STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
SUNGARD SECURITIES FINANCE LLC	:	ORDER AND OPINION DTA NO. 824336
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period February 28, 2007 through May 31, 2009.	:	

Petitioner, Sungard Securities Finance LLC, filed an exception to the determination of the Administrative Law Judge issued on February 6, 2014. Petitioner appeared by Alston & Bird, LLP (Richard C. Kariss, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Osborne K. Jack, Esq., of counsel). Petitioner filed a brief in support of its exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioner did not file a reply brief. Oral argument was heard in New York, New York on September 17, 2014. The Tax Appeals Tribunal issued a decision on March 16, 2015, denying petitioner's exception and affirming the determination of the Administrative Law Judge.

Petitioner filed a notice of motion to reargue and for reconsideration, together with supporting documents, which was received by the Tax Appeals Tribunal on June 1, 2015. The Division of Taxation filed an affirmation in response, which was received by the Tax Appeals Tribunal on June 29, 2015. The 90-day period for the issuance of this order thus began on June 29, 2015.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following order and opinion.

ORDER AND OPINION

Petitioner, in its notice of motion, asks that this Tribunal grant its motion to reargue in order to: (1) recreate the transcript of the oral argument held in this matter on September 17, 2014 (original argument); and (2) reconsider matters of fact that were misconstrued by this Tribunal in its decision rendered in this matter on March 16, 2015 (decision).

A motion to reargue a prior decision "is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided (citations omitted)" (***Foley v Roche***, 68 AD2d 558, 567 [1979], ***lv denied*** 56 NY2d 507 [1982]; ***see also*** CPLR 2221 [d] [2]). Thus, petitioner's request to hold an additional oral argument in order to recreate what it asserts is the inadequate transcript of the original argument, is not the proper subject of a motion to reargue.

Petitioner's motion is, however, allowed pursuant to 20 NYCRR 3000.5 as a motion made to this Tribunal to provide the specific form of relief of granting petitioner the opportunity to recreate the original argument made to this Tribunal. Petitioner in its supporting papers asserts that the transcript of the original argument contains "extensive material inaccuracies that cannot be otherwise adequately corrected." The Division does not contest petitioner's description of the transcript as inaccurate, but asserts that petitioner has not identified any errors in the transcript requiring this Tribunal to grant the relief petitioner has requested (i.e., material inaccuracies).

We agree that there are issues with the transcript of the original argument, and note that the Secretary to the Tax Appeals Tribunal attempted on numerous occasions to have the court reporter correct those inaccuracies, to no avail. However, the accuracy and completeness of a transcript are essentially the responsibility of the parties (***see*** CPLR 5525 [c] [procedure for the settlement of a transcript on appeal wherein the court is only involved if parties cannot agree to the proposed changes to the transcript]). The record contains no indication that petitioner attempted to resolve its issues with the transcript of the original argument with either the court reporter or the Division prior to the issuance of the decision in this matter on March 16, 2015. No application was made to this Tribunal from the date of the original argument through the date of the issuance of the decision six months later. We now face a situation where petitioner is requesting to recreate the original argument before this Tribunal, while having the benefit of the Tribunal's reasoning as set forth in the decision. We are disinclined to grant petitioner this relief under these circumstances.

Petitioner asserts that it should be granted the requested relief because a complete and accurate transcript would be required if petitioner found it "necessary to apply for a judicial review" of the decision. Petitioner is correct to the extent that Tax Law § 2016 provides that the transcript of any oral argument before this Tribunal is required to be included in the record on appeal (***see also*** Rules of App Div, 3d Dept [22 NYCRR] § 800.2 [c]). However, mistakes and gaps in a transcript have been held to "not preclude a meaningful review" of an administrative decision on appeal, even where such mistakes and gaps were in transcripts of evidentiary hearings (***Matter of Van Bergen (Commissioner of Labor)***, 258 AD2d 705, 707 [1999]; ***see also Matter of Crespo (Upton, Cohen and Slamowitz - Commissioner of Labor)***, 251 AD2d 842 [1998], ***Matter of Fama v Mann***, 196 AD2d 919, 920 [1993]). The assertion of an inadequate

transcript in this matter relates not to an evidentiary hearing, but to the original argument on exception to this Tribunal. Petitioner submitted written arguments in its brief filed on exception to this Tribunal and this Tribunal was not even required to grant oral argument to petitioner in the first instance (Tax Law § 2006 [7] [whether or not to grant oral argument in a particular case is in the discretion of the Tribunal]). Thus, we do not see how mistakes in the transcript of the original argument in this matter preclude a meaningful review of petitioner's case.

Finally, as noted by the Division in its opposing affirmation, petitioner has not pointed to any specific inaccuracies that would warrant the relief it requests.

Under the totality of the circumstances presented herein, we cannot justify granting petitioner the opportunity to recreate the original argument made to this Tribunal.

Petitioner's motion for reconsideration is actually a motion to reargue its case. As previously noted, such a motion must be founded upon an allegation that this Tribunal has "overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law" (***Foley v Roche***). Furthermore, while this Tribunal has the authority to reconsider one of its previous decisions, such authority is not contained in statute and thus is limited and must be exercised with great care (***see*** 20 NYCRR 3000.16 [c]; ***Matter of Trieu***, Tax Appeals Tribunal, June 2, 1994, ***confirmed sub nom Matter of Xuong Trieu v Tax Appeals Trib. of State of N.Y.***, 222 AD2d 743 [1995], ***appeal dismissed*** 87 NY2d 1054 [1996], ***lv denied*** 88 NY2d 809 [1996]; ***Matter of Jenkins Covington, N.Y.***, Tax Appeals Tribunal, November 21, 1991, ***affd Matter of Jenkins Covington, N.Y. v Tax Appeals Trib.***, 195 AD2d 625 [1993], ***lv denied*** 82 NY2d 664 [1994]; ***see also Evans v Monaghan***, 306 NY 312 [1954]).

Here, petitioner argues that the Tribunal incorrectly based its decision upon inconsistencies between certain documents in evidence and the affidavits submitted into evidence by petitioner.

Petitioner asserts that there are no such inconsistencies, rather that the affidavits provide the context for interpreting the documents. Petitioner appears to be arguing that the Tribunal "misapprehended" the facts by relying upon documentary evidence to the exclusion of the affidavits. However, as pointed out by the Division, the decision specifically addresses the affidavits and finds the information contained therein to be at odds with the documentary evidence. In fact, this Tribunal specifically found that petitioner had failed to adequately resolve such discrepancies. Having specifically addressed the question that petitioner seeks to reargue, to consider such reargument now would be to impermissibly "permit the unsuccessful party to argue once again the very questions previously decided" (***Foley v Roche***). We will not exercise our limited authority to reconsider our decisions under such circumstances.

Accordingly, it is hereby ORDERED that the motion entitled Motion to Reargue and for Reconsideration filed by petitioner is denied in its entirety.

DATED: Albany, New York
September 25, 2015

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner