

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

In the Matter of the Administrative Protest )  
Under the Cigarette and )  
Tobacco Products Tax Law of: )  
SAHAK JEIRANIAN, dba Royal Cigar ) Account Number CR STF 002-002223  
Taxpayer ) Case ID 841617<sup>1</sup>  
Los Angeles, Los Angeles County

Type of Business: Cigarette distributor  
Audit period: 01/01/01 – 05/12/03

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported cigarette tax	\$743,023		
Fraud penalty	\$185,756		
Failure-to-file penalty	\$ 59,207		
Finality penalty	\$ 74,302		
Collection cost recovery fee	\$ 925		
As determined		\$743,023.50	\$244,963.73
Finality penalty added			<u>74,302.35</u>
Protested liability		<u>\$743,023.50</u>	<u>\$319,266.08</u>
Tax liability		\$ 743,023.50	
Interest through 05/25/16		822,855.50	
Fraud penalty		185,755.88	
Failure-to-file penalty		59,207.85	
Finality penalty		<u>74,302.35</u>	
Total tax, interest, and penalty		\$1,885,145.08	
Payments		<u>- 850.00</u>	
Balance Due		<u>\$1,884,295.08</u>	
Monthly interest beginning 05/26/16		<u>\$3,710.87</u>	

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.

<sup>1</sup> Taxpayer has made payments totaling \$850, and he has filed claims for refund that are timely for payments totaling \$140. Those claims for refund are not addressed herein because they are not ripe for consideration.

**UNRESOLVED ISSUES**

**Issue 1:** Whether taxpayer is liable for the tax at issue. We find that taxpayer is liable.

Taxpayer was the corporate president of Royal Cigars, Inc., which was located at the same address where the business at issue here was located. Royal Cigars, Inc. held a seller's permit from April 1997, until it was revoked in March 2000, and it held a cigarette distributor's license that was effective for the period May 8, 2001, through September 18, 2001. During that period, Royal Cigars, Inc. reported zero distributions on its distributor's tax reports and purchased cigarette tax stamps totaling \$348. The application for a cigarette distributor's license filed on behalf of Royal Cigars, Inc., was signed by Sofya Simonyan. Also, on August 15, 2001, Ms. Simonyan applied for a seller's permit to operate a business known as "Cigars" as a sole proprietor at the same business address used by Royal Cigars, Inc. A seller's permit (SR AC 97-905105) and a cigarette distributor's license (CR STF 02-002056) were issued to Ms. Simonyan, with effective start dates of August 15, 2001, and June 2, 2003, respectively. However, as explained in more detail below, the Investigation and Special Operations Division (ISOD) determined that taxpayer was the true owner of the business known as Royal Cigar throughout the liability period.

On December 17, 2001, ISOD visited Royal Cigar and spoke to taxpayer, who identified himself as "Jack Jay" and as the owner of the business. The identification taxpayer provided to ISOD showed his name as Sahak Jeiranian. Taxpayer subsequently stated he was not the owner of the business and that the true owner was in Armenia. Taxpayer refused to answer any questions and refused to allow ISOD to conduct an inspection.

Using information from various sources, including 1) monthly reports from Watkins Motor Lines (Watkins) (which operates a transportation service and provides ISOD with delivery information pertaining to shipments from out-of-state cigarette distributors to California purchasers; 2) records obtained during the execution of a search warrant at taxpayer's residence; 3) information from the suppliers from whom taxpayer purchased, as reflected on those records; and 4) shipping records from United Parcel Service (UPS), ISOD established that taxpayer had purchased and distributed 17,089,000 cigarettes. ISOD computed tax at a rate of \$0.0435 per cigarette and reduced that total by \$348 (the total amount of cigarette tax stamps purchased by Royal Cigar, Inc.) to compute unreported

1 cigarette and tobacco tax of \$743,023.50. Taxpayer does not dispute ISOD's computation of the tax  
2 liability.

3 Taxpayer contends, however, that he was not the owner of Royal Cigar. Specifically, taxpayer  
4 contends that he was a victim of identity theft and that his roommate, Armen Agajanian, and Ms.  
5 Simonyan were the true owners of Royal Cigar. Taxpayer asserts that his signature was forged on the  
6 cancelled checks and any related business documents that were seized during the execution of the  
7 search warrant. Further, taxpayer states that all records related to the business that were seized from  
8 his residence were found in Mr. Agajanian's room. In addition, taxpayer asserts that none of the  
9 suppliers that purportedly sold to Royal Cigar actually exist and that the documents used by ISOD to  
10 support its case are not originals but are instead altered copies fabricated by ISOD. As evidence to  
11 support these assertions, taxpayer has provided various documents, including 1) a notarized declaration  
12 from Mr. Agajanian dated April 2, 2010, stating that Mr. Agajanian was the true owner of Royal Cigar,  
13 that he shipped the cigarettes at issue to Armenia and Russia, and that he operated the business under  
14 Ms. Simonyan's name in order to assist her with building her credit; 2) a lease agreement for  
15 taxpayer's residence showing that taxpayer and several other individuals resided with Mr. Agajanian;  
16 3) a letter from Bank of America, dated June 26, 2009, stating that it was unable to produce a signature  
17 card for Royal Cigar's account; 4) Royal Cigars, Inc.'s application for a cigarette distributor's license  
18 dated May 4, 2001, bearing Mr. Simonyan's signature and title as owner; 5) an undated Fictitious  
19 Business Name Statement for Royal Cigars bearing Ms. Simonyan's signature; and 6) a refund check  
20 from the Franchise Tax Board to Ms. Simonyan sent to Royal Cigar's address.

21 As noted previously, taxpayer does not dispute ISOD's computation of the number of cigarette  
22 distributed. Also, the cigarettes at issue were no longer in Royal Cigar's possession at the time the  
23 search warrant was executed on April 2, 2003. Accordingly, the cigarettes are presumed to be  
24 distributed. (Rev. & Tax. Code, § 30109).<sup>2</sup>

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27 <sup>2</sup> Taxpayer has stated that the cigarettes were shipped to Armenia and Russia, and that statement is included in Mr.  
28 Agajanian's declaration dated April 2, 2010. However, taxpayer has provided no evidence whatsoever, such as shipping or  
customs documents. Accordingly, we find that there is no evidence to rebut the presumption that the cigarettes were  
distributed in California.

1           The question to be addressed, however, is whether taxpayer was the owner of the business and  
2 thus the distributor of the cigarettes. We first note that the April 2002 Watkins report, as well as  
3 several ISOD surveillance operations, establish that taxpayer received multiple deliveries of cigarettes  
4 for Royal Cigar at his personal residence. Also at taxpayer's residence, ISOD seized 695 cartons of  
5 unstamped cigarettes, and 1,278 counterfeit cigarette tax stamps, and the Department found business  
6 records for Royal Cigar, which include cigarette purchase invoices, bank statements, cancelled checks,  
7 and Watkins delivery receipts. Taxpayer's possession of Royal Cigar's business records and cigarettes  
8 at his personal residence is very strong evidence that taxpayer owned or had an ownership interest in  
9 the company. ISOD also noted that taxpayer had the keys to Royal Cigar, which is also consistent with  
10 an ownership interest in the company.

11           In addition, ISOD contacted Royal Cigar's suppliers, who confirmed that taxpayer routinely  
12 presented himself as a licensed cigarette distributor and issued the counterfeit cigarette distributor's  
13 license to them. ISOD also interviewed Royal Cigar's accountant, Jack Bedevian, who stated that he  
14 prepared Royal Cigar's sales and use tax returns based on oral reports from taxpayer regarding its  
15 sales. In other words, the evidence indicates that taxpayer physically operated the business and  
16 conveyed Royal Cigar's sales and tax information to the business's accountant, which actions are also  
17 very strong evidence of an ownership interest in the company – and there is no evidence that any other  
18 individual performed such actions.

19           Next, the cancelled checks found at taxpayer's residence were used to authorize payment for  
20 *Royal Cigar's* expenses including rent, cigarette purchases, and California sales tax. Clearly the bank  
21 recognized taxpayer as an authorized signer for Royal Cigar's checks, which is consistent with an  
22 ownership interest in the company, especially when there is no evidence that any other individual was  
23 authorized to sign Royal Cigar's checks. We are not persuaded that taxpayer's signature was forged  
24 on any checks, because he has submitted no evidence to corroborate the alleged forgery. Moreover,  
25 the checks were used to pay for Royal Cigar's cigarette purchases that taxpayer in fact received, and  
26 there is no evidence that he returned or refused delivery of them, which we would expect to see if the  
27 purchases had been made by someone else using taxpayer's (allegedly) forged signature. Accordingly,  
28 we reject taxpayer's forgery allegation and conclude that he signed Royal Cigar's checks, which he

1 used to pay for Royal Cigar's purchases and expenses, which strongly indicates taxpayer's ownership  
2 interest in the company.

3 Next, we note that no evidence connecting Ms. Simonyan to Royal Cigar was found at her  
4 residence. The fact that voluminous evidence was found at taxpayer's residence is evidence that  
5 taxpayer owned Royal Cigar. We are not persuaded otherwise by taxpayer's assertion that the  
6 evidence was found in Mr. Agajanian's room because, when ISOD executed the search warrant, it  
7 found no evidence that anyone other than taxpayer and his wife were residing there and because none  
8 of the business records seized bore Mr. Agajanian's name.

9 Taxpayer has provided no evidence to support his assertion that he was the victim of identity  
10 theft. Also, with the exception of Mr. Agajanian's declaration, there is no evidence that Mr. Agajanian  
11 owned Royal Cigar. Instead, we find that Mr. Agajanian's statement is contradicted by the  
12 overwhelming evidence that taxpayer was the owner of the business. Thus, we find taxpayer was the  
13 distributor of the cigarettes and owes the tax at issue.

14 With respect to taxpayer's assertions that the out-of-state suppliers ISOD identified as vendors  
15 to Royal Cigar do not exist and that the documents used by ISOD to establish the liability were  
16 fabricated or altered, we note that the information from suppliers was cross-checked with information  
17 obtained from UPS, Watkins, and Bank of America. Taxpayer has provided no evidence that ISOD  
18 fabricated or altered any documents, and we can think of no plausible reason that ISOD might have  
19 done so. Accordingly, we reject this undocumented assertion.

20 **Issue 2:** Whether ISOD has established fraud by clear and convincing evidence.<sup>3</sup> We find that  
21 ISOD has.

22 ISOD imposed a 25-percent penalty for fraud because of the magnitude of the understatement,  
23 particularly since taxpayer reported zero distributions of cigarettes. ISOD also finds the counterfeit  
24 cigarette tax stamps seized from taxpayer's residence to be additional evidence of fraud. In addition,  
25 ISOD cites evidence, provided by suppliers, that taxpayer routinely presented himself as a licensed  
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27 <sup>3</sup> Without regard to whether the finding of fraud is upheld, the Notice of Determination was timely issued for the period  
28 March 2003 through May 2003 under the 8-year statute of limitations because taxpayer did not file returns. (Rev. and Tax.  
Code § 30207). Absent a finding of fraud, the determination would not have been timely for the remainder of the period.

1 cigarette distributor and issued a counterfeit cigarette distributor's license to them when he purchased  
2 cigarettes, and concludes that the use of a counterfeit license shows that taxpayer intended to conceal  
3 his evasion of the tax.

4 Taxpayer does not specifically protest the finding of fraud but asserts he was not the owner of  
5 Royal Cigar. Since we find above that taxpayer was the owner of the business, we reject that argument  
6 here. However, we will also analyze whether the evidence supporting fraud is clear and convincing.

7 Taxpayer was the corporate president of Royal Cigars, Inc., and that corporation purchased  
8 cigarette stamps totaling \$348 and filed monthly cigarette distributor's tax reports, which is direct  
9 evidence that taxpayer was aware of the requirements of the Cigarette and Tobacco Products Tax Law.  
10 Also, a sign posted on the wall of Royal Cigar, which stated "[u]nstamped cigarettes are for  
11 distributors only," is additional evidence that taxpayer was familiar with the requirements of the law.

12 With regard to taxpayer's intent, we find that the possession of counterfeit cigarette tax stamps  
13 (seized during the execution of the search warrant) and a counterfeit cigarette distributor's license (at  
14 the business address) is a clear indication that taxpayer intended to evade the payment of tax. Also,  
15 taxpayer's attempt to conceal his ownership of the business is further evidence. We find that there is  
16 clear and convincing evidence that taxpayer's failure to report any tax on distributions of 17,081,000  
17 cigarettes was the result of fraud.

18 **Issue 3:** Whether relief of the failure-to-file and finality penalties is warranted. We find relief  
19 is not warranted.

20 Since taxpayer did not file monthly cigarette distributor's tax reports for the periods January 1,  
21 2001, through March 31, 2001, and September 1, 2001, through May 31, 2003, a penalty of \$59,207.85  
22 was added for failure to file returns. Since taxpayer did not timely pay the Notice of Determination  
23 (NOD) or file a petition for redetermination, a finality penalty of \$74,302.35 was added. Taxpayer has  
24 filed a request for relief of these penalties, on the basis that he was not the owner of Royal Cigar.

25 We have previously concluded that taxpayer was the owner of Royal Cigar, and thus reject his  
26 basis for requesting relief. Taxpayer has offered no explanation for his failure to file returns or his  
27 failure to timely pay the NOD or file a petition for redetermination. Therefore, we find that relief of  
28 the penalties is not warranted.



1 posted on the Public Agenda Notice for the meeting at which the Board will consider and vote on the  
2 Summary Decision.

3 A taxpayer may request that the Board hold in abeyance its vote to decide the appeal so the  
4 taxpayer may review the Board's written opinion prior to the expiration of the 30-day period for the  
5 filing of a petition for rehearing. If the vote is held in abeyance, the proposed Summary Decision will  
6 be confidential until it is adopted by the Board. (Cal. Code Regs., tit. 18, § 5551, subd. (b)(5).) Any  
7 request that the Board's vote be held in abeyance should be made in writing to the Board Proceedings  
8 Division prior to the hearing or as part of oral argument at the hearing. Any such request would then  
9 be considered by the Board during its deliberations on the appeal.

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