STATE BOARD OF EQUALIZATION
CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING 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:	)	
ALMOND CORPORATION, dba Almond Smoke Shop	)	Account Number: LR Q STF 91-308363 Case ID 867053
Petitioner	)	Menifee, Riverside County

Type of Business:	Smoke Shop
Seizure Date:	February 2, 2015
Approximate Value in Dispute:	$3,020.91[1]

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 corporation, owns and operates Almond Smoke Shop located at 30145 Antelope Road, Suite 104, Menifee, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit SR EH 101-011825, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On February 2, 2015, ISOD conducted a cigarette and tobacco products inspection of this location, where petitioner's manager, Shenouda Rofaiel, was on the premises and authorized the inspection. ISOD found that petitioner's cigarette inventory was properly stamped. Mr. Rofaiel provided ISOD with purchase invoices and ISOD's review of the purchase invoices and the cigarette

[1] Consisting of 2 (50-count) boxes and 80 individual Signature House Blend cigars; and 7 (30-count) boxes and 19 individual Sublimes cigars.

and tobacco product inventory revealed that most of the inventory was purchased tax paid. While reviewing the purchase invoices, ISOD found an invoice from an out-of-state supplier, Sublimes Cigars, which did not show that tax was paid on the purchase of the cigars. Mr. Rofaiel identified all cigars that were purchased from Sublimes Cigars.

ISOD seized the cigars and issued petitioner a Receipt for Property Seized and a Civil Citation for the alleged violations of Business and Professions Code sections 22974.3, subdivision (b), and 22980.2, subdivision (a). Subsequently, ISOD served petitioner with a Notice of Seizure and Forfeiture dated February 24, 2015, stating that cigarettes and tobacco products valued at $3,236.91 were seized and subject to forfeiture under Business and Professions Code section 22974.3 and Revenue and Taxation Code section 30436. Petitioner submitted a verified petition dated March 19, 2015, for release of the seized tobacco products. Petitioner states that Sublimes Cigars president, Thomas Jaromirski, assured petitioner that it was purchasing the cigars tax paid and that petitioner did not become aware that the cigars were not tax paid until the inspection.

In its Reply to Petition, ISOD asserts that the petition should be denied because petitioner has not shown that the tobacco products were purchased tax paid, and therefore petitioner has not shown that those products were erroneously or illegally seized. Therefore, ISOD states that the seizure was proper.

Business and Professions Code section 22974.3, subdivision (b), provides that, where a person holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco products are subject to seizure and forfeiture, and that person bears the burden of proving the applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice which complies with Business and Professions Code section 22978.4 and which shows that applicable taxes have been paid. Here, there is no dispute that petitioner possessed the tobacco products in question. Moreover, there is no dispute that petitioner purchased the tobacco products from Sublimes Cigars, an out-of-state, unlicensed supplier. Because petitioner was found possessing tobacco products, those products are presumed to be untaxed unless petitioner can prove otherwise. (Bus. & Prof. Code, § 22974.3, subd. (b).) While petitioner asserts that Sublimes Cigars' president assured it that tax was included in the purchase price, petitioner has not provided any evidence to support this

assertion. Without specific evidence that the cigars were purchased tax paid, Sublimes Cigars' assurances to petitioner that such was the case are not sufficient. Moreover, Sublimes Cigars was not licensed to distribute tobacco products in California at the time petitioner purchased the products in question. Therefore, Sublimes Cigars could not have collected and remitted the tax on its distribution to petitioner. Based on the foregoing, we find that petitioner possessed untaxed tobacco products in violation of Business and Professions Code section 22974.3, subdivision (b), and we conclude that those products were properly seized and must be forfeited. Accordingly, we recommend that the petition be denied.

Summary prepared by Chad T. Bacchus, Tax Counsel