

STATE BOARD OF EQUALIZATION



Appeal Name: VINAY VOHRA AND VIKRAM VOHRA

Case ID: 553888 ITEM #: H1.4

Date: JULY 27, 2011 Exhibit No: \_\_\_\_\_

TP FTB DEPT

Public Comment

GOOD MORNING LADIES AND GENTLEMEN. THANK YOU FOR ALLOWING ME THE TIME TO MAKE COMMENT ON THIS MATTER.

I MUST START BY SAYING THAT WE HAVE BEEN IN BUSINESS IN CALIFORNIA SELLING TABACOO PRODUCTS FOR OVER 10 YEARS AND HAVE NEVER HAD AN ISSUE WITH THE BOE.

NOW, WE ARE BEING TOLD THAT THERE WAS AN ISSUE BECAUSE WE TRANSFERRED BETWEEN STORES THAT ARE OWNED BY THE SAME PERSONS. THE ITEMS THAT WERE TRANSFERRED BETWEEN STORES AND CONSISTS OF TABACOO ITEMS WITH A WHOLESALE VALUE OF LESS THAN \$100.00, FOR WHICH ALL TAXES WERE PAID.

THAT MATTER HAS BEEN RESOLVED AND ALL PROPER PAPERWORK IS BEING TAKEN CARE OF. THE PRODUCT THAT WAS SEIZED PURSUANT TO SECTION 22976.3. THAT SECTION IS SILENT ON WHAT DOCUMENTS WERE REQUIRED FOR THE TRANSFER BETWEEN SAME OWNER STORES.

THE INVESTIGATION DIVISION HAS SET OUT IN THEIR PLEDINGS THAT THE TRANSFER DOCUMENTS WERE SUPPLIED LATE, EVEN THEY HAVE NOT CITED AUTHORITY SETTING FORTH THE DATE THEY WERE REQUIRED. WE HAVE PROVIDED EVERY DOCUMENT THAT WAS DEMANDED FROM US. THE BOARD'S REPLY DATED FEBRUARY 23,2011 PAGE 1, LINE 27 DEMANDED CIGRETTES AND TABACOO DISTIBUTION LICENCE AND THE SAME

DOCUMENT PAGE 2, LINE 9 THROUGH 13 EXPLAINS THE PRODUCT WAS TRANSFERRED FROM ONE STORE TO THE OTHER TAX PAID!

REGARDING THE BOARD'S PLEDING THAT BOARD FAILED TO IDENTIFY THE PRODUCT, I REFER TO THE BOARD FINAL REPLY FROM THE ID, PAGE 2, LINE 28, WHERE IT IS WRITTEN "PETITIONER PROVIDED 3 INVOICES FROM THE LICENSED DISTRIBUTOR O.K. SALES ISSUED TO FAST N ESY#4, CONTAINING PRODUCT THAT MATCHES THE SEIZED PRODUCT."

IN THIS BAD ECONOMY, PULLING THE AUTHORITY TO SELL TOBACCO PRODUCTS FOR 20 DAYS HURTS THE STATE AND OUR CUSTOMERS. THE STATE HAS SPENT THOUSANDS OF DOLLARS IN THIS PROCESS WHEN THE ISSUE INVOLVES LESS THAN \$100.00.

WE ARE SURE YOU WILL DO THE RIGHT THING AND RESOLVES THIS MATTER NOW. THANK YOU FOR YOUR TIME.

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7

8 STATE OF CALIFORNIA

9 BOARD OF EQUALIZATION

10 In the Matter of the Petition for  
Release of Seized Property under the Cigarette  
11 and Tobacco Products Licensing Act of 2003  
of:

12 **VINAY VOHRA AND VIKRAM VOHRA,**  
13 **DBA PALM BLUFFS LIQUOR**

14 Account No. LR Q ET 91-319269  
Case ID: 553888  
15

16 Petitioner.

**DEPARTMENT'S REPLY TO  
PETITIONER'S OPENING BRIEF**

Board Hearing Date: February 23, 2011

17 The Investigations Division submits the following reply to petitioner's Opening Brief.  
18 This matter is the subject of a Board hearing scheduled February 23, 2011. This Reply Brief will  
19 briefly explain why the seizure of the untaxed tobacco products in dispute is proper and why the  
20 tobacco products remaining in custody should not be returned because petitioner has not  
21 established that the property was erroneously or illegally seized.

22 Background

23 Petitioner, a partnership of Vinay Vohra and Vikram Vohra, owns and operates six stores  
24 in California, one of which is Palm Bluffs Liquor located at 585 W. Nees Avenue in Fresno.  
25 Petitioner holds a Seller's Permit and a Cigarette and Tobacco Products Retailer's License,  
26 which allow it to engage in the retail sale of cigarettes and tobacco products at the this location.  
27 ~~Petitioner does not hold a Cigarette and Tobacco Products Distributor's License.~~  
28

1 On August 19, 2010, a senior investigator from the Board's Investigation Division saw  
2 Vikram Vohra and another man exit Palm Bluffs Liquor, walk to a car parked in front of the  
3 store, remove what appeared to be three bonus boxes<sup>1</sup> of Swisher Sweets cigarillos, and walk  
4 back into the store with the boxes. Later that afternoon, staff conducted a cigarette and tobacco  
5 products inspection of Palm Bluffs Liquor. With the exception of three unopened bonus boxes  
6 of Swisher Sweets cigarillos, staff was able to reconcile the store's tobacco products inventory  
7 with the purchase invoices provided by Mr. Vohra. Mr. Vohra did not have purchase invoices to  
8 show that it had paid tax on two 60-count bonus boxes of Swisher Sweets Grape cigarillos and  
9 one 60-count bonus box of Swisher Sweets Wine cigarillos. When questioned, Mr. Vohra  
10 explained that he had purchased the three bonus boxes of Swisher Sweets cigarillos for the Fast  
11 'N' Esy #4 store and that he had brought them to the Palm Bluffs Liquor store that morning.  
12 Mr. Vohra told staff that the product had been purchased from O.K. Sales (a licensed distributor  
13 in California) and that the purchase invoices were at the Fast 'N' Esy #4 store. Mr. Vohra  
14 admitted that he did not have any transfer documents for the tobacco products at issue. Staff  
15 concluded that the two 60-count bonus boxes of Swisher Sweets Grape cigarillos and one 60-  
16 count bonus box of Swisher Sweets Wine cigarillos were untaxed tobacco products as there was  
17 no valid purchase invoice provided to establish that excise taxes had been paid and there was no  
18 documentation to support the transfer of products between stores. Staff seized the product, and  
19 issued petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of  
20 Business and Professions Code sections 22974 and 22974.3, subdivision (b).

21 On August 25, 2010, Mr. Vohra provided staff with copies of three Fast 'N' Esy #4  
22 purchase invoices from O.K. Sales. The purchase invoices, dated May 10, 2010, May 14, 2010,  
23 and May 17, 2010, show a total of seven 60-count boxes of Swisher Sweets Grape cigarillos and  
24 one 60-count box of Swisher Sweets Wine cigarillos. Staff contacted O.K. Sales and confirmed  
25 that between April 2010 through August 19, 2010, Fast 'N' Esy #4 purchased a total of seven  
26

27 <sup>1</sup> Originally, Swisher Sweets cigarillos were sold in one box containing 50 individual cigars. Eventually, a "bonus  
28 box" containing 60 cigars selling for the price of the 50-count original box was introduced. Although there are a  
few 50-count boxes still sold today, the majority of sales for the boxed configuration are 60-count bonus boxes.

1 occurred and the tobacco products are tax paid where the retailer makes a contemporaneous record of  
2 the exchange showing the date of exchange, the distributor or wholesaler's name and date the products  
3 were purchased from the distributor or wholesaler, and a listing of the packaging, configuration, flavor  
4 and amounts of products transferred, and retains a copy of this documentation along with a copy of the  
5 purchase invoice evidencing a tax-paid purchase. Copies of the exchange documents should also be  
6 retained at both the transferor location and the transferee location so that, upon inspection, there is no  
7 dispute regarding whether they were in existence before the inspection or created because of the  
8 inspection. Records documenting an exchange that are submitted some time after the alleged  
9 exchange, particularly transfer records submitted after an inspection, are of little weight in establishing  
10 that the exchange actually occurred.

11 While the paper petitioner provided describes Swisher products that are Grape and Wine  
12 flavored, the paper does not contain a description of the configuration or packaging of the products  
13 transferred. Therefore, we cannot identify exactly what tobacco products petitioner allegedly  
14 transferred. The piece of paper also does not contain any distributor information so that piece of paper  
15 does not specifically connect to any tobacco products listed on the invoices provided with its petition  
16 dated October 6, 2010.<sup>2</sup> Petitioner did not retain a copy of the purchase invoice at Palm Bluffs Liquor  
17 along with a copy of the recently submitted piece of paper. ]

18 According to ID, when it inspected petitioner's business on August 19, 2010, it did not find any  
19 invoices or transfer records to support any of the tobacco products in question, and partner Mr. Vikram  
20 Vohra stated during the inspection that petitioner did not have records documenting the transfer of  
21 products. Prior to the Board hearing, petitioner had the opportunity to make known that it had this  
22 piece of paper when it submitted its petition for release of the seized products or its opening brief, but  
23 did not do so until the Board hearing. For these reasons, we are unable to accept that the petitioner's  
24 submission validly documents the purported exchange. Rather, we find that petitioner has not  
25 established that the seized tobacco products were tax paid, and that the tobacco products in question  
26  
27

28 <sup>2</sup> Petitioner provided three invoices from licensed distributor O.K. Sales issued to Fast 'N' Esy #4 containing products that match all of the seized products, which is why ID indicated at the hearing it would accept that the disputed products were tax-paid if petitioner could document the alleged transfer.