

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:)
ROGER JACOB NEHME,)
dba Roger Jacobi Cigar)
Petitioner)

Account Number: LR Q ET 91-323015
Case ID 552300

Chula Vista, San Diego County

Type of Business: Cigar store
Seizure Date: July 20, 2010
Approximate Value: \$11,920.83¹

We have not held an appeals conference in this matter. This summary is prepared based on the information contained in the Petition, the 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 Roger Jacobi Cigar located at 873 Crest Drive, Chula Vista, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit SR FH 101-588440, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On July 20, 2010, ID conducted a cigarette and tobacco products inspection of this location. Petitioner was on the premises and authorized the inspection. During the inspection, ID found tobacco products that were not supported by invoices showing payment of California tax. Petitioner stated to ID that he sold cigars to just one customer, Yuma Cigars, Inc. (Yuma) located in Arizona. Petitioner

¹ Consisting of 237 boxes of cigars, 335 bundles of cigars, and 5 single cigars.

1 provided purchase invoices for premium cigars listing Vegas Santiago S.A. (Vegas) located in Costa
2 Rica as the exporter, and either Yuma or Mob, Inc. (Mob) located in Colorado as the consignee. The
3 invoices do not show California tax paid. Petitioner stated that Vegas is a manufacturer of cigars,
4 which sent the cigars to Mob, who was an importer, and then the cigars were sent to Yuma. Petitioner
5 also stated that he is an agent for Vegas, and he pays for the cigars and obtains a commission from
6 Vegas for his sales to Yuma. Petitioner stated that Yuma purchased cigars from him, but Yuma did not
7 pay for those cigars. As such, petitioner stated that he drove to Yuma in Arizona, confiscated those
8 cigars from Yuma, and brought those cigars to his store.

9 Petitioner also stated that he was aware that a distributor license was required in order to
10 possess tobacco products purchased from an unlicensed out-of-state vendor. Petitioner stated that on
11 or about May 20, 2010,² he had gone to the San Diego District office, and explained to that office that
12 he needed a distributor license. Petitioner stated that he obtained a distributor license application that
13 he intended to complete after leaving the district office, and petitioner stated that while at the District
14 office he also completed and filed a retailer license application. Petitioner stated that due to a busy
15 family life he did not complete the distributor application nor pay the required fee.

16 ID seized the tobacco products not supported by invoices showing payment of tax and issued
17 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and
18 Professions Code sections 22974, 22974.3, subdivision (b), 22980.2, subdivision (a), and 22978.1. On
19 September 1, 2010, ID served petitioner with a Notice of Seizure and Forfeiture dated August 30,
20 2010, stating that tobacco products valued at \$11,920.83 were seized and are subject to forfeiture under
21 Business and Professions Code section 22974.3. Due to the quantity of the tobacco products seized, a
22 notice of seizure and forfeiture was posted on the Board's website on August 31, 2010. (Rev. & Tax.
23 Code, § 30437, subd. (b).)

24 Petitioner submitted a verified petition dated September 7, 2010, for release of all of the seized
25 tobacco products. Petitioner stated that Vegas directed petitioner to take back the cigars in question
26 from Yuma because Yuma did not pay for the cigars due to financial difficulties. Petitioner stated that
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28 ² We reviewed the Board's records, and are able to confirm that petitioner visited the San Diego District office on May 4, 2010.

1 he brought the cigars back to his business on July 17, 2010, just three days prior to the seizure.
2 Petitioner stated that he did not try to sell those cigars but was storing the cigars until a solution could
3 be reached with Yuma. Petitioner also argued that he received the incorrect license from the Board.
4 Petitioner asserted that he went to San Diego District office on May 20, 2010, to obtain a distributor
5 license, but instead of receiving a distributor license in the mail, he received a retailer license in the
6 mail on May 30, 2010. However, we note that during the July 20, 2010 inspection petitioner stated
7 that when he went to the San Diego District office, he completed and filed a retailer license application
8 and also obtained a distributor license application that he intended to complete and submit at a later
9 date. As such, petitioner received a retailer license in the mail rather than a distributor license.
10 Petitioner also stated in his petition that after he received the retailer license in the mail, he returned to
11 the San Diego District office a few days later and obtained another distributor license application.
12 Petitioner stated that he intended to complete this distributor license application but did not.

13 On November 8, 2010, petitioner provided to the Board Proceedings Division four Vegas
14 invoices and a letter again explaining that he took those cigars from Yuma at Vegas' direction. On
15 November 15, 2010, petitioner provided a copy of a U.S. Customs and Border Protection Entry
16 Summary noting that cigars were exported from Costa Rica on November 26, 2009.

17 In its Reply to Petition, ID states that the tobacco products in question were from an unlicensed
18 out-of-state vendor located in Costa Rica, and there is no evidence that tax has been paid on those
19 products. ID further states that petitioner did not possess a distributor license, and thus may not
20 possess untaxed tobacco products. Thus, ID asserts that the petition should be denied.

21 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
22 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
23 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
24 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
25 which complies with Business and Professions Code section 22978.4 and which shows that applicable
26 taxes have been paid. Here, the tobacco products in question came from Vegas, an unlicensed vendor
27 located in Costa Rica, and there is no evidence that tax has been paid on those tobacco products.
28 Petitioner states that he received instruction from Vegas to retrieve the tobacco products from Yuma.

1 Despite knowing that he needed a distributor license in order to possess untaxed tobacco products,
2 petitioner went to Yuma and brought the untaxed tobacco products back to his business in violation of
3 Business and Professions Code section 22974.3, subdivision (b). Petitioner has provided no evidence
4 to establish that tax has been paid on the tobacco products in question. Therefore, we conclude that
5 those products were properly seized and they must be forfeited. Accordingly, we recommend that the
6 petition be denied.

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