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **MEDIVATION, INC.**	)	OTA Case No. 220410165

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Annie H. Huang, Attorney

For Respondent: Matthew D. Miller, Attorney Supervisor

J. JOHNSON, Administrative Law Judge: On January 27, 2026, the Office of Tax Appeals (OTA) issued an Opinion reversing the action of respondent Franchise Tax Board proposing additional tax of $122,069 for the 2015 tax year. In the Opinion, OTA held that appellant, by application of Revenue and Taxation Code (R&TC) sections 23609 and 23036(d)(1), is allowed to reduce its alternative minimum tax (AMT) liability using research credits.

Respondent timely filed a petition for rehearing (petition) with OTA under R&TC section 19048 on the basis that OTA's Opinion is contrary to law and unsupported by any substantial evidence. Upon consideration of respondent's petition, OTA concludes that the contentions set forth in the petition do not constitute a basis for granting a new hearing.

OTA will grant a rehearing where the filing party shows that the Opinion is contrary to law in a manner that materially affects the substantial rights of the party seeking a rehearing. (Cal. Code Regs., tit. 18, § 30604(a)(5);[1] see *Appeal of Shanahan*, 2024-OTA-040P.) When determining whether an opinion is contrary to law, 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. (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976

[1] OTA regulations provide a list of six enumerated grounds upon which a rehearing may be granted. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6).) Respondent's primary argument is centered on the "contrary to law" ground. (*Id*. at sub. (a)(5).) Respondent also raises doubt over the sufficiency of the evidence to support the Opinion, discussed further below. (See *Id*. at subd. (a)(4).) The remaining enumerated grounds are not raised on petition and therefore not discussed herein.

(*NASSCO*).) OTA reviews the opinion in the light most favorable to the prevailing party (here, appellant). (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) This requires a review of the opinion to indulge "in all legitimate and reasonable inferences" to uphold the opinion. (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907 (*Sanchez-Corea*).)[2] The fact that a party is dissatisfied with the outcome of the appeal is not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.)

Respondent provides a series of arguments to support its position that the underlying Opinion is contrary to law.

Reliance on precedence and application of *stare decisis*

First, respondent argues that "OTA is afforded very broad authority to remove the precedential status of a previously precedential opinion," including Board of Equalization (BOE) opinions like *NASSCO*, and "is not bound or limited by anything, including . . . the principles of *stare decisis*." Respondent asserts that OTA's Opinion underestimates the discretion granted to OTA to withdraw the precedential status of prior opinions.

As respondent's petition indicates, OTA's Opinion determined that under the principles of *stare decisis*, OTA should follow the precedent created in *NASSCO*. However, this determination was not based on blind adherence, or under any assumption that the doctrine of *stare decisis* required OTA to follow *NASSCO* without question. Rather, the Opinion discussed the importance of *stare decisis* as a means to create and foster predictability in the meaning and application of the law and also noted that it is a flexible policy rather than an absolute rule. As appellant states in its reply to respondent's petition, the Opinion clearly recognizes OTA's authority to remove prior precedent, citing its own Regulation 30504 (Cal. Code Regs., tit. 18, § 30504). A significant portion of the Opinion is then dedicated to analyzing whether the doctrine of *stare decisis* should be applied to this appeal, ultimately concluding that it should and the reasoning of *NASSCO* should be followed here.

As respondent's petition states, OTA has discretion to determine whether the doctrine of *stare decisis* applies, and OTA's Opinion exercising that discretion is not contrary to law, even when one party would prefer an alternative outcome.

[2] California Code of Regulations, title 18, section 30604 is essentially based on the provisions of California Code of Civil Procedure (CCP) section 657; therefore, the language of CCP section 657 and applicable caselaw are persuasive authority in determining whether a ground has been met to grant a rehearing. (*Appeal of Martinez Steel Corp.*, 2020-OTA-074P.)

Legal accuracy of *NASSCO*

Respondent's second argument asks OTA to reconsider its finding that *NASSCO* remains good law.[3] Respondent asserts that OTA did not address the question of whether *NASSCO* is erroneous under the law, and contends that, absent the doctrine of *stare decisis*, OTA would have found *NASSCO* to be improperly decided and inconsistent with the law. As support for this contention, respondent reiterates its arguments provided on appeal up through the oral hearing.

Respondent's arguments as to how the term "tax" as used R&TC section 23036(d)(1) should be defined have been considered by OTA on appeal and were found to be unconvincing. The Opinion found that, in addition to these arguments being apparently contrary to subsequent legislative action, these arguments were contrary to respondent's own guidance issued after *NASSCO* was decided. Respondent's dissatisfaction with the outcome of the Opinion does not show that the Holding is contrary to law, particularly when it is supported by 15 years of precedent.

Distinguishing *NASSCO*

Respondent's petition next raises the question of whether *NASSCO* should be distinguished. On appeal, OTA asked the parties if *NASSCO* should be distinguished from the present appeal. While respondent did state that *NASSCO* should be distinguished, it did not utilize opportunities provided by OTA during briefing and at the hearing to provide any elaboration on why, other than to reiterate its arguments that *NASSCO* should be overturned. In its petition, respondent appears to assert that the present appeal differs from *NASSCO* in that it involves the research credit found in R&TC section 23609, and that statute provides that the definition of "tax" for purposes of that statute is found in R&TC section 23036.[4] Respondent

[3] Respondent asserts OTA did not determine whether or not *NASSCO* was properly decided. However, the Opinion discusses in detail the application of *NASSCO*'s findings as relevant to the facts on appeal, including the actions of the legislature and respondent following the issuance of *NASSCO*, and found that it remained good law that should be followed pursuant to the doctrine of *stare decisis*. To prevent any further potential confusion, let it be understood, without any doubt, that the Opinion finds *NASSCO* to be properly decided, consistent with the law, and precedent to be followed.

[4] Respondent notes that the Opinion misinterprets respondent's assertions when the Opinion states that respondent contends that focusing on R&TC section 23609 "as opposed to" section 23036 is the proper analysis. This discrepancy arose via a difference in issue statements presented in the parties' briefs, prehearing documents, and preliminary statements at the hearing, wherein respondent only included or prioritized the reference to R&TC section 23609 while appellant prioritized or only included references to R&TC section 23036. Ultimately, both sections are discussed by both parties.

argues that the only definition of tax in R&TC section 23036 is found in subdivision (a), and it does not include the AMT.

However, respondent's assertion that there is only one definition of "tax" in R&TC section 23036 is the crux of the issue in *NASSCO*. As noted in *NASSCO*, R&TC section 23036 provides that the term "tax" includes various items in (a)(1), then provides that it does not include certain other items in (a)(2), but does not indicate where the AMT falls, either within or without this definition of "tax." Subdivision (b) then further modifies the definition of "tax," but only for certain provisions of the tax code. Ultimately, *NASSCO* found ambiguity in the term "tax" as used for subdivision (d)(1), where the list of credits that can reduce "tax" below the tentative minimum tax (TMT) is found. This list of credits contains the credits at issue in *NASSCO* alongside the credit at issue in this appeal. Respondent has not provided a convincing reason as to why the term "tax" as presented in subdivision (d)(1) would mean different things for different credits in the list. Accordingly, *NASSCO* is not distinguishable based on the fact it involves different credits than the credit on appeal, when both credits are found in the list under subdivision (d)(1).

Substantial evidentiary support

Respondent's penultimate assertion is that the Opinion is contrary to law because it is unsupported by any substantial evidence. A rehearing may be granted when the party seeking a rehearing shows there is insufficient evidence to justify the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(4); see *Sanchez-Corea*, *supra*, 38 Cal.3d at p. 907.)[5] To find there is insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different conclusion. (*Appeal of Mather*, 2024-OTA-378P.)

In support of this assertion, respondent highlights post-*NASSCO* bill analyses regarding R&TC section 23036(d)(1) that specify that these credits are allowed to reduce "regular" income tax (as opposed to specifying AMT) below the TMT. Respondent dismisses the bill analysis examples provided in the Opinion stating that the credits in subdivision (d)(1) can be used to reduce the AMT, and the fact that no legislative action was taken to clarify the subdivision at

[5] OTA's grounds for the granting of a petition for rehearing are adopted from the BOE's rules, which in turn were modeled after the CCP's grounds for granting a new trial. (See *Appeal of Wilson Development, Inc.*, (94-SBE-007) 1994 WL 580654; Code Civ. Proc., § 657.) Historically, the ground of contrary to law served double duty and also included the ground of whether there was an insufficiency of the evidence to justify the verdict or opinion. (See, e.g., Code Civ. Proc., § 657(6).) OTA's Rules for Tax Appeals separates these two concepts into separate grounds, one covering the legal accuracy of the opinion (i.e., contrary to law) and one for the evidentiary support of factual findings (i.e., insufficiency of the evidence). (See Cal. Code Regs., tit. 18, § 30604(a)(4) & (5).)

issue or to indicate that *NASSCO* was wrongly decided, by contending that the Legislature's failure to act does not necessarily equal acquiescence to the BOE's interpretation in *NASSCO*. Finally, respondent casts doubt on all legislative analysis surrounding this issue by noting examples where bill analyses conflate TMT and AMT or use the nonexistent term of "tentative alternative minimum tax."

Respondent asks OTA to provide weight to its choice of legislative history, while providing no weight to the legislative history that contradicts its position. However, the evidentiary support provided by respondent still does not directly conflict with *NASSCO* and its holding. Even the bill analyses FTB provides that describe how "regular" tax can be reduced by certain credits fail to directly address how those credits can or cannot be utilized against AMT. Should respondent's evidentiary support be found to support its position, then clear statements from the legislative history that are in line with the holding in *NASSCO* surely constitute supporting evidence for the alternative position.[6] Ultimately, there is clearly substantial evidence to support the holding in the Opinion found in not only the legislative history examples provided, but also in the legal precedent of *NASSCO*, which has stood for 15 years.[7]

Substantial rights materially affected

In addition to the necessary finding that the Opinion is contrary to law or that there is insufficient evidence to justify the Opinion, another condition required for the granting of a rehearing is that the substantial rights of the party seeking a rehearing are materially affected. (Cal. Code Regs., tit. 18, § 30604(a).) Respondent summarizes its arguments as to why it contends the Opinion is contrary to law as support for an assertion that respondent's substantial

[6] Granting a rehearing based on the ground that there is insufficient evidence to justify an opinion requires a finding that the entirety of the evidence is "such as would justify a directed verdict against the part[y] in whose favor the verdict [is] returned." (*Sanchez-Corea*, *supra*, 38 Cal.3d at p. 906.)

[7] The question regarding sufficient evidentiary support typically concerns the evidentiary record, i.e., factual findings, rather than legal support. The question on appeal is predominantly a legal question, i.e., the interpretation of a statute. Despite the arguments and discussion presented herein, the true factual question is primarily whether appellant properly claimed the credits at issue, which is a point neither party has disputed. However, for purposes of this petition, the parties have treated as an evidentiary question whether the legal precedent in *NASSCO* remains good law, hence the references to legislative and agency actions post-*NASSCO*. In that regard, the simple fact that *NASSCO* has not been overturned by the BOE, OTA, the courts, or the Legislature stands as "evidence" of its ongoing validity.

rights are affected, including the right to have a fair hearing.[8] However, since this topic is but the second prong of the two-prong test for whether to grant a rehearing based on the Opinion being contrary to law or there being insufficient evidence to justify the Opinion, and the first prong has not been met under either ground, as discussed above, this topic is therefore moot.

Conclusion

Accordingly, OTA finds that respondent has not shown that the Opinion is contrary to law under the relevant standard, and respondent's petition is therefore denied.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

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

DocuSigned by:
Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

Date Issued: 9/10/2026

[8] Respondent does not contend that there were any procedural missteps in the conduct of the hearing (e.g., evidence improperly excluded, lack of sufficient time to present, etc.) in its assertion that it was not provided a fair hearing, and instead it appears this term is used to indicate that the results of the appeal (i.e., the Opinion) were an unfair result. As such, this contention appears to still be on the issue of whether the Opinion was contrary to law, and not a separate ground for rehearing, e.g., error in law.