

1 Determination (NOD) to petitioner for the cigarette and tobacco products tax associated with the
2 distribution of those cigarettes.

3 Petitioner contends that she purchased the cigarettes for Lois M. Hendrickson, who was living
4 at petitioner's residence during the liability period, and that Ms. Hendrickson should be liable for any
5 tax due. Petitioner asserts that she was a caregiver and representative payee for Ms. Hendrickson for
6 purposes of the Supplemental Security Income (SSI) disability payments that Ms. Hendrickson
7 received from the Social Security Administration (SSA). Petitioner states that she purchased the
8 cigarettes for Ms. Hendrickson because Ms. Hendrickson did not have a credit card she could use to
9 make such purchases. In other words, we understand petitioner to be arguing that she acted as Ms.
10 Hendrickson's agent in purchasing the cigarettes. In response to our request for evidence showing that
11 she purchased the cigarettes for Ms. Hendrickson, petitioner provided correspondence from the SSA
12 regarding Ms. Hendrickson's SSI disability claim and petitioner's status as her representative payee.

13 Petitioner also states that neither Hemi Group nor the Board informed her that taxes were due
14 on the cigarette purchases. Petitioner claims that she should not be held liable for the tax because
15 Hemi group was required by California Assembly Bill 1617 to inform her of that tax liability. Also,
16 petitioner states that she is disabled, receives social security disability payments, is on a fixed income,
17 and has no means to pay the taxes at issue. As support, petitioner has provided correspondence from
18 the SSA stating that she has been eligible to receive SSI income since January 1998.

19 It is undisputed that: 1) petitioner purchased untaxed cigarettes from Hemi Group, an
20 unlicensed out-of-state cigarette distributor, and 2) the cigarettes were shipped to petitioner at a
21 California address, where petitioner accepted the cigarettes. These undisputed facts establish that there
22 was a distribution of cigarettes within the meaning of the Cigarette and Tobacco Products Tax Law and
23 that petitioner owes excise tax on that distribution. With regard to petitioner's contention that Ms.
24 Hendrickson was the actual purchaser of the cigarettes, and petitioner was acting only as an agent, the
25 only evidence petitioner has provided is correspondence from the SSA regarding petitioner's status as
26 Ms. Hendrickson's representative payee. However, evidence of such status does not establish that
27 petitioner was acting as an agent for Ms. Hendrickson when she purchased the cigarettes. Instead, the
28 available evidence shows that petitioner purchased untaxed cigarettes in her own name from Hemi

1 Group, which shipped the cigarettes to petitioner at her California address. Given petitioner's purchase
2 and acceptance of the cigarettes in her name, the burden is on petitioner to establish that she was acting
3 as Ms. Hendrickson's agent, and she has not done so. Also, we reject petitioner's argument that Hemi
4 Group was required, but failed, to inform her that she would owe excise tax with respect to the
5 cigarette purchases because there is no such statutory or regulatory requirement. Petitioner's reliance
6 on Assembly Bill 1617 is misplaced because it did not contain such a provision and, in any event, it
7 was vetoed by the governor and did not become law. In addition, we find no basis for adjustment on
8 the grounds that petitioner was not notified by the Board of the excise tax liability before the NOD was
9 issued, since there is no statutory provision that relieves a taxpayer of the tax based on ignorance of the
10 law. As for petitioner's asserted inability to pay, her financial circumstances do not provide a basis for
11 us to recommend relief of the tax. However, the D&R notes that petitioner has been in contact with
12 representatives of Board's Offer in Compromise Program, and has been advised to resubmit her offer
13 in compromise after a decision has been rendered in her appeals.

14 **Issue 2:** Whether petitioner is liable for use tax because she purchased cigarettes from an out-
15 of-state vendor for storage, use, or other consumption in California. We find that she is.

16 The Department found that petitioner also owes use tax with respect to her storage, use, or
17 consumption of the cigarettes described under Issue 1, and it issued an NOD for that tax. Petitioner
18 protests the application of use tax on the same grounds cited in her dispute regarding the excise tax
19 (explained in detail above).

20 Petitioner purchased 696 cartons of cigarettes from an out-of-state vendor, without payment of
21 use tax or tax reimbursement, and she consumed those cigarettes in California. Thus, there was a use
22 of cigarettes in this state and, since no exemption or exclusion applies, petitioner (as the purchaser)
23 owes use tax on her purchase and use of the cigarettes. For the same reasons described above, we
24 reject petitioner's contentions that she should not be held liable for the tax because: 1) she purchased
25 the cigarettes as an agent of Ms. Hendrickson, 2) Hemi Group did not inform her of the tax liability
26 although it was required to do so; 3) the Board did not inform her of the use tax liability before the
27 NOD was issued; and 4) she is unable to pay the liability.

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OTHER MATTERS

None.

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