

**CALIFORNIA STATE BOARD OF EQUALIZATION**

**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

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: )

KAMAL F. BATECH and WAFAA ELIAS )  
BATECH, dba Mike’s Market and Liquor )

Account Number: LR Q ET 91-240761  
Case ID 533038

Petitioner )

San Bernardino, San Bernardino County

Type of Business: Market

Seizure Date: March 4, 2010

Approximate Value: \$806.32<sup>1</sup>

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 Division (ID), 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 husband-and-wife co-ownership, owns and operates Mike’s Market and Liquor located at 1996 W. Highland Avenue, San Bernardino, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller’s permit SR EH 97-235573, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license.

On March 4, 2010, ID conducted a cigarette and tobacco products re-inspection of this location.<sup>2</sup> Co-owner Mr. Kamal F. Batech was on the premises and authorized the inspection. ID

<sup>1</sup> Consisting of 39 pouches of Bugler tobacco, 1 box of Top tobacco, 2 boxes of Swisher Sweets cigars, 69 packages of Swisher Sweets cigars, and 28 packages of Black & Mild cigars.

<sup>2</sup> ID previously inspected petitioner’s business on October 11, 2006, and as a result of that inspection, ID issued a Notice to Appear for violations of Business and Professions Code section 22974 and 22974.3, subdivision (a)(3). ID also inspected petitioner’s business on April 25, 2007, and as a result of that inspection, ID issued a Civil Citation to petitioner for violation of Business and Professions Code section 22974.

1 found that all cigarettes were properly stamped. When ID requested invoices for petitioner's purchases  
2 of cigarettes and tobacco products for the previous 12 months, Mr. Batech provided purchase invoices  
3 issued by licensed vendors Sam's Club and Quick Sale Wholesale (Quick Sale) for petitioner's  
4 purchases of cigarettes and provided three invoices issued by licensed vendor Michael Wholesale for  
5 petitioner's purchases of tobacco products. ID found that the three Michael Wholesale invoices did not  
6 support a majority of petitioner's tobacco products inventory as tax paid. ID requested that Mr. Batech  
7 provide additional invoices, but Mr. Batech was unable to do so. ID also spoke with Mr. Batech's  
8 bookkeeper, Mr. Nate Green, by telephone, and Mr. Green stated to ID that it would have to provide  
9 him with a written request for additional invoices before he would provide ID with any invoices. ID  
10 explained to Mr. Green that petitioner would be cited for a lack of invoices on the premises unless Mr.  
11 Green provided the invoices to ID, but Mr. Green did not provide the invoices.

12 ID seized the tobacco products not supported by invoices showing payment of tax, and issued  
13 petitioner a Receipt for Property seized and a Notice to Appear for alleged violations of Business and  
14 Professions Code sections 22974 and 22974.3, subdivision (b). On March 16, 2010, petitioner  
15 provided ID with three Quick Sale invoices, and asserted that those invoices support the seized tobacco  
16 products. On March 18, 2010, ID went to Quick Sale and spoke with owner Mr. Ibrahim Abdulla, who  
17 reviewed the invoices that Mr. Batech provided. Mr. Abdulla stated that those invoices were not  
18 issued by Quick Sale because the rubber stamp used on the provided invoices misspelled the word  
19 cigarette as "cigaratte" and the font was different. Mr. Abdulla stated that the provided invoices list  
20 lower product prices than what he charges for the same products, and in the lower left corner of the  
21 invoice, there was a different presentation of the form number than the one used by Mr. Abdulla. Mr.  
22 Abdulla further stated that if called upon, he would testify that Quick Sale did not issue these invoices.  
23 Based upon Mr. Abdulla's information, ID concluded that the invoices provided by Mr. Batech were  
24 forgeries and did not support any of the seized tobacco products.

25 On April 26, 2010, ID served petitioner with a Notice of Seizure and Forfeiture dated April 23,  
26 2010, stating that tobacco products valued at \$806.32 were seized and are subject to forfeiture under  
27 Business and Professions Code section 22974.3. Petitioner submitted a verified petition dated April  
28 30, 2010, for release of all of the seized tobacco products, stating that it misplaced its invoices for the

1 tobacco products in question, and attached to the petition the same Quick Sale invoices provided on  
2 March 16, 2010.

3 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not  
4 shown that tax has been paid on the tobacco products in question, and therefore petitioner has not  
5 shown that those products were erroneously or illegally seized. ID states that the Quick Sale invoices  
6 attached to the petition were the same purchase invoices submitted on March 16, 2010. ID states that  
7 while the provided invoices contain products that match all of the tobacco products in question, ID  
8 concludes that those invoices are forgeries based upon its discussion with Mr. Abdulla, the owner of  
9 Quick Sale. Therefore, ID states that the provided invoices do not support the seized tobacco products  
10 as tax paid. ID states that petitioner was provided Publication 78 "Sales of Cigarettes and Tobacco  
11 Products in California," when the Board issued petitioner's license and after each of the two previous  
12 inspections of petitioner's business. ID states that after each inspection, ID explained to petitioner the  
13 contents of Publication 78 and that the law prohibits the possession of untaxed tobacco products.

14 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person  
15 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco  
16 products are subject to seizure and forfeiture, and that person bears the burden of proving that the  
17 applicable taxes have been paid. Here, petitioner provided three purchase invoices to support its  
18 assertion that the products itemized in the invoices were purchased from Quick Sale, but the owner of  
19 that company has denied his company issued the invoices. Based on the discrepancies cited by  
20 Mr. Abdulla and his denial, we conclude that the invoices proffered by petitioner were not issued by  
21 Quick Sale, and do not support return of the tobacco products in question. Rather, we conclude that  
22 those products were properly seized and must be forfeited. Accordingly, we recommend that the  
23 petition be denied.

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25 Summary prepared by Cindy Chiu, Tax Counsel III (Specialist)  
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