STATE BOARD OF EQUALIZATION
CIGARETTE AND TOBACCO PRODUCTS TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION PETITION FOR REHEARING SUMMARY

In the Matter of the Petition for Redetermination Under the Cigarette and Tobacco Products Tax Law of:	
AKOP JACK CHICHYAN, VICKEN DJEREDJIAN, and MNATSAKAN MIKE GRIGORYAN	Account Number: CR ET 02-002289 Case ID 388129
Petitioner	Glendale, Los Angeles County

Type of Business: Distributor of tobacco products

Audit period: 10/01/00– 02/28/02

Item	Disputed Amount
Unreported tax on distributions of tobacco products	$2,815,668
Penalties	$ 985,484

	Tax	Penalty
As determined	$3,262,500.00	$1,141,875.00
Post-D&R adjustment	- 261,000.00	- 91,350.00
Post-Board hearing adjustment	- 185,832.00	- 65,041.20
Proposed redetermination protested	$2,815,668.00	$ 985,483.80

Proposed tax redetermination	$2,815,668.00
Interest through 07/25/14	2,930,944.31
Fraud penalty	703,917.00
Failure-to-file penalty	281,566.80
Total tax, interest, and penalty due	$6,732,096.11
Monthly interest beginning 07/26/14	$14,078.34

We first note that the Board heard this matter on November 15, 2012, and concluded petitioner did not report its distributions of untaxed cigarettes, no further adjustments were warranted, the understatement was the result of fraud, and relief is not warranted from the failure-to-file penalties assessed for the period October 1, 2000, through February 28, 2002. Accordingly, the Board ordered the tax and penalties redetermined to $3,001,500 and $1,050,525, respectively. Petitioner filed a timely petition for rehearing, which was scheduled for Board consideration on the Consent calendar on May 22, 2013. However, since petitioner submitted additional documentation on May 14, 2013, Chairman Horton requested that the matter be removed from the Consent calendar. The matter was rescheduled for Board consideration on the Adjudicatory calendar on August 13, 2013; however,

petitioner submitted documentation on the day of the hearing, and the Board put the matter over to a subsequent calendar to allow staff to examine petitioner's submission. We confirmed that the August 2013 submission was exactly the same documentation that petitioner submitted via email on May 14, 2013, which we have thoroughly considered in our analysis below. The matter was then rescheduled for consideration by the Board on November 2013, but was deferred as a result of petitioner's representative's critical illness. It was rescheduled for consideration in May 2014 but was deferred at the request of the Appeals Division because petitioner had provided additional documents that required review. As explained under "Unresolved Issue," we find that those documents do not support further adjustments.

Second, this appeal involves an amount in controversy that is $500,000 or more and thus is covered by Revenue and Taxation Code section 40, as explained below.

UNRESOLVED ISSUE

Issue: Whether the petition for rehearing should be granted. We recommend that it be denied. However, we also recommend reductions of the tax, fraud penalty, and failure to file penalty, of $185,832.00, $46,458.00, and 18,583.20, respectively.

In its petition for rehearing, petitioner reiterates its argument that the tax liability is invalid because a partnership never existed between Messrs. Chichyan, Djeredjian, and Grigoryan. Petitioner asserts that there is no documentary evidence that the alleged partnership existed, that the alleged partnership purchased untaxed cigarettes in Virginia, or that the alleged partnership distributed the untaxed cigarettes in California. Petitioner also states that the cigarette purchases and distributions at issue were made by licensed distributors in California and that Messrs. Chichyan, Djeredjian, and Grigoryan made the purchases of cigarettes as officers and/or employees of those distributors. As support, petitioner provided copies of three purchase invoices, 13 bills of lading, and two cigarette distributor licenses.

Regarding its assertion that no partnership of these three individuals ever existed, petitioner has provided no new evidence or contentions. Petitioner merely raises the same arguments that were thoroughly and fully considered at the Board hearing. With respect to petitioner's assertion that the purchases and distributions of cigarettes at issue were actually made by licensed distributors in

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California, petitioner, by email dated May 14, 2013, submitted additional documentation showing that the Bureau of Alcohol, Tobacco and Firearms issued a search warrant against Sell for Less, a California cigarette distributor, and seized 330 boxes of cigarettes. Petitioner asserts that the Virginia cigarette wholesaler sold the cigarettes to Sell for Less, and that Sell for Less was solely responsible for the cigarette excise taxes. The documentation presented shows that sales of cigarettes were made to Sell for Less, a fact that is not in dispute. The documentation does not establish that the sales of cigarettes used to establish the amount of cigarette excise tax determined against petitioner were in fact sales to Sell for Less. Here, the audit workpapers indicate that the Investigations and Special Operations Division (ISOD) separately compiled the amounts of cigarettes sold and delivered to petitioner and the amounts of cigarettes sold and delivered directly to Sell for Less. Then, ISOD billed petitioner and Sell for Less for the tax applicable only to the sales made to the appropriate business. In other words, the additional evidence provides no basis for a reduction of the measure of tax (nor for a rehearing) because it does not establish that the cigarettes in question were included in the determination.

As stated previously, petitioner provided documents on August 13, 2013, which were described as new evidence. However, we confirmed that the documents provided in August 2013 were identical to those provided in May 2013.

After petitioner's representative passed away, it began working with a new representative who forwarded some bills of lading for review. All but ten of the bills of lading were duplicates of evidence that had been provided previously. We have reviewed those documents, and we continue to find that the "new" bills of lading do not represent reliable evidence because of serious concerns regarding the authenticity of the bills of lading, as explained below. Therefore, there is no way to verify whether the bills of lading provided by petitioner relate to distributions of cigarettes for which tax was remitted to the Board or a vendor or to the many untaxed cigarette transactions detailed in the indictment to which petitioner pled guilty. Accordingly, we find that the ten bills of lading provided recently are not credible and cannot be used to support adjustments to the audited amount of distributions of untaxed cigarettes in California.

Petitioner pled guilty to a felony federal indictment for transporting 75,000,000 sticks of untaxed cigarettes into California. The fact that cigarette vendors issued invoices and bills of lading related to sales to other licensed distributors does not negate that guilty plea because there is no proof that the invoices or bills of lading are related to the untaxed cigarettes in the indictment. Moreover, there is evidence in the indictment that petitioner created "dummy" invoices and that the Bureau of Alcohol, Tobacco, and Firearms, in its undercover operation, generated fake bills of lading as part of the sale of untaxed cigarettes. Under those circumstances, there is no way to tell whether the invoices or bills of lading provided by petitioner are genuine. Thus, we find petitioner has not provided credible evidence or any new argument, or any other basis for a rehearing.

However, ISOD notified the Appeals Division, in an email dated June 28, 2013, that it has identified one transaction that was inadvertently included in the computation of the amount determined against petitioner and in the amount determined against Sell for Less (CR ET 02-001750).[1] ISOD advises that, for this transaction only, due to an error in compiling the sales of cigarettes, there is a duplication of the amount billed, such that tax on the same transaction is included in the determinations issued to each of the taxpayers. ISOD has determined that Sell for Less owes the tax on this specific transaction, which is $185,832.00, and that it was incorrect to determine tax of that amount against petitioner. Accordingly, ISOD recommends a reduction of tax of $185,832.00 for a transaction which occurred in August 2001, with corresponding adjustments to the fraud penalty and failure-to-file penalty. In light of ISOD's concession, we recommend reductions of the tax, fraud penalty, and failure-to-file penalty of $185,832.00, $46,458.00, and 18,583.20, respectively. With the exception of that recommended adjustment, we find the Board correctly decided this matter. Thus, we recommend the petition for rehearing be denied.

Section 40 Matter

As noted above, this matter is subject to Revenue and Taxation Code section 40. Therefore, within 120 days from the date the Board's vote to decide the appeal becomes final, a written opinion

[1] ISOD became aware of the duplication in the determined tax while preparing for an appeals conference held June 6, 2013, regarding the determination issued to Sell 4 Less.

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(i.e., Summary Decision or Memorandum Opinion) must be published on the Board's website. (Cal. Code Regs., tit. 18, § 5552, subds. (b), (f).) If the Board denies a rehearing, notice of the Board's decision will be mailed to petitioner and will become final 30 days after the notice is issued. (Cal. Code Regs., tit. 18, § 5562, subd. (c)(2).) If the Board grants a rehearing, no final decision will be rendered until the conclusion of the rehearing process.

Following the conclusion of the Board's consideration of the petition for rehearing, if the Board votes to deny the rehearing, but does not specify whether a Summary Decision or a Memorandum Opinion should be prepared, staff will expeditiously prepare a nonprecedential Summary Decision and submit it to the Board for consideration at a subsequent meeting. (Cal. Code Regs., tit. 18, § 5551, subd. (b)(2).) Unless the Board directs otherwise, the proposed Summary Decision would not be confidential pending its consideration by the Board (Cal. Code Regs., tit. 18 § 5551, subd. (b)(5)); accordingly, it would be posted on the Public Agenda Notice for the meeting at which the Board will consider and vote on the Summary Decision.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III