

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:)

KASHMIR SINGH KHINDA,)
 dba Cool Spot Smoke Shop)

Account Number: LR Q ET 91-320344
 Case ID 536518

Petitioner)

Sacramento, Sacramento County

Type of Business: Smoke shop

Seizure Date: April 30, 2010

Approximate Value of Products in Dispute: \$895.20¹

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 sole proprietor, owns and operates Cool Spot Smoke Shop located at 5130 Auburn Boulevard, Sacramento, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and holds seller’s permit SR KH 100-118692, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On April 30, 2010, ID conducted a cigarette and tobacco products inspection of this location. Petitioner’s wife Ms. Rajwinder Kaur Khinda was on the premises and authorized the inspection. ID found that all cigarettes in petitioner’s inventory were properly stamped. When ID requested invoices for petitioner’s purchases of cigarettes and tobacco products for the previous 12 months, Ms. Khinda

¹ Consisting of 215 items of various tobacco products.

1 telephoned petitioner, who came to the store shortly thereafter. Petitioner provided ID with purchase
2 invoices issued by licensed vendors Sam's Club, Costco, Godfrey Group, Inc. (Godfrey), Pitco,
3 Globex Enterprise Incorporation (Globex), and Habib Import, Inc. (Habib) for January 2010 through
4 April 2010. ID reviewed those invoices and found that those invoices did not support a portion of
5 petitioner's tobacco products inventory as tax paid. When ID informed petitioner that a portion of the
6 tobacco products inventory was not supported by the provided invoices, petitioner stated that some of
7 the tobacco products were purchased from the previous owner or transferred from his other store
8 Cigarettes and Cigars located down the street.² ID asked petitioner if he had any documentation
9 showing the transfer of tobacco products from Cigarettes and Cigars to Cool Spot Smoke Shop.
10 Petitioner stated that he did not have any transfer records or any paperwork showing what tobacco
11 products he purchased from the previous owner.

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 Civil Citation for alleged violations of Business and
14 Professions Code sections 22974 and 22974.3, subdivision (b). On June 11, 2010, ID served petitioner
15 with a Notice of Seizure and Forfeiture dated June 4, 2010, stating that tobacco products valued at
16 \$1,055.00 were seized and are subject to forfeiture under Business and Professions Code section
17 22974.3. Petitioner submitted a verified petition dated June 21, 2010, for release of all of the seized
18 tobacco products, and attached to the petition a Habib invoice, three Godfrey invoices, and five Globex
19 invoices. Petitioner also stated that some of the seized tobacco products were transferred from his
20 other store.

21 ID reviewed the provided invoices and stated that with the exception of the Habib invoice, it
22 previously reviewed the Godfrey and Globex invoices at the time of the inspection and did not seize
23 any of the tobacco products listed on those invoices. Based upon the Habib invoice, ID determined
24 that tax had been paid on a portion of the seized tobacco products, and therefore returned those
25 products with an approximate retail value of \$159.80, leaving products with an approximate retail
26 value of \$895.20 (\$1,055.00 - \$159.80) in ID's custody and remaining in dispute.

27 _____
28 ² Petitioner also owns and operates Cigarettes and Cigars located at 5161 Madison Avenue, Sacramento, California, and holds license LR Q ET 91-221749, for this location.

1 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not
2 shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
3 shown that those products were erroneously or illegally seized. ID states that there is no documentary
4 evidence such as transfer records to support petitioner's contention that he transferred tobacco products
5 from his other store.

6 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
7 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
8 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
9 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
10 which complies with Business and Professions Code section 22978.4 and which shows that applicable
11 taxes have been paid. Here, petitioner has not presented invoices showing that tax has been paid on the
12 tobacco products remaining in custody. Therefore, those products were properly seized and they must
13 be forfeited. Accordingly, we recommend that the petition be denied with respect to the tobacco
14 products remaining in custody.

15
16 Summary prepared by Cindy Chiu, Tax Counsel III (Specialist)