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APPEARANCES:

Panel Lead: H.O. KIMBERLY WILSON

Panel Members: ALJ NATASHA RALSTON
ALJ MICHAEL GEARY

For the Appellant: MANNY ALMEIDA

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

RANDY SUAZO
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits A-E were received into evidence at page 7.)

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Cerritos, California; Tuesday, September 10, 2024

1:15 p.m.

HEARING OFFICER WILSON: We are going on the record.

This is the Appeal of Bee Management Incorporated doing business as Tee Up Restaurant & Bar, OTA Case Number 231014492. The date is September 10th, 2024, and the time is 1:15 p.m. The hearing is being held in Cerritos, California.

I am the Hearing Officer Kim Wilson, and I will be the lead for the purposes of conducting this hearing. My Co-Panelists are Administrative Law Judges Natasha Ralston and Michael Geary. We are equal participants in deliberating and determining the outcome of this appeal.

I'm going to ask the parties to identify themselves and who they represent.

Appellant.

MR. ALMEIDA: Manny Almeida, representing Bee Management, Inc.

HEARING OFFICER WILSON: Thank you.
And CDTFA.

MR. SUAZO: Randy Suazo, Hearing Representative with CDTFA.

MR. PARKER: Jason Parker, Chief of Headquarters

1 Operations Bureau with CDTFA.

2 MR. BROOKS: Christopher Brooks, attorney for
3 CDTFA.

4 HEARING OFFICER WILSON: Thank you.

5 As stated in the Minutes and Orders, the issue to
6 be decided in this appeal is whether adjustments are
7 warranted to the deficiency number for unreported taxable
8 door admission fees. The Appellant has not submitted any
9 exhibits.

10 Mr. Almeida, do you have any exhibits today?

11 MR. ALMEIDA: No. Just annotation 550.06 --
12 0680, which has been the annotation that we've been pretty
13 much set on. I wouldn't consider these, what I would call
14 taxable entry fees, because entry fees are not subject to
15 tax. So --

16 HEARING OFFICER WILSON: Okay. All right. So no
17 exhibits. Thank you.

18 MR. ALMEIDA: No.

19 HEARING OFFICER WILSON: And CDTFA submitted
20 Exhibits A through F -- I'm sorry E; is that correct?

21 MR. SUAZO: Yes.

22 HEARING OFFICER WILSON: Okay. And Appellant did
23 not object to these.

24 Are you still in agreement with that?

25 MR. ALMEIDA: Yeah, that's fine.

1 HEARING OFFICER WILSON: Okay. Therefore,
2 Exhibits A through E are admitted into evidence.

3 (Department's Exhibits A-E were received in
4 evidence by the Administrative Law Judge.)

5 HEARING OFFICER WILSON: Let's see. Mr. Almeida,
6 you said that you would need 30 minutes for your
7 presentation is that still correct?

8 MR. ALMEIDA: That's correct.

9 HEARING OFFICER WILSON: Okay. Please proceed
10 when you are ready.

11

12 PRESENTATION

13 MR. ALMEIDA: Okay. Yeah. I mean, as we've
14 discussed in our preliminary conversation and, obviously,
15 throughout the course of this audit -- and I was involved
16 at the tail end after the audit had been completed. But,
17 you know, the issue that we're in disagreement with is
18 entry fees. I mean, it's pretty simple. The client has a
19 business that is, you know, basically involving the entry
20 of folks that are certain for -- what you call it? --
21 certain financial positioned, a place where generally
22 considered more of a private club.

23 You have an entry fee, and you also have a
24 membership fee. Membership fees will allow you to bring
25 in folks. It will also allow you bring to in folks that

1 are being charged. The membership fees were not taxable
2 -- were not considered taxable, met the criteria, and we
3 have the position as it relates to the entry fee. You
4 know, the Department basically said, well, your markup
5 isn't high enough. Therefore, you're subsidizing your
6 markup by entry fees. I mean, there's clubs that charge a
7 significant amount of money to get in.

8 And our position is that if you we're going to
9 make entry fees subject to tax based on the amount, then
10 that would require changing the law. Now, having said
11 that, I mean, you can say the same thing about the
12 membership fee. And, by the way, neither one, neither the
13 membership fee nor the entry fee requires anyone to
14 consume anything in particular. And there's other things
15 associated with this particular venue where you can walk
16 in and you can do karaoke, and they provide all these
17 other services, which we brought up at the appeals
18 conference related to, you know, being driven back to your
19 home or hotel or whatever it might be for no charge in the
20 event that you, you know, consume significant alcohol
21 where you're not able to drive.

22 And, you know, these are some of the things that
23 this particular club offers. Again, it's set up for
24 certain businesspeople. The reason that the fee to get in
25 is so high is because they don't want just anybody walking

1 in and just sitting there and potentially creating, you
2 know, havoc or making it uncomfortable for a lot of these
3 businesspeople that come in. And a lot of them are
4 traveling. You know, they're here for a day or two. And,
5 you know, they're invited by one of their business
6 associates, and, you know, that's what they do.

7 Again, having been -- have been doing this for
8 the last, you know, 35, 40 years, it's kind of like, okay,
9 wait a minute. So you're going to create a taxable event
10 because my entry fee is significant. And it's not -- it's
11 not the case of the venue also having a low markup. I
12 mean, to me the markups are, you know, 200, 300 percent.
13 In that vicinity, there's nothing wrong with the markup.
14 And as you all know there is nothing in the law. There's
15 nothing statutory that states that a markup needs to be a
16 certain percentage. And that's all along what we've been
17 contending, and we have a position.

18 Again, if you're going to try to tax us, I mean,
19 not only -- not only do we have a situation where you're
20 trying to tax entry fees, but is the law going to change?
21 Is that all of a sudden be the -- the norm for clubs and
22 places where, you know, the clientele is of significant,
23 you know, financial means where they don't want to be in a
24 place where, you know, you get in it for free or
25 what-have-you? And, again, that's a reality, especially

1 today.

2 You know, prices today are over-the-top with
3 anything you do or any -- anywhere you go; whether it's to
4 consume alcohol, or whether it's to consume food. Or in
5 this particular case, where you're basically going in to
6 basically have, you know, a relaxing time hopefully, and
7 one that you're not bothered and you're not harassed to
8 consume. 'Cause, again, you can walk in with a member,
9 you pay your entry fee, and you are not required to
10 consume anything. So in a situation like that where you
11 pay the \$120 to get in and you don't consume anything, how
12 could that be taxable? I mean, where's the consideration
13 and the exchange occurring?

14 And to make a decision -- just a general decision
15 across the board that these entry fees are subject to tax
16 just because it's a significant amount and the markups in
17 the eyes of the Department is not significant -- I mean,
18 there's even a comparison with -- with a related entity.
19 Completely different business model. So that one doesn't
20 require that kind of an entry fee, but it's a completely
21 different business model. You can't even compare it. So
22 if you're trying to compare industries, you'd have to go
23 to a place that's more of a higher end that, you know,
24 requires that kind of an entry fee to get in.

25 And like I said, you're not required to consume

1 anything. So how could that be a taxable event? And
2 that's what we've been contending all along. In addition
3 to that, what are you going to do? Change the law? What
4 does my client do going forward? I mean, obviously, this
5 audit has been going on for -- for a number of years now.
6 We're still in a position where we haven't been able to do
7 anything because we don't really have anything set in
8 stone.

9 In addition to that, if you were to create, you
10 know, some sort of a markup where, okay, yeah, we're just
11 gonna -- we think the markup should be 500 percent, okay.
12 Well, let's look at that. I'm not saying that we should
13 because, again, there's nothing that dictates what the
14 markup should be based on the business. But in the event
15 that you were to do that, then you got to look at that and
16 say, well, maybe not whole entry fee is subject to tax.
17 That wasn't even addressed. It wasn't even something
18 that -- that the Department was willing to, you know,
19 consider.

20 Again, if you're going -- if you're gonna -- if
21 you're gonna try to make the entry fee taxable and full, I
22 think you're going over the top and creating, you know, a
23 precedence on something that's never going to change,
24 unless services all of a sudden become taxable in
25 California, and you can say, well, from now on entry fees

1 are going to be subject to tax simply because we're going
2 to make the assumption that there's consumables that are
3 going to be associated with the entry fee.

4 So in a nutshell that's -- that's our position.
5 It's been our position all along. It's just inconsistent
6 with -- with the law and certainly -- and like I said, to
7 make a -- to make a conclusion that the entry fees are
8 what keeps the business in order, well, you know,
9 there's -- there's businesses that have different stream
10 of revenues, you know. And some are services, and some
11 are sales of tangible personal property. But that doesn't
12 mean that the sales of the services become taxable simply
13 because they keep the business operating in a positive
14 flow.

15 So that's our position.

16 HEARING OFFICER WILSON: Okay. Thank you.

17 MR. ALMEIDA: Thank you.

18 HEARING OFFICER WILSON: Panel, do we have
19 questions?

20 JUDGE GEARY: No. Thank you.

21 HEARING OFFICER WILSON: Okay. We'll go ahead
22 and turn to CDTFA.

23 You have 30 minutes for your presentation. Begin
24 when you're ready.

25 ///

1 alcoholic drinks; Exhibit E, page 69.

2 Appellant does operate a second bar in Torrance,
3 California, and the markup for cost of goods sold for the
4 two-year period of 2018 and 2019 is 297 percent; Exhibit
5 B, page 36. The Torrance location charges a \$30 door fee
6 for members and guest. Comparison of the two bars
7 indicates the markup for the Los Angeles location was well
8 under an expected markup considering the location and
9 venue, as well as the type of clientele the establishment
10 attracts. Reconciliation of sales disclose the Appellant
11 did not report door charges or membership fees revenue on
12 their sales and use tax returns; Exhibit E, page 65.

13 The Department determined that membership fees
14 were not taxable as they included intangible benefits such
15 as reservation, entertainment, discount, and concierge
16 services. Any taxable portion was considered not material
17 enough to warrant an adjustment for this audit period;
18 Exhibit E, pages 59 and 60. However, the Department
19 determined the door charges are taxable as those charges
20 subsidize the low selling prices of alcohol and,
21 therefore, part of gross receipts; Exhibit E, pages 61 and
22 62.

23 Department noted that when sales tax and tips are
24 excluded, bar sales represent 57 percent of gross
25 receipts; door charges represent a 35 percent of gross

1 receipts; and nontaxable membership fees represent the
2 remaining 8 percent of gross receipts. The Department
3 noted that for the two years for which federal income tax
4 returns were available, 2016 and 2017, the cost of
5 operating the bar lounge computed to approximately \$2.5
6 million, while reported taxable sales for those two years
7 was under \$1.3 million, demonstrating that taxable sales
8 do not cover the cost of operating the bar.

9 The Department concluded the door charges
10 subsidized the lower than expected markups on alcohol and
11 served to cover the operating cost of the bar. California
12 imposes sales tax on the retailer for its retail sales in
13 the state of tangible personal property measured by the
14 retailer's gross receipts, unless the sale is specifically
15 exempt or excluded from taxation by statute, Revenue & Tax
16 Code 6051 and 6091. According to Revenue & Tax Code
17 section 6012, gross receipts means the total amount of the
18 sale, including any services that are part of the sale
19 without any deduction on account of the cost of the
20 property sold, the cost of materials used, labor or
21 service cost, or any other expenses, Revenue & Tax Code
22 6012 subdivision(a), (b) (1).

23 All of the retailer's gross receipts are presumed
24 to be subject to tax until the contrary is established,
25 and the retailer has the burden of proof of proving

1 otherwise, Revenue & Taxation Code 6091. Moreover,
2 Revenue & Taxation Code section 6481 states that if the
3 Department is not satisfied with the return or returns of
4 the tax or the amount of tax or other amount required to
5 be paid to the State by any person, it may compute and
6 determine the amount required to be paid upon the basis of
7 the facts contained in the return or returns, or upon the
8 basis of any information within its possession or that may
9 come into its possession.

10 Here, the Department examined the Appellant's
11 books and records, as well as information from the
12 Appellant's Torrance location and industry standards, and
13 found the markup on cost of goods sold to be unreasonable.
14 Therefore, the Department was within its authority to use
15 other information within its possession to calculate gross
16 receipts. Given that gross receipts include any services
17 that are part of the sale, the door charges were properly
18 characterized as gross receipts. It is Appellant's burden
19 to prove that the door charges are not taxable. Appellant
20 has argued that door charges are not taxable because they
21 include services like discounted hotel accommodations and
22 complimentary car service, which are not taxable.

23 To support this position, Appellant cites
24 annotation 550.0680, which states that charges for the
25 admission to a place furnishing entertainment which are

1 billed separately for minimum charges for meals or drinks
2 are not subject to sales tax. The Department
3 distinguishes the facts of this appeal from the
4 annotation. In this appeal, Appellant's business is not a
5 place furnishing entertainment. Instead, Appellant's
6 business furnishes food and alcohol.

7 The services that the Appellant alleges are
8 included as part of the door charges were found to be, by
9 the Department, to be provided as part of membership fee
10 and not part of the door charge; again, Exhibit A, page
11 17. Instead, as previously mentioned, the Department
12 determined that the door charges relate specifically to
13 alcohol sales. Appellant also contends the 218 percent
14 markup is acceptable as the business has other revenue
15 streams that allow it to be profitable. Appellant argues
16 that there is no minimum required markup for its business.
17 Appellant further contends differences in the business
18 model, demographics, location, and venue between the
19 Los Angeles bar and the Torrance bar makes comparison of
20 their bar markups inappropriate.

21 The Department does agree that there is no
22 minimum required markup for a bar. However, Audit Manual
23 Section 0803.15 states that a markup must still be
24 reasonable. The Department contends a 218 percent markup
25 for a bar with the clientele location and venue, as this

1 one maintains, is unreasonable. Furthermore, Audit Manual
2 Section 0802.55 states that a reasonable markup should be
3 evaluated in terms of the similar businesses. In this
4 case, Appellant's other bar serves as an example that the
5 recorded markup of 218 percent is far below what is
6 reasonable.

7 The Department maintains that the door charges
8 subsidizes the low markup and are, therefore, part of
9 taxable gross receipts. Appellant has failed to prove the
10 audited taxable sales is overstated or that its door
11 charges should be removed from taxable gross receipts.

12 This concludes our presentation. I'm available
13 to answer any questions you may have.

14 HEARING OFFICER WILSON: Thank you.

15 Judge Ralston, do you have questions?

16 JUDGE RALSTON: Yes. I have a question for the
17 Appellant.

18 So the members pay a membership fee, and then do
19 they also pay an entry fee every time they visit the
20 location?

21 MR. SUAZO: Yes.

22 MR. ALMEIDA: That's correct.

23 JUDGE RALSTON: Okay. Thank you.

24 HEARING OFFICER WILSON: Judge Geary?

25 JUDGE GEARY: Yes. I have a question also for

1 Mr. Almeida.

2 Is there anywhere in the evidence -- did you look
3 at the evidence that the Department offered? Is there in
4 there anywhere a listing of all the various services your
5 client provided to the clients? And the Department
6 mentioned discounted hotel reservations and things like
7 room upgrade -- I see that in this exhibit -- late check
8 out, discount for valet parking, pick up and drop off
9 services, which you mentioned, right, and discount on
10 bottles. If you buy a couple, you get a discount on the
11 third.

12 MR. ALMEIDA: Right. Right.

13 JUDGE GEARY: Do you know whether your client
14 kept a record of how much it cost it to provide these
15 various discounts and services?

16 MR. ALMEIDA: If I remember correctly, there was
17 a breakdown of some of those services. I don't remember
18 specifically if it was part of the audit period or the
19 whole audit period. But I believe there was some sampling
20 that was done --

21 JUDGE GEARY: And --

22 MR. ALMEIDA: -- by the auditor --

23 JUDGE GEARY: -- but -- okay.

24 MR. ALMEIDA: -- just prior to me getting
25 involved, I believe, in looking at some of the work that

1 we received from the auditor for those services.

2 JUDGE GEARY: Okay.

3 MR. ALMEIDA: And karaoke was another aspect of
4 the business also.

5 JUDGE GEARY: All right. Any other services that
6 your client provided that aren't stated in what I just
7 read and the karaoke services that you mentioned?

8 MR. ALMEIDA: Not that I'm aware of.

9 JUDGE GEARY: Let me ask Mr. Suazo.

10 Is there in the audit work papers in Exhibit E or
11 elsewhere in the Department's package information about
12 what it cost the Appellant to provide these various
13 services to the clients?

14 MR. SUAZO: For the --

15 JUDGE GEARY: I don't remember seeing anything.

16 MR. SUAZO: For the services, I don't believe so.

17 JUDGE GEARY: Okay. Those are the only --

18 MR. SUAZO: We're talking about the -- like, the
19 Uber-type stuff and --

20 JUDGE GEARY: Discounts.

21 MR. SUAZO: -- concierge and all that stuff?

22 JUDGE GEARY: Yes.

23 MR. SUAZO: Okay.

24 JUDGE GEARY: You don't think there's anything in
25 there?

1 MR. SUAZO: I don't think there's anything in
2 there.

3 JUDGE GEARY: All right. Those --

4 MR. SUAZO: There was a breakdown on the revenue
5 side, but not on the -- the cost side.

6 JUDGE GEARY: I saw that.

7 MR. SUAZO: Yeah.

8 JUDGE GEARY: Thank you, both of you.

9 Thank you, Ms. Wilson.

10 HEARING OFFICER WILSON: Okay. Mr. Almeida, you
11 have time for closing remarks.

12

13 CLOSING STATEMENT

14 MR. ALMEIDA: Yeah. Once again, you know, this
15 is a business that is very unique in itself, and I think
16 the Department clearly stated that, at least in more
17 specific aspect than I did. Yeah, the reality is that,
18 you know, to make an assumption that the entry fees cover
19 some sort of a markup for the tangible property or the
20 alcohol and food that is sold is -- is an assumption.

21 And, again, it's not one that I've ever seen with
22 any of the other audits that I've been involved with where
23 there was a significant entry fee. And I just think this
24 is one audit that's being sort of put out there and -- to
25 create what I believe to be a false markup. I mean,

1 again, there's nothing that says the markup needs to be a
2 certain amount. I mean, for somebody to make a decision
3 that over 200 percent is unreasonable -- I remember when I
4 started with the Department way back when. I mean, a lot
5 of times if you had anything over 200, that was good.

6 I mean, again, you've got different revenue
7 sources. The idea behind going into this lounge is not
8 necessarily to consume the alcohol and to consume the
9 food. And, again, Mr. Geary stated, obviously, that
10 there's even discounts. Why is there discounts? Because
11 there's an entry fee, and there's a membership fee. So,
12 you know, at the end of the day, they're going to get
13 charged for that, and they're going to pay the tax on it
14 whether it's full price or whether it's two for one.

15 But here, again, what's a lot? Two for one?
16 It's whatever consideration is provided. It's not, okay,
17 going to tax you on two, even though I'm going to charge
18 you for one. I mean, it's basically the same situation if
19 you really consider the way, you know, things are.

20 That's it. Thank you.

21 HEARING OFFICER WILSON: Great. Thank you.

22 Again, Panel?

23 JUDGE RALSTON: This is Judge Ralston. No
24 further questions. Thank you.

25 MR. ALMEIDA: Thank you.

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HEARING OFFICER WILSON: Thank you.

Judge Geary?

JUDGE GEARY: Nothing else. Thank you.

HEARING OFFICER WILSON: All right. I don't have any questions, so we'll conclude the hearing.

Let's see. This case is being submitted today, September 10th, 2024. The record is now closed.

Thank you everyone for participating today.

The Judges will meet to deliberate and decide your case. We will issue a written opinion within 100 days.

Today's hearing in the Appeal of Bee Management Incorporated, DBA Tee Up Restaurant & Bar is now concluded.

(Proceedings adjourned at 1:41 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 30th day of September, 2024.

ERNALYN M. ALONZO
HEARING REPORTER