

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matters of the Petitions for Redetermination )  
Under the Sales and Use Tax Law of: )  
FELICIA TAWIL )  
Petitioner )  
Account Number CI STF 06-142441 )  
Case ID 594873 )  
Account Number UI STF 07-142441 )  
Case ID 594874 )  
Fontana, San Bernardino County )

Type of transaction: Purchases of cigarettes

Liability period: 1/1/07 – 9/30/08

<u>Item</u>	<u>Disputed Amount</u>	
Unreported distributions of cigarettes and tobacco purchased from out-of-state vendor	87 cartons (Case ID 594873)	
Purchases of cigarettes subject to use tax	\$1,586.88 (Case ID 594874)	
	<u>594873</u>	<u>594874</u>
Tax as determined and protested	\$ 757.00	\$115.00
Interest through 10/31/14	<u>307.82</u>	<u>46.62</u>
Total tax and interest	<u>\$1,064.82</u>	<u>\$161.62</u>
Monthly interest beginning 11/01/14	<u>\$ 3.78</u>	<u>\$ 0.57</u>

These matters were scheduled for Board hearing in February 2014, but petitioner did not respond to the Notice of Hearing. Thus, the matters were scheduled for decision on the nonappearance calendar for March 2014. Petitioner then filed a late response to the Notice of Hearing, and the matters were rescheduled for hearing in June 2014, but were postponed at petitioner's request because of transportation issues. They were rescheduled for Board hearing in August 2014, but were postponed again at petitioner's request because of transportation issues.

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner is liable for the excise tax on her distribution in California of untaxed cigarettes purchased from an out-of-state vendor. We find that she is.

Petitioner, a California resident, purchased 87 cartons of cigarettes from the Hemi Group, LLC (Hemi Group), an out-of-state internet retailer not licensed in California, for delivery to her residence in California. Petitioner does not hold a cigarette and tobacco products retailer's license, a seller's

1 permit, a distributor's license, or a wholesaler's license under the Cigarette and Tobacco Products  
2 Licensing Act of 2003. The Property and Special Taxes Department (Department) issued a Notice of  
3 Determination (NOD) to petitioner for the cigarette and tobacco products tax associated with the  
4 distribution of the 87 cartons of cigarettes purchased from Hemi Group.

5 Petitioner concedes that she personally consumed some of the cigarettes she purchased from  
6 Hemi Group, while she gifted the remainder to her mother and father, who thereafter consumed the  
7 cigarettes. Petitioner claims that all of the vendors from whom she purchased cigarettes through online  
8 transactions informed her that they collected and remitted California tax, and argues that, since the cost  
9 of the cigarettes at issue was similar to other tax-included transactions in which she had engaged, she  
10 had a reasonable basis for believing that tax was included in the cost. Additionally, petitioner claims  
11 that she is unemployed, has no assets and, therefore, cannot afford to pay the tax liability.

12 It is undisputed that: 1) petitioner purchased untaxed cigarettes from Hemi Group, an  
13 unlicensed out-of-state cigarette distributor, and 2) the cigarettes were shipped to petitioner at a  
14 California address, where petitioner accepted and subsequently used the cigarettes by consuming a  
15 portion of them and allegedly giving the remainder to her parents. These undisputed facts establish  
16 that there was a distribution of cigarettes within the meaning of the Cigarette and Tobacco Products  
17 Tax Law and that petitioner owes excise tax on that distribution. Regarding petitioner's contention  
18 that she had a reasonable basis for believing that Hemi Group included excise tax in the price of  
19 cigarettes sold to California residents, we find that there is no statutory or regulatory authority for  
20 relieving petitioner of the liability for tax on that basis. Regarding petitioner's asserted inability to pay  
21 the tax, we find that financial circumstances do not provide a basis for deleting or relieving the excise  
22 tax. Nonetheless, we explained the provisions for settlement, installment payment plans, and offers in  
23 compromise to petitioner, and encouraged her to contact the Department if she wishes to pursue any of  
24 these options.

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

27 The Department found that petitioner also owes use tax with respect to her storage, use, or  
28 consumption of the 87 cartons of cigarettes purchased from Hemi Group, and it issued an NOD for that

