

**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: )  
EGYPTIAN COMPANY, LLC, )  
dba Old Cairo Cafe )  
Petitioner )

Account Number: LR Q ET 91-325399  
Case ID 562693

San Diego, San Diego County

Type of Business: Cafe  
Seizure Date: November 3, 2010  
Approximate Value: \$212.50<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 limited liability company consisting of members Mr. Nabil T. Khalil and Ms. Fe Revilla Kahlil, owns and operates Old Cairo Cafe located at 3569 Adams Avenue, San Diego, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller’s permit SR FH 101-626604, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On October 26, 2010, ID conducted a cigarette and tobacco products inspection of this location. Mr. Nabil Khalil was on the premises and authorized the inspection. During the inspection, ID found

<sup>1</sup> Consisting of 5 boxes, 1 carton , and 2 tubes of Al Fakher brand tobacco, 3 boxes of El Hennawy brand tobacco, 2 boxes of Sheherazade tobacco, 1 carton of King Moassel tobacco, and 11 boxes of Nakhla tobacco.

1 that all cigarettes in petitioner's inventory were properly stamped. When ID requested invoices for  
2 petitioner's purchases of cigarettes and tobacco for the previous 12 months, Mr. Khalil stated that his  
3 invoices were at home, and it would take too long for him to obtain them from his house. ID  
4 suspended the inspection to allow Mr. Khalil until November 3, 2010, to provide invoices. On  
5 November 3, 2010, ID returned to petitioner's business. Petitioner's manager Mr. Khaled Daoud was  
6 on the premises and provided ID with invoices, which ID found did not support a portion of  
7 petitioner's tobacco products inventory as tax paid.

8 ID seized the tobacco products not supported by invoices showing payment of tax, and issued  
9 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and  
10 Professions Code section 22974 and 22974.3, subdivision (b). On November 15, 2010, Mr. Khalil  
11 faxed ID two additional invoices: a October 27, 2010 invoice issued by Shisha Center, Inc. (Shisha), a  
12 licensed distributor; and a September 20, 2010 invoice issued by North Park Produce (North Park), a  
13 licensed retailer (but not a licensed distributor or wholesaler). ID accepted the invoice from Shisha as  
14 proof that a portion of the seized tobacco products were tax paid because Shisha is a licensed  
15 distributor and its invoice indicates that tax was paid on tobacco products. Accordingly, ID returned  
16 12 boxes of Al Fakher Tobacco and 2 cans of Starbuzz Tobacco to petitioner, on November 17, 2010.  
17 ID did not accept the invoice from North Park as proof of tax payment on tobacco products because  
18 North Park is not a licensed distributor or wholesaler, and ID found no proof that tax had been paid on  
19 the tobacco products on that invoice.

20 On January 11, 2011, ID served petitioner with a Notice of Seizure and Forfeiture dated  
21 January 7, 2011, stating that tobacco products valued at \$212.50 were seized and are subject to  
22 forfeiture under Business and Professions Code section 22974.3. Petitioner submitted a verified  
23 petition dated January 25, 2011, for release of the seized products remaining in ID's custody, asserting  
24 that they are tax paid because petitioner purchased them from licensed retailers who purchased those  
25 products tax paid from licensed distributors. In the petition, petitioner explains that it ordinarily  
26 purchases tobacco products tax paid, from licensed distributors, but also infrequently purchases  
27 tobacco products "from neighboring tobacco retailers to replenish our small inventory of the multiple  
28 available flavors to meet our customer's orders." Petitioner attached to its petition two invoices for

1 purchases of tobacco products, which include tobacco products similar to those remaining in  
2 custody: the previously submitted invoice dated September 20, 2010, issued by North Park; and a  
3 handwritten invoice dated October 9, 2010, from an unspecified vendor, which appears to have been  
4 paid with cash.<sup>2</sup>

5 ID concludes that the two invoices petitioner submitted with its petition do not provide the  
6 proof required by Business and Professions Code section 22978.4 to overcome the presumption that  
7 tax was not paid on the tobacco products in question. ID thus asserts that the petition should be denied  
8 because petitioner has not shown that those products were erroneously or illegally seized.

9 The invoice from North Park dated September 20, 2010, indicates that it then held retailer  
10 license LR Q ET 91-248252, which according to the Board's records was issued June 30, 2004, to  
11 J S A Produce, Inc., dba North Park Produce, and closed out June 30, 2009, because of a change in  
12 ownership to Ward Produce Inc. (Ward), also dba North Park Produce, which currently holds seller's  
13 permit SR FH 101-286983, issued effective July 1, 2009.<sup>3</sup> According to the Board's records, Ward  
14 currently holds retailer license LR Q ET 91-329408, issued on February 1, 2011, but Board records do  
15 not indicate that Ward held a retailer, distributor, or wholesaler license for periods from July 1, 2009,  
16 through January 31, 2011, for North Park. Based on the foregoing, ID concluded that the invoice from  
17 North Park does not show that tax has been paid on any of the tobacco products remaining in custody  
18 because, without a valid license at the time the subject invoice was issued, North Park's owner, Ward,  
19 could not have legally purchased tax paid tobacco products from licensed wholesalers or distributors.  
20 (Bus. & Prof. Code, § 22980.1, subd. (b)(1).) Furthermore, ID is unable to identify any licensed  
21 wholesaler or distributor from whom North Park purchased the subject products, and thus ID is unable  
22 to otherwise verify that tax has been paid. With respect to the invoice from an unspecified vendor, ID  
23 asserts that it does not support release of any tobacco products because, among other things, it does not  
24 show the purchasing retailer's name, address and license number, and therefore it does not comply  
25 with the invoice requirements of Business and Professions Code section 22978.4.

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27 <sup>2</sup> The invoice issued by North Park includes six boxes of Al Fakher and 12 boxes of Al Nakhla brand tobacco, and the  
28 invoice issued by an unspecified vendor includes Al Nakhla and Al Fakher brand tobacco.

<sup>3</sup> The Board's records indicate that J S A Produce, Inc.'s seller's permit SR FH 97-889601 was closed out August 30, 2010,  
because the business was sold.

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. Section 22974.3, subdivision (b), further provides that it  
5 is presumed that tax has not been paid on tobacco products in a retailer's possession, until the contrary  
6 is established by proof of payment to the Board, or by a purchase invoice showing that the retailer paid  
7 the tax-included price to a licensed distributor, wholesaler, manufacturer, or importer, as described in  
8 Business and Professions Code section 22978.4. Business and Professions Code section 22980.1,  
9 subdivision (b)(1), provides that no distributor or wholesaler shall sell cigarettes or tobacco products to  
10 a retailer, wholesaler, distributor, or any other person who is not licensed.

11 Here, petitioner has not provided any evidence showing that tax has been paid on the three  
12 boxes of El Hennawy, two boxes of Sheherazade, and one carton of King Moassel brand tobacco. As  
13 for the two invoices petitioner submitted with its petition, those invoices do not establish that tax has  
14 been paid on any of the tobacco products remaining in custody. There is no evidence that tax has been  
15 paid on the products listed in the North Park invoice dated September 20, 2010. In addition, petitioner  
16 has not provided other proof of payment of tax to the Board for the products on that invoice, such as an  
17 invoice from North Park's supplier showing payment of tax, and ID is unable to identify any licensed  
18 distributor or wholesaler from whom North Park might have purchased those products. Similarly,  
19 there is no evidence that tax has been paid on the products listed in the October 9, 2010 invoice, and  
20 petitioner has not provided other proof of payment of tax to the Board for the products on that invoice.  
21 Finally, since Business and Professions Code section 22980.1, subdivision (b)(1), prohibits a  
22 distributor, wholesaler, or importer from selling to any person who is not licensed, it appears unlikely  
23 that either North Park or the unspecified vendor, neither of whom appear to have been licensed at the  
24 time they sold tobacco products to petitioner, could have purchased any of those products tax paid  
25 from a licensed distributor, wholesaler, or importer.

26 Since petitioner has not presented invoices showing that tax has been paid on the seized  
27 tobacco products, we find that those products were properly seized and must be forfeited.  
28 Accordingly, we recommend that the petition be denied.

1 Summary prepared by Cindy Chiu, Tax Counsel III (Supervisor)  
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