

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
HYDE PARK LOUNGE, LLC

) OTA Case No. 18032460
) CDTFA Acct. No. 101-647172
) CDTFA Case ID 872992
)
) Date Issued: November 8, 2019
)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Tyler Shewey, Attorney
For Respondent: Kevin C. Hanks, Chief
Headquarters Operations Division

M. GEARY, Administrative Law Judge: On May 16, 2019, we issued an Opinion sustaining the action of respondent California Department of Tax and Fee Administration (Department) deleting the negligence penalty but otherwise denying appellant Hyde Park Lounge, LLC’s petition for redetermination of the April 22, 2015 Notice of Determination in the amount of \$19,783 tax, plus applicable interest, for the period April 1, 2011 through March 31, 2014.

Pursuant to the California Code of Regulations, title 18, section (Regulation) 30602, appellant filed a timely petition for rehearing (PFR). Upon consideration of the matters stated therein, we find that appellant has not established good cause for a new hearing. (*Appeal of Do* (2018-OTA-002P).)

California Code of Regulations, title 18, section (Regulation) 30604, subdivisions (a)-(e), provides that a rehearing may be granted where one of the following grounds exists and the rights of the complaining party are materially affected: (1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; (2) accident or surprise that occurred during the proceedings and prior to the issuance of the written opinion, which ordinary prudence could not have guarded against; (3) newly discovered, relevant evidence, which the party could not, with reasonable diligence, have discovered and produced

prior to the issuance of the written opinion; (4) insufficient evidence to justify the written opinion, or the opinion is contrary to law; or (5) an error in law. (*Appeal of Sjöfinar Do, supra.*)

Appellant contends that there was insufficient evidence to justify the Opinion, and that the Opinion is contrary to law. It contends that the Opinion does not recognize a limit on Department's authority to use an indirect audit methodology, like a markup analysis, when a taxpayer provides Z-tapes and other records, which the taxpayer asserts are complete and accurate. Appellant asserts that Department did not dispute the adequacy or accuracy of its business records; therefore, as stated in Department's audit manual, it should not have ignored those records and instead used a markup analysis to determine appellant's liability. It argues that the Opinion gives little, if any, weight to the Z-tapes, none of which were disputed by Department, and opines that the significance of the Z-tapes had been obscured by Department's Summary Analysis. Appellant contends that the Opinion mischaracterizes, or at least reflects the panel's misunderstanding of, its arguments regarding *Maganini v. Quinn* (1950) 99 Cal.App.2d 1 (*Maganini*). Finally, appellant points out that Ronald E. Williams, the person who ran the business during the audit period, passed away in 2017, leaving his widow to wrap up appellant's affairs.¹

We cannot grant a petition for rehearing on the grounds of insufficient evidence unless, after weighing the evidence, we are convinced from the entire record, including reasonable inferences therefrom, that we clearly should have reached a different decision. (Code Civ. Proc., § 657.)

Here, appellant has not provided anything new for our consideration. The arguments in support of its PFR were considered in the Opinion. There is no evidence that Department accepted appellant's business records as sufficient to support the audit. On the contrary, as indicated in the March 20, 2015 "Report of Field Audit – Revised," Department found that the records were inadequate, which was one of the reasons for the negligence penalty. The Department's failure to challenge the accuracy of the Z-tapes does not indicate otherwise. Z-tapes are accurate only when every sale is correctly entered. This does not always occur, particularly in businesses that deal in cash. As we noted in the Opinion, the California Legislature granted broad authority to Department to not rely on a taxpayer's records, but instead determine the deficiency, if any, on the basis of information which is in the Department's

¹ This information does not go to the merits of the PFR and will not be addressed further.

possession or may come into its possession. (R&TC, § 6481.) There is no evidence in this case that Department exceeded its authority. It appears that Department was generous in its allowances and that the results of its revised audit are the best evidence of appellant’s liability. *Maganini* does not lead us to a different conclusion. Therefore, we find that there is adequate evidentiary support for the Opinion, which is not contrary to law. Consequently, we deny the PFR.

DocuSigned by:
Michael Geary
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Michael F. Geary
Administrative Law Judge

We concur:

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

DocuSigned by:
Patrick J. Kusiak
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Patrick J. Kusiak
Administrative Law Judge