

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

**PARTNERSHIP OF ZULFIQAR
QAMRUDDIN BAWANI, SHAUKAT
MAREDIA AND HARRY SWARTZ
dba Valley Wide Distribution**

) OTA Case No. 18053151
) CDTFA Acct. No.: CP STF 50-004355
) CDTFA Case ID 487723
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) Date Issued: September 27, 2019
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:

Harry Swartz

For Respondent:

Joshua Aldrich, Tax Counsel
Stephen Smith, Tax Counsel IV
Shelley Anselmi,
Business Taxes Specialist II

N. DANG, Administrative Law Judge: On May 6, 2019, we issued an opinion sustaining the California Department of Tax and Fee Administration’s (CDTFA’s) proposed deficiency as stated in its October 23, 2013 adjusted Field Billing Order. Thereafter, appellant filed a timely petition for rehearing (Petition). Upon due consideration of appellant’s Petition, we conclude that the grounds set forth therein do not constitute good cause for a rehearing.

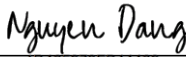
Good cause for a rehearing is shown where one of the following grounds exist and the rights of the complaining party are materially affected: (1) an irregularity in the proceedings by which the party was prevented from having a fair consideration of its appeal; (2) accident or surprise, which ordinary prudence could not have guarded against; (3) newly discovered evidence, material for the party making the petition for rehearing, which the party could not, with reasonable diligence, have discovered and produced prior to the decision; (4) insufficiency of the evidence to justify the decision, or the decision is contrary to law; or (5) an error in law. (Cal. Code Regs., tit. 18, § 30604(a) – (e).)

In its Petition, appellant contends that during the appeal, it was unable to support its contention regarding an additional allowance for seized tobacco products because CDTFA failed to send all the seized property receipts to Mr. Swartz, as he had requested. Mr. Swartz explains that during the oral hearing, he discovered for the first time that CDTFA had previously sent those receipts to Mr. Bawani. However, Mr. Swartz asserts that he was unable to obtain them from Mr. Bawani prior to the issuance of the opinion, because Mr. Bawani was out of the country from September 9, 2018, through April 2019. Mr. Swartz claims that upon eventually receiving a complete record of the seized tobacco products from Mr. Bawani, appellant is now able to fully substantiate the adjustments appellant previously asserted were warranted. Therefore, appellant contends that good cause for a rehearing exists due to an irregularity in the proceedings and newly discovered evidence, as defined in California Code of Regulations, title 18, section (Regulation) 30604, subdivision (a) and (c), respectively.

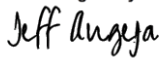
The evidence provided by appellant is insufficient to support these allegations because it fails to include details relating to when Mr. Swartz's request was made to CDTFA, what information was requested, or how the information CDTFA sent to Mr. Swartz differed from what CDTFA had sent to Mr. Bawani. More importantly, appellant has not demonstrated how this "new evidence" allegedly obtained by Mr. Swartz would materially affect the calculation of tax or the outcome of its appeal. Accordingly, we are not persuaded that a rehearing is warranted on these bases.


Appellant also contends that a rehearing is warranted because there is insufficient evidence to support our finding in the opinion that CDTFA seized a portion of appellant's tobacco products from two unlicensed business locations. This finding was based on statements contained in CDTFA's audit working papers and in a Statement of Probable Cause, which were admitted into evidence during the oral hearing. Appellant has not identified any evidence in the record that contravenes this finding. Therefore, we must reject this contention.

Based on the foregoing, appellant's Petition is denied.

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Nguyen Dang
Administrative Law Judge

We concur:

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Jeffrey G. Angeja
Administrative Law Judge

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Linda C. Cheng
Administrative Law Judge