

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Release of Seized)
Property Under the Cigarette and Tobacco)
Products Tax Law and the Cigarette and Tobacco)
Products Licensing Act of 2003 of:)
)
TIMOTHY MARK KRUG,) Account Number: LR Q STF 91-336975
dba Redlands Cigar) Case ID 791354
)
Petitioner) Redlands, San Bernardino County

Type of Business: Cigar Lounge
Seizure Date: November 5, 2013
Approximate Value: \$3,819.75¹

We have not held an appeals conference in this matter. This summary is prepared based on the information contained in the Petition, Reply to Petition of the Investigations and Special Operations Division (ISOD), and related documents.

UNRESOLVED ISSUE

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b). We conclude that the tobacco products should be forfeited.

Petitioner, a sole proprietor, owns and operates Redlands Cigar located at 732 W. Tennessee Street, Redlands, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit SR EH 102-147298, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On November 5, 2013, ISOD conducted a cigarette and tobacco products inspection of this location based on an Investigative Complaint which stated that petitioner was purchasing cigars in cash to restock and placing the cigars in existing boxes. Petitioner was on the premises and authorized the inspection. ISOD found that petitioner did not sell cigarettes. When ISOD requested invoices for

¹ Consisting of 17 boxes and 13 individual Wilson W Adams cigars.

1 petitioner's purchases of tobacco products for the previous 12 months, petitioner provided his purchase
2 invoices. Upon review, ISOD noticed several boxes of Wilson W Adams cigars for sale, and being
3 unfamiliar with this brand of cigars, ISOD requested the purchase invoices for the Wilson W Adams
4 cigar inventory. Petitioner could not provide any purchase invoices and stated that he did not know
5 where he purchased the cigars. Petitioner stated that his employee, Erik Hanes, could have purchased
6 the cigars. ISOD spoke with Mr. Hanes by telephone who stated that Brandon Wilson and Steve
7 Miller brought the cigars to the business pursuant to an agreement that Mr. Wilson and Mr. Miller
8 could store the cigars at the business while petitioner was out on sick leave. Mr. Hanes stated that Mr.
9 Miller and Mr. Wilson were attempting to establish a company to distribute the Wilson W Adams
10 cigars in California. He also stated that he did not receive a purchase invoice for the cigars. Petitioner
11 admitted to ISOD that when he returned from his leave of absence he continued to store the cigars.
12 Petitioner stated that the cigars are imported from Nicaragua by Mr. Wilson and Mr. Miller.²

13 ISOD seized the tobacco products in question and issued petitioner a Receipt for Property
14 Seized and a Civil Citation for alleged violations of Business and Professions Code sections 22974 and
15 22974.3, subdivision (b). On November 6, 2013, petitioner faxed to ISOD a sales order receipt #29203
16 (dated October 15, 2013) from Cigar Tailor/Tobacco Barn, which shows purchases of Wilson W
17 Adams cigars. ISOD spoke with Ron McLaughlin, a member of Ott Enterprises, LLC, which owns
18 Cigar Tailor/Tobacco Barn (SR EH 100-557488) (LD Q STF 90-004436). Mr. McLaughlin stated that
19 a sales order receipt is created when an order is taken over the phone or via the Internet. He confirmed
20 that the order was never made and that the Wilson W Adams cigars were never sold or delivered to
21 petitioner. Mr. McLaughlin provided copies of sales order receipts #29202 and #29204 and found that
22 the October 15, 2013 date on sales order receipt #29203 was manually changed.³ Accordingly, ISOD
23 did not return the cigars.

24 Subsequently, ISOD served petitioner with a Notice of Seizure and Forfeiture dated December
25 5, 2013, stating that tobacco products valued at \$3,819.75 were seized and are subject to forfeiture
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28 ² During the inspection, Mr. Wilson arrived at the business and confirmed that the Wilson W Adams cigars belonged to him
and that he was storing them at petitioner's business. Mr. Wilson admitted that he brought the cigars to California from
Miami, Florida and that he had not paid tax on the distribution of the cigars. Mr. Wilson stated that he worked as a sales
representative for Blue Mountain Cigars, an out of state, unlicensed vendor.

1 under Business and Professions Code section 22974.3. Petitioner submitted a verified petition dated
2 December 26, 2013, for release of the seized tobacco products. Petitioner provided a sales order
3 receipt from Tobacco Barn dated October 15, 2013 showing the purchase of various Wilson Adams
4 cigars. Petitioner contends that this sales order was not provided at the time of inspection because it
5 was “confused with records for 2012 taxation accounting which were located at the business owner’s
6 residence.”

7 In its Reply to Petition, ISOD asserts that the petition should be denied because petitioner has
8 not shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
9 shown that those products were erroneously or illegally seized. ISOD notes that the Tobacco Barn
10 sales order was previously submitted and denied by ISOD. ISOD also notes that the sales order does
11 not comply with the invoice requirements of Business and Professions Code section 22978.4 in that it
12 does not include either petitioner’s license number or Tobacco Barn’s distributor’s license number.
13 The purchase invoice also does not include a statement that all cigarette and tobacco product taxes are
14 included in the total amount of the invoice. Moreover, ISOD noted that Tobacco Barn is not a licensed
15 distributor or wholesaler.⁴ Based on this information and the fact that petitioner’s statements during
16 the inspection were contradictory to the statements made in the petition, ISOD determined that the
17 purchase invoice did not prove that the tobacco products were purchased tax paid.

18 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
19 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
20 products are subject to seizure and forfeiture, and that person bears the burden of proving the
21 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
22 which complies with Business and Professions Code section 22978.4 and which shows that applicable
23 taxes have been paid. Here, petitioner provided sales order receipt #29203 from Tobacco Barn dated
24 October 15, 2013 (i.e., prior to the seizure). However, through communication with Ott Enterprises,
25 LLC (i.e., Tobacco Barn), we know that the sales order is not an actual purchase invoice and that
26 Tobacco Barn never sold the Wilson W Adams cigars to petitioner. Moreover, records provided by Ott
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28 ³ Sales order receipt #29202 and #29204 have a November 5, 2013 order date. Therefore, sales order receipt #29203 is out of sequence.

1 Enterprises indicate that petitioner manually changed the date on the sales order receipt, as the sales
2 orders immediately prior and after the one in question are both dated November 5, 2013, which is the
3 date of the seizure. We also note that petitioner and Mr. Wilson confirmed that petitioner was storing
4 the Wilson W Adams cigars at petitioner's business location, which contradicts petitioner's current
5 contention that he purchased the cigars from Tobacco Barn. Based on the information provided by Ott
6 Enterprises, LLC and the contradicting information provided by petitioner, we conclude that those
7 products were properly seized and must be forfeited. Accordingly we recommend that the petition be
8 denied.

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10 Summary prepared by Chad T. Bacchus, Tax Counsel
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28 ⁴ We are not sure how ISOD made this determination as Tobacco Barn is operated by Ott Enterprises, LLC, which is a licensed distributor.