

1 **CALIFORNIA STATE BOARD OF EQUALIZATION**2 **APPEALS DIVISION FINAL ACTION SUMMARY**

3 In the Matter of the Petition for Release of Seized)
4 Property Under the Cigarette and Tobacco)
5 Products Tax Law and the Cigarette and Tobacco)
6 Products Licensing Act of 2003 of:)

7 DUONG FAMILY INVESTMENT, INC.,)
8 dba Gas N Save/PDQ Mini Mart)

Account Number: LR Q STF 91-255241
Case ID 867934

9 Petitioner)

Seaside, Monterey County

10 Type of Business: Gas station with mini mart

11 Seizure Date: March 2, 2015

12 Approximate Value: \$1,037.92¹

13 We have not held an appeals conference in this matter. This summary is prepared based on the
14 information contained in the Petition, Reply to Petition of the Investigations and Special Operations
15 Division (ISOD), and related documents. This matter was scheduled for decision on the Board's July
16 28, 2015 consent calendar, but was pulled from that calendar by Member George Runner. This matter
17 has thus been rescheduled as an adjudicatory item.

UNRESOLVED ISSUE

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

21 Petitioner, a corporation, owns and operates Gas N Save/PDQ Mini Mart located at 2000 Del
22 Monte Boulevard, Seaside, California. Petitioner holds the cigarette and tobacco products retailer
23 license listed above, and seller's permit SR GHC 100-431733, for this location. Petitioner does not
24 hold a cigarette and tobacco products distributor or wholesaler license for this location.

25 On February 24, 2015, ISOD conducted the cigarette and tobacco products inspection at issue
26 in this petition. Petitioner's employee, Vay Duong, was on the premises and authorized the inspection.

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28 ¹ Consisting of 10 (8-count) boxes of Backwoods Sweet Bourbon cigars; 11 (8-count) boxes of Backwoods Sweet Aromatic
cigars; and 5 (8-count) boxes of Backwoods Honey Berry cigars.

1 ISOD found that petitioner's cigarette inventory was properly stamped. When ISOD requested
2 purchase invoices for petitioner's cigarette and tobacco product purchases over the prior 12 months,
3 Vay Duong contacted Vi Van Duong, petitioner's president, to find out where petitioner kept the
4 purchase invoices. Ultimately, Vay Duong provided ISOD with a folder containing purchase invoices.
5 ISOD determined that the tobacco product inventory at the business at the time of the inspection was
6 supported by the provided purchase invoices. Vay Duong also informed ISOD that he purchased
7 cigars from Florida Tobacco Shop, an unlicensed, online supplier. Vay Duong emailed to ISOD a
8 copy of the Florida Tobacco Shop purchase invoice, which showed that the products were to be
9 delivered on March 2, 2015.

10 On March 2, 2015, ISOD returned to the business and found that the tobacco products from
11 Florida Tobacco Shop had been delivered. ISOD opened the package and found a portion of the
12 original order of tobacco products. ISOD contacted Vi Van Duong, who stated that the other part of
13 the order was delivered on February 25, 2015 and that he had taken the shipment to his home. ISOD
14 requested that Vi Van Duong bring the package to the business, which he did. ISOD concluded that
15 the products from Florida Tobacco Shop were untaxed.

16 ISOD seized the tobacco products from Florida Tobacco Shop and issued petitioner a Receipt
17 for Property Seized and a Civil Citation for alleged violations of Business and Professions Code
18 sections 22974, 22974.3, subdivision (b), and 22980.1, subdivision (d)(1). Subsequently, ISOD served
19 petitioner with a Notice of Seizure and Forfeiture dated March 23, 2015, stating that tobacco products
20 valued at \$1,037.92 were seized and are subject to forfeiture under Business and Professions Code
21 section 22974.3. Petitioner submitted a verified petition dated March 30, 2015, for release of the
22 seized tobacco products. Petitioner confirms the facts and asserts that Florida Tobacco Shop stated
23 that it could "sell to California." Petitioner also states that when it received the first shipment on
24 February 25, 2015, that it called ISOD and was instructed to take the shipment home and that it should
25 return the product to Florida Tobacco Shop as soon as the second package arrived.

26 In its Reply to Petition, ISOD asserts that the petition should be denied because petitioner has
27 not shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
28 shown that those products were erroneously or illegally seized.

1 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
2 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
3 products are subject to seizure and forfeiture, and that person bears the burden of proving the
4 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
5 which complies with Business and Professions Code section 22978.4 and which shows that applicable
6 taxes have been paid. Here, there is no dispute that petitioner possessed the tobacco products in
7 question. Moreover, there is no dispute that petitioner purchased the tobacco products from Florida
8 Tobacco Shop and that Florida Tobacco Shop is not a licensed wholesaler or distributor. Because
9 petitioner was found possessing tobacco products, those products are presumed to be untaxed unless
10 petitioner can prove otherwise. (Bus. & Prof. Code, § 22974.3, subd. (b).) Petitioner does not assert
11 that the tobacco products were purchased tax paid, but instead asserts that it was not aware that Florida
12 Tobacco Shop was not licensed and that it was going to return the products when the second shipment
13 arrived, which happened to be the day ISOD returned to the business (having noted the expected
14 shipment arrival from the purchase invoice). As for the shipment that was not at the business location
15 when ISOD returned on March 2, 2015, once Vi Van Duong returned the tobacco products to the
16 business location, they are presumed to be untaxed tobacco products and are subject to seizure. Based
17 on the foregoing, we find that petitioner possessed untaxed tobacco products in violation of Business
18 and Professions Code section 22974.3, subdivision (b), and we conclude that those products were
19 properly seized and must be forfeited. Accordingly we recommend that the petition be denied.

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21 Summary prepared by Chad T. Bacchus, Tax Counsel
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