

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination )  
 4 Under the Cigarette and Tobacco Products Tax )  
 5 Law of: )

6 AKOP JACK CHICHYAN, VICKEN )  
 7 DJEREDJIAN, and MNATSAKAN MIKE )  
 8 GRIGORYAN )

Account Number: CR ET 02-002289  
 Case ID 388129

9 Petitioner )

Glendale, Los Angeles County

10 Type of Business: Distributor of tobacco products

11 Audit period: 10/01/00– 02/28/02

12 Item

Disputed Amount

13 Unreported tax on distributions of tobacco products \$3,001,500  
 14 Penalties \$1,050,525

	<u>Tax</u>	<u>Penalty</u>
15 As determined	\$3,262,500.00	\$1,141,875.00
16 Post-D&R adjustment	-261,000.00	-91,350.00
17 Proposed redetermination protested	<u>\$3,001,500.00</u>	<u>\$1,050,525.00</u>

18 Proposed tax redetermination	\$3,001,500.00
19 Interest through 11/25/12	2,825,917.91
Fraud penalty	750,375.00
18 Failure-to-file penalty	<u>300,150.00</u>
19 Total tax, interest, and penalty due	<u>\$6,877,942.91</u>

20 Monthly interest beginning 11/26/12 \$15,007.50

21 This matter was scheduled for Board hearing in September 2011, but was postponed at  
 22 petitioner's request because of a scheduling conflict. It was rescheduled for hearing in November  
 23 2011, but was deferred at the request of the Investigations and Special Operations Division (ISOD) to  
 24 allow time to obtain and review additional documents.

25 **UNRESOLVED ISSUES**

26 **Issue 1:** Whether further adjustments are warranted to the measure of tax. We find no further  
 27 adjustments are warranted.

1 Based on investigation by federal law enforcement authorities, Messrs. Chichyan and  
2 Grigoryan pled guilty to the criminal charge of conspiracy to possess and transport contraband  
3 cigarettes (conspiracy), and Mr. Djeredjian pled guilty to the criminal charge of possession and  
4 transportation of contraband cigarettes (possession). The indictment to which the Messrs. Chichyan,  
5 Grigoryan, and Djeredjian pled guilty indicated that 75,000,000 untaxed cigarettes were transported to,  
6 and distributed in, California. Based on this information, ISOD issued a Notice of Determination to  
7 the partnership of Akop Jack Chichyan, Vicken Djeredjian, and Mnatsakan Mike Grigoryan for excise  
8 tax of \$3,262,500 measured by 75,000,000 cigarettes, along with a fraud penalty and a failure-to-file  
9 penalty. The D&R recommends that the measure be reduced for 6,000,000 cigarettes not actually  
10 transported to California, which reduces the determined tax to \$3,001,500.

11 Petitioner argues that the determination is invalid and the failure-to-file penalty should not  
12 apply because a partnership never existed between Messrs. Chichyan, Grigoryan, and Djeredjian.  
13 Rather, petitioner contends that the purchases were made on behalf Grand Distribution Company USA,  
14 Inc. (GDC).<sup>1</sup> We reject this contention based on the available evidence, which includes  
15 Mr. Grigoryan's own admission of a partnership between Messrs. Chichyan, Grigoryan, and  
16 Djeredjian.

17 Alternatively, petitioner contends that ISOD has failed to establish that the cigarettes in  
18 question were transported to California because the determination was issued solely based upon the  
19 indictment, which is just an "accusation," and no review of any books or records was made. The fact  
20 that ISOD did not review any books and records is immaterial. The partners admitted, by their guilty  
21 pleas, that they did, in fact, purchase and transport cigarettes for distribution in California. Thus, we  
22 find this argument is without merit.

23 Petitioner also contends that ISOD has not established that 18,072,000<sup>2</sup> cigarettes out of the  
24 total 69,000,000 unstamped cigarettes were shipped to California because the shipping destination was

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26 <sup>1</sup> GDC, a California corporation, with business addresses in Glendale and North Hollywood, California, held seller's permit  
27 SR AP 97-773201, effective November 1, 2000, through June 30, 2001, and cigarette distribution license CR ET 002-  
001744, effective December 1, 2000, through February 7, 2002.

28 <sup>2</sup> ISOD's schedule 11C dated May 17, 2006, indicates that 600,000 of the 18,072,000 cigarettes were not included in the  
75,000,000 cigarette sticks upon which the NOD was based. Accordingly, petitioner's contention really applies only to the  
17,472,000 of these cigarettes that were included in the measure of deficiency.

1 identified as Las Vegas and/or California. Petitioner has not presented any evidence to show the  
2 destination was not California. Moreover, the available evidence indicates that the cigarettes were  
3 most likely intended for California. Consequently, in the absence of evidence to the contrary, we find  
4 that sufficient evidence exists to conclude that the cigarettes were transported to California.

5 **Issue 2:** Whether the failure-to-file penalty should be relieved. We find relief is not warranted.

6 Petitioner's request for relief of this penalty restates its argument against the assessment, that  
7 no partnership existed. We reject this argument and find relief is not warranted.

8 **Issue 3:** Whether the 25-percent penalty for fraud or intent to evade is supported by clear and  
9 convincing evidence.<sup>3</sup> We find that it is.

10 ISOD imposed a 25-percent penalty for fraud or intent to evade because petitioner intentionally  
11 avoided payment of the tax due on the distribution of the untaxed tobacco products. Petitioner argues  
12 that the indictment relied on by ISOD for this finding is only an allegation and cannot be used as  
13 evidence of petitioner's intent to commit fraud. Petitioner also argues that ISOD's reliance on the  
14 guilty pleas is "bootstrapping" and should not be allowed. Petitioner contends that the only reason the  
15 partners pled guilty was the inability to pay further legal costs. Petitioner also contends that, because  
16 its partners pled guilty and were convicted in federal court, it cannot, under the doctrine of res judicata,  
17 be pursued by the Board for its alleged actions.

18 The guilty pleas by Messrs. Chichyan, Grigoryan, and Djeredjian to conspiracy to possess and  
19 transport, or to possession and transport of, contraband cigarettes is evidence that they knew it was  
20 against the law to distribute unstamped cigarettes. Further, no reasonable explanation has been  
21 presented for the failure to report distributions in California of 69,000,000 sticks of untaxed cigarettes.  
22 While it might be regarded as "bootstrapping" to regard fraudulent activities in one year as showing  
23 fraud in other years, that is not the case here: there was no bootstrapping. The doctrine of res judicata  
24 precludes a plaintiff from bringing multiple litigations against a defendant for the same controversy,  
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26 <sup>3</sup> Without regard to whether the finding of fraud is upheld, the determination is timely for the entire period under the eight-  
27 year statute of limitations because petitioner failed to file tobacco product excise tax returns. (Rev. & Tax. Code, §§ 30181,  
28 subd. (b), 30207.)

1 and is wholly inapplicable here because the Board was not a plaintiff in the prior criminal proceedings,  
2 and this is a civil matter to collect tax due, not a duplicative criminal proceeding. Regardless of their  
3 reasons for admitting their crimes, Messrs. Chichyan, Grigoryan, and Djeredjian did in fact do so, and  
4 have not provided any reasonable basis for us to disregard those admissions. We find that ISOD has  
5 satisfied its burden of establishing fraud by clear and convincing evidence.

6 **OTHER MATTERS**

7 When ISOD requested that the hearing for this matter be deferred, it requested documentation  
8 from the Bureau of Alcohol Tobacco and Firearms (ATF) to further support the civil audit billing,  
9 which was based solely on the Grand Jury indictments of the defendants. ATF provided copies of the  
10 plea agreements signed by each of the defendants, but, since the case had been heard by a grand jury,  
11 the case documents were sealed and could not be released. ISOD noted that, in the plea agreements,  
12 the defendants pled guilty to a charge of evading cigarette tax of no less than \$2.5 million and no more  
13 than \$7 million. We note that the established understatement of tax of \$3,001,500 is in the low end of  
14 that range, and we find that the defendants' guilty pleas further support the determined amount.

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