OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **SOUL LOUNGE, LLC** **dba Brick and Mortar**	OTA Case No. 19075065 CDTFA Case No. 101-262347

OPINION

Representing the Parties:

For Appellant:	Basil J. Boutris, Attorney Jason Perkins, Witness
For Respondent:	Jason Parker, Chief of Headquarters Operations Christopher Brooks, Tax Counsel IV Randy Suazo, Hearing Representative
For Office of Tax Appeals:	Deborah Cumins, Business Taxes Specialist III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Soul Lounge, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) in response to appellant's timely petition for redetermination of a Notice of Determination (NOD) dated November 4, 2016. The NOD is for $260,353.03 in tax, applicable interest, and a negligence penalty of $26,035.31, for the period January 1, 2012, through December 31, 2014 (audit period). CDTFA's decision ordered a reaudit, which reduced the measure of unreported taxable sales from $3,002,311.00 to $2,324,133.00, which will result in reductions to the tax, applicable interest, and the penalty, and denied the remainder of the petitioned amount.

Office of Tax Appeals (OTA) Administrative Law Judges Andrew J. Kwee, Josh Aldrich, and Andrea L.H. Long held an oral hearing for this matter in Sacramento, California, on August 24, 2022. At the conclusion of the hearing, the record was held open to allow the parties

to provide additional briefing and evidence. On April 12, 2023, the record was closed, and this matter was submitted for an opinion.

ISSUES

1. Whether adjustments are warranted to the audited amount of facility rentals subject to tax.
2. Whether adjustments are warranted to the audited understatement of reported taxable sales of food and beverages established by markup.
3. Whether adjustments are warranted to the audited amount of sales of drink tickets for nonalcoholic beverages subject to tax.
4. Whether adjustments are warranted to the audited amount of self-consumed alcoholic beverages subject to tax.
5. Whether respondent properly imposed the negligence penalty.

FACTUAL FINDINGS

1. Appellant operated a music venue with a full bar doing business as Brick and Mortar in San Francisco since August 2009, selling liquor, beer, carbonated beverages, food, and tickets for admission to view live entertainment. During the audit period, appellant's venue was open three to five days per week, depending on its ability to arrange bookings with performers, from 2:00 p.m. to 2:00 a.m.
2. During the audit period, appellant reported total and taxable sales of $547,482 and claimed no deduction.
3. For audit, appellant provided federal income tax returns (FITRs) for 2012 and 2013; profit and loss statements (P&Ls) for the audit period; and bank statements for most months of the audit period. Appellant did not provide Forms 1099-K,[1] guest checks, daily cash register Z-tapes (which show the total sales for a shift or day), general ledgers, sales journals, purchase journals or purchase invoices.[2]

[1] Form 1099-K is an IRS form which shows gross amounts paid to the merchant by customers using a payment card (i.e., credit card or debit card) or third-party network (e.g., PayPal) transaction.

[2] A cash register Z-tape is the part of a cash register tape that summarizes sales by category for a given time period.

4. In its preliminary review of the available records, CDTFA determined that the gross receipts reported on appellant's FITRs exceeded total sales reported on its sales and use tax returns (SUTRs) by $837,280 for 2012 and $759,253 for 2013. Also, the taxable sales recorded in appellant's P&Ls exceeded reported taxable sales by $114,822 for the audit period. In addition, CDTFA found that the costs of goods sold reported on appellant's FITRs materially exceeded the total sales reported on appellant's SUTRs.[3] Because of these discrepancies, CDTFA determined that further investigation was warranted.
5. In the audit, CDTFA used appellant's FITRs and bank deposits to establish audited taxable sales. CDTFA computed an understatement based on its analysis of differences between bank deposits and reported taxable sales of $920,980 for the third and fourth quarters of 2012 and 2013, and an understatement based on differences between FITRs and SUTRs of $2,081,331 for the period January 1, 2012, through June 30, 2012, and January 1, 2013, through June 30, 2013, and calendar year 2014 (a total understatement of reported taxable measure of $3,002,311).
6. CDTFA concluded that the understatement was the result of negligence.
7. Subsequently, CDTFA issued an NOD for tax of $260,353.03, applicable interest, and imposed a negligence penalty of $26,035.31. Appellant filed a timely petition for redetermination.
8. On May 1, 2018, CDTFA held an appeals conference with appellant. After the appeals conference, appellant provided amended FITRs; revised P&Ls; sales invoices for room rentals; a sales journal for room rentals; a list of admission ticket sales from Ticketfly; a liquor and beer purchase invoice summary from vendor Matagrano; draft and bottled beer purchase invoices from vendor Morris Distributing; a liquor, wine, and beer purchase summary from vendor Young's Market Company; and a Transactions List (a listing of all purchases recorded by appellant).
9. CDTFA reviewed the additional materials and made several observations. CDTFA noted that the taxable alcohol and food sales recorded in appellant's revised P&Ls exceeded appellant's reported taxable sales by $137,275, $208,131, and $28,868 for 2012, 2013,

[3] CDTFA computed negative markups of about -55 percent for 2012 and -60 percent for 2013. A negative markup occurs when the price of the merchandise is less than the cost of merchandise.

and 2014, respectively. CDTFA had conducted a vendor survey and concluded that appellant's recorded purchases were incomplete because it did not include purchases from Southern Wine and Spirits or from DBI, which contradict the vendor survey. Accordingly, CDTFA totaled the purchase amounts recorded in the revised P&Ls and the purchases identified by Southern Wine and Spirits and DBI for 2013 and 2014. CDTFA compared those total purchases to the sales recorded on the revised P&Ls and computed achieved markups of 24.84 percent for 2013 and -21.33 percent for 2014. [4] Because CDTFA expected a markup of at least 350 percent for this type of business, CDTFA concluded that the amounts of sales recorded on the revised P&Ls were understated.

10. After its review of the additional material appellant provided, CDTFA decided to utilize a different audit method. CDTFA computed three separate proposed understatements of reported taxable sales (an understatement of reported taxable sales of food and beverages established on a markup basis; unreported sales of non-alcoholic drinks; and unreported taxable room rental receipts); and an unreported cost of self-consumed alcohol.

11. On August 28, 2018, CDTFA issued a decision in which it recommended a reaudit.

12. CDTFA completed a reaudit, in which it computed an understatement of reported taxable sales of food and beverages, computed on a markup basis of $1,966,075; unreported sales of drink tickets for nonalcoholic beverages of $21,534; unreported taxable rentals of the facility of $319,426; and an unreported cost of self-consumed alcoholic beverages of $17,098.

    a) In its computation of the understatement of reported taxable sales of food and beverages ($1,966,075), CDTFA did all the following:

        i. Established alcohol purchases by adding the purchases recorded on the revised P&Ls and the purchases identified by Southern Wine and Spirits and DBI for 2013 and 2014;

[4] "Markup" is the amount by which the cost of merchandise is increased to set the retail price. For example, if the retailer's cost is $.70 and it charges customers $1.00, the markup is $0.30. The formula for determining the markup percentage is markup amount ÷ cost. In this example, the markup percentage is 42.86 percent (.30 ÷ .70 = 0.42857). A "book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records. Markup and gross profit margin are different. The gross profit is the sales price minus the cost. The formula for determining the gross profit margin is profit amount ÷ sales price. In the above example, the gross profit margin is 30 percent (0.30 ÷ 1.00 = 0.30).

ii. Reduced those purchases by an estimated cost of mixers, computed at 1 percent;

iii. Reduced purchases of beverages by the cost of non-alcoholic drinks sold as drink tickets;

iv. Reduced purchases of alcohol by estimated costs of self-consumption and losses related to pilferage, each computed at 2 percent;

v. Established the balance as the audited cost of alcohol sold for 2013 and 2014;

vi. Established audited purchases of food for 2013 by using the amount recorded on appellant's P&L;

vii. Used the same amount of food purchases for 2014 because appellant did not have any recorded purchases of food in 2014;

viii. Reduced audited purchases of food by estimated costs of self-consumption and losses related to pilferage, each computed at 2 percent;

ix. Established the balance as the audited cost of food sold for 2013 and 2014;

x. Added a markup of 200 percent to the audited costs of alcohol and food sold to compute audited sales of alcohol and food;

xi. Compared audited sales of alcohol and food to reported taxable sales and computed percentages of error of 434.06 percent for 2013, 313.44 percent for 2014, and 359.11 percent for the two years combined; and

xii. Applied those percentages of error to reported taxable sales for each quarter of the audit period (using 359.11 percent for 2012).

13. This timely appeal followed.

DISCUSSION

Issue 1. Whether appellant has shown that adjustments are warranted to the audited understatement of reported taxable sales of food and beverages established by markup.

Generally, California sales tax is imposed on a retailer's retail sales of tangible personal property in California. (R&TC, § 6051.) All gross receipts are presumed subject to tax unless the retailer can prove otherwise. (R&TC, § 6091.) The retailer must report and pay the sales tax due on its taxable sales to CDTFA. (R&TC, §§ 6451, 6452, 6454.) The retailer is responsible

for maintaining complete and accurate records and must make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

A retailer may collect sales tax reimbursement from its customers on the sales price of tangible personal property sold at retail. (Civ. Code, § 1656.1(a).) This amount is not a sales tax imposed on the customer; instead, it is merely "reimbursement" for the sales tax imposed on the retailer. (*Ibid*.) There is no statutory requirement for the retailer to collect sales tax reimbursement from its customer, and a retailer is liable for any applicable California sales tax regardless of whether it elects to do so. (*Ibid.*; R&TC, § 6051.)

Although gross receipts derived from the sale of "food products" are generally exempt from the sales tax, sales of food served in a restaurant and sales of hot prepared food are subject to tax. (R&TC, § 6359(a), (d)(2), (d)(7).)

If CDTFA is unsatisfied with the amount of tax reported on the return, CDTFA may determine the amount required to be paid based on any information that is in its possession or may come into its possession. (R&TC, §§ 6481, 6511.) The markup method is a recognized and accepted accounting procedure when the taxpayer's records are inadequate. (*Appeal of Amaya*, 2021-OTA-328P.) On appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that CDTFA's determination is wrong. (*Ibid*.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid*.)

CDTFA found differences between recorded and reported sales in its preliminary examination. CDTFA also found that the costs of goods sold reported on appellant's FITRs exceeded the amounts of total sales reported on SUTRs and computed achieved markups of 24.84 percent for 2013 and -21.33 percent for 2014. Under these circumstances, CDTFA chose to use alternate audit methods, in this case, by applying the markup audit approach.

CDTFA states that it used a markup of 200 percent to establish sales of both alcohol and food based on appellant's assertion that a 200 percent estimate was accurate at the appeals conference. CDTFA quotes a May 31, 2018 email from appellant stating, "The alcohol sales are based on a mark-up of 3x of purchase costs and the food sales are based on a mark-up of cost of 4x of purchase costs." CDTFA thus believes it likely that the audited markup of 200 percent is understated. CDTFA has not proposed that a higher markup be used in the audit calculations but

has requested that this issue be considered in the event any reductions are made to the audited understatement.[5] On appeal, appellant maintains that the average markup was 200 percent.[6] CDTFA has established that its determination was reasonable and rational and the burden therefore shifts to appellant.

Appellant raises two arguments regarding the audited understatement of reported taxable sales of food and beverages established on a markup basis. First, appellant asserts that the audited costs of alcohol sold are overstated because they include purchases by a separate and distinct legal entity, New Pigalle, LLC, and because appellant made some purchases of alcohol that it transferred to New Pigalle. Second, appellant asserts that there were no food sales after 2013.

Audited costs of alcohol sold

Regarding the audited amounts of alcohol purchases, CDTFA specifically requested information for appellant's business from the alcohol vendors. In its requests for information, CDTFA included appellant's legal name (Soul Lounge, LLC), its business name (Brick and Mortar), and the business address. The use of specific, detailed identification data would minimize any errors in the information the vendors provided.

A comparison of the purchases listed on the vendor surveys with the amounts recorded by appellant indicate that appellant's records showed no purchases from two large vendors, Southern Wine and Spirits, and DBI. Appellant's Transactions List reflects no wine or liquor purchases for the first seven months of 2012 and the year of 2014. In addition, OTA did not find any records that showed the purchases listed by vendors included purchases by a related company, New Pigalle, LLC. Based on these findings, CDTFA correctly concluded that the purchases recorded on the Transactions List were incomplete.

Regarding appellant's assertion that it transferred some of the alcohol it purchased to New Pigalle, LLC and other entities, appellant testified that it used a central warehouse to house all of the liquor for appellant and other related entities. Appellant describes that it maintained an inventory sheet, where the bar manager would sign out cases of alcohol to the venues that needed

[5] CDTFA's alternative position for a higher markup is addressed further in Issue 2.

[6] At the oral hearing, witness J. Perkins stated that the average markup should be 300 percent. In a post-hearing brief, J. Perkins amended his testimony, stating the markup was in fact 200 percent.

it. Appellant has submitted a blank inventory sheet which it alleges was the form appellant, New Pigalle, and other related entities used to track the inventory in the central warehouse.

Appellant also provides emails from the district manager of Southern Wine and Spirits, referencing the distributor's practice of delivering all of the alcohol for multiple venues to one location. An email sent by the district manager on March 16, 2016 states the following: "The [CDTFA] contacted me about our arrangement of shipping all liquor supplies to your central location on Duboce and I have been informed that you cannot do this and that we must invoice [each] venue in San Francisco, Oakland and in The sierras [sic]."

Appellant also argues that practically speaking, it would be impossible for a venue of its size with a two-bartender operation to make the amount of sales that CDTFA has determined. Appellant opines that CDTFA's figures would have required each bartender to make sales of $3,000 per hour, which would not be humanly or physically possible.[7]

Although some of appellant's contentions and emails appear to support appellant's assertion that all alcohol was delivered to one central receiving location for sale at multiple locations, without more, the records before OTA are not sufficiently complete to distinguish appellant's purchases from other purchases by related entities. Appellant was unable to provide a completed inventory sheet for the audit period. As such, there is no evidentiary basis for OTA to make an estimation based on these emails alone. (See *Vanicek v. Commissioner* (1985) 85 T.C. 731, 743.) Appellant, for example, has not asserted or provided evidence of which purchases from Southern Wine and Spirits should be attributed to appellant. Accordingly, appellant has not overcome its burden of proof.

Audited sales of food

Appellant has no recorded purchases of food in 2014. As a result, CDTFA estimated appellant's purchases of food for 2014 by using the recorded amount for 2013. Appellant argues that this audit approach was incorrect because it stopped selling food after 2013 and leased its kitchen to a third-party caterer.

After the oral hearing, OTA allowed for additional time for appellant to provide the catering contract with the catering vendor who took over food services in 2014. Appellant states that it no longer has the original contract with the vendor in its possession but did provide an

[7] It is unclear how appellant calculated this figure.

unsigned copy of a lease agreement that appellant purports to be a true and accurate copy of the document executed between the parties. Although OTA is sympathetic to the fact that appellant no longer operates Brick and Mortar and therefore, no longer has access to relevant documentation, the unsigned and undated contract is insufficient to meet appellant's burden. Accordingly, no adjustment is warranted to the audited amount of food sales.

Issue 2. Whether appellant has shown that adjustments are warranted to the audited amount of facility rentals subject to tax.

Generally, sales of food for human consumption are exempt from sales and use tax. (R&TC, § 6359(a).) However, the law provides, in pertinent part, that the exemption does not apply when the food products are furnished, prepared, or served for consumption at tables, chairs, counters, or from tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve products to others. (R&TC, § 6359(d)(2).) Sales of meals, food, or drinks by a restaurant are subject to tax. (See Cal. Code Regs., tit. 18, § 1603(a)(2)(A).)

Appellant recorded 171 room rentals totaling $319,426, all of which it claims were nontaxable room rentals. CDTFA argues that because restaurants and bars typically provide food and bar services, it assumes appellant also provided such services with its room rentals and therefore the rentals are taxable. CDTFA surmises that the fact that most of the invoices were not marked as "paid" suggests the invoices may have been prepared as a guarantee against a minimum purchase of meals or beverages for an event. (See Cal. Code Regs., tit. 18, § 1603(i)(4).) CDTFA concludes that the invoices remained unpaid because the customers likely met the minimum amount, so the room rental charge was waived.

Although CDTFA's assumptions that all rentals in a restaurant and bar would include food and/or bar services would generally be reasonable, the circumstances in this appeal do not support such an assumption. Appellant testified that including bar services with the room rentals was rare. Of the 171 room rental invoices in the record, five of the invoices are noted as "Room

Rental w/Bar & Door Services" and one is noted as "Room Rental Sports Banquet."[8] It appears that appellant had a practice of noting in the invoice when bar services were included in the room rental pricing. Based on the evidence and unrefuted testimony,[9] OTA finds that only $11,250 of the $319,426 in room rentals is taxable.

CDTFA requests that if OTA finds an adjustment in favor of appellant is warranted, then OTA also consider applying an increased markup of cost for food and beverages to offset any adjustments. Applying higher markup would result in increasing appellant's tax liability. When CDTFA's position on appeal either alters the original deficiency or requires the presentation of different evidence, then a new matter has been introduced and the burden of proof shifts to CDTFA. (*Appeal of Praxair*, 2019-OTA-301P.)

CDTFA asserts that based on its experience, it expected a markup of costs of at least 350 percent for alcoholic beverages. As previously stated, based on the May 18, 2018 correspondence with the appellant, CDTFA believes that a 300 percent markup of cost likely more accurate than the 200 percent markup it used in its determination. CDTFA also points out that the audit for period October 1, 2015, through September 30, 2018, resulted in an audited (weighted average) alcoholic beverage markup of 499 percent based on a shelf test and purchase segregation. Based on this analysis, CDTFA asserts that a 300 percent markup is more accurate than the 200 percent markup it applied in its determination. Had a 300 percent markup been applied for alcoholic beverages, CDTFA calculates that the measure of understated taxable sales would have been $2,779,693, which is an increase of $813,618.

OTA finds that CDTFA met its burden of showing that a higher markup of 300 percent would have been reasonable based on the evidence analysis in the record. Appellant has already received a great benefit from CDTFA's usage of a lower markup than what is supported by the record. Therefore, the reduced measure of $308,176 is offset with the additional understated

[8]

Date	Amount	Notation
3/11/12	$1,250	Room Rental w/Bar & Door Services
5/28/12	$1,500	Room Rental w/Bar & Door Services
7/15/12	$1,750	Room Rental w/Bar & Door Services
9/8/12	$1,250	Room Rental w/Bar & Door Services
5/15/14	$2,000	Room Rental Sports Banquet
5/18/14	$3,500	Room Rental w/Bar & Door Services

These invoices total $11,250.

[9] When a party does not refute or contest the facts alleged by an opposing party, OTA may accept the facts as true. (See e.g., *Eaddy v. Commissioner*, T.C. Memo. 1989-450.)

taxable sale of alcoholic beverages of $813,618. The remaining amount of $505,442 will not result in an increase to appellant's liability.

Issue 3. Whether adjustments are warranted to the audited amount of sales of drink tickets for nonalcoholic beverages subject to tax.

In CDTFA's review of appellant's website and Yelp comments posted on the internet, CDTFA determined that appellant charged customers under the age of 21 $5 to purchase a ticket, which entitled the buyer to admission to the entertainment and one non-alcoholic drink. CDTFA concludes that each ticket represents a taxable sale of a nonalcoholic beverage for $5, and it estimates that appellant sold 10 of those tickets for three shows each week, for a total $150 per week (30 tickets x $5), or $7,800 per year. CDTFA computes that the ticket sales, excluding sales tax reimbursement, totals $21,534 for the audit period.

CDTFA's estimation of sales of drink tickets for nonalcoholic beverages subject to tax is reasonable and rational. Appellant does not provide any argument contesting CDTFA's estimation; therefore, this audited amount is upheld, and no adjustment is warranted.

Issue 4. Whether adjustments are warranted to the audited amount of self-consumed alcoholic beverages subject to tax.

CDTFA reduced the audited purchases of alcohol by an estimated cost of self-consumed alcohol, computed at 2 percent. CDTFA established a separate audit item for the cost of self-consumed alcohol of $17,098.

The CDTFA audit manual recommends a standard allowance for self-consumption of 2 percent of the taxable cost of goods sold unless evidence supports a higher allowance. (CDTFA Audit Manual § 0802.45.)[10] CDTFA's allowance of 2 percent is therefore reasonable. Appellant has not provided any evidence or argument to suggest a higher allowance should have been made. Therefore, no adjustment to the self-consumed alcoholic beverages is warranted.

[10] According to CDTFA's Audit Manual, it "is an advisory publication providing direction to [CDTFA] staff administering the Sales and Use Tax Law and Regulations." OTA is not required to follow CDTFA's Audit Manual; however, OTA may look to it for guidance, such as when evaluating the reasonableness of CDTFA's determination. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

Issue 5. Whether appellant was negligent.

CDTFA may impose a 10 percent penalty if any part of a deficiency determination is due to negligence or intentional disregard of law or rules and regulations. (R&TC, § 6484.)

A taxpayer must maintain and make available for examination all records necessary to verify the accuracy of any return filed when requested by CDTFA. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) Such records include, but are not limited to, the following: (1) the normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question; (2) bills, receipts, invoices, cash register tapes, or other documents of original entry; and (3) schedules of working papers used in connection with the preparation of the tax returns. (Cal. Code Regs., tit. 18, § 1698(b)(1).) Failure to maintain and provide complete and accurate records will be considered evidence of negligence or intent to evade the tax. (Cal. Code Regs., tit. 18, § 1698(k).)

California Code of Regulations, title 18, section 1703(c)(3)(A) provides that a negligence penalty should not be added to a deficiency determination associated with the first audit of a taxpayer in the absence of evidence establishing that any bookkeeping and reporting errors cannot be attributed to the taxpayer's good faith and reasonable belief that its bookkeeping and reporting practices were in substantial compliance with the requirements of the Sales and Use Tax Law or authorized regulations. (See *Independent Iron Works, Inc. v. State Bd. of Equalization* (1959) 167 Cal.App.2d 318, 323.) In the present case, appellant had not been previously audited.

The understatement of $2,015,957[11] represents an error ratio of 368 percent when compared to reported taxable sales of $547,482. In addition, appellant failed to maintain complete books and records. Appellant, for example, did not provide detailed sales records for alcohol or food sales, such as daily guest checks, and cash register tapes. OTA finds that the large understatement, error ratio, and lack of complete records are evidence of negligence.

Although OTA finds that the error ratio may in part be inflated because some purchases might have been made for other related entities, it is nevertheless an indication of appellant's failure to properly maintain proper records of alcohol purchases. OTA finds that the understatement cannot be attributed to appellant's good faith and reasonable belief that its

[11] Unreported nonalcoholic drinks of $21,534 + unreported room rental receipts of $11,250 + unreported alcohol and food of $1,966,075 + self-consumption of alcoholic beverages of $17,098.

bookkeeping and reporting practices were in substantial compliance with the requirements of the Sales and Use Tax Law or authorized regulations. (Cal. Code Regs., tit. 18, § 1703(c)(3)(A); see also *Independent Iron Works, Inc. v. State Bd. of Equalization*, *supra*, 167 Cal.App.2d at 323.) In light of the above, the negligence penalty was properly imposed.

HOLDINGS

1. Adjustments are not warranted to the audited understatement of reported taxable sales of food and beverages established by markup.
2. Adjustments are warranted to the audited amount of facility rentals subject to tax by reducing it from $319,426 to $11,250; however, it is fully offset by the additional measure of unreported taxable sales of $813,618 based on an estimated markup cost of 300 percent for alcoholic beverages asserted by CDTFA.
3. Adjustments are not warranted to the audited amount of sales of drink tickets for nonalcoholic beverages subject to tax.
4. Adjustments are not warranted to the audited amount of self-consumed alcoholic beverages subject to tax.
5. CDTFA properly imposed the negligence penalty.

DISPOSITION

CDTFA's action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

DocuSigned by:
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Andrew J. Kwee
Administrative Law Judge

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Josh Aldrich
Administrative Law Judge

Date Issued: 5/23/2023