

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matters of the Petition for Redetermination)
and Claim for Refund Under the Cigarette and)
Tobacco Products Tax Law of:)

AHSAN ATIQ REHMAN, dba)
Studio City Shell)

Petitioner)

Account Number: CP ET 50-003883
Case ID's 377576 and 528881
Yorba Linda, Orange County

Type of Business: Gasoline station with mini-mart

Audit period: 07/01/01 – 08/31/03

| <u>Item</u> | <u>Disputed Amount</u> | <u>Tax</u> | <u>Penalty</u> |
|--|------------------------|--------------------|------------------|
| Unreported distributions of tobacco products | \$18,217 | | |
| Failure-to-file penalty | \$ 959 | | |
| Amount of claimed refund | \$11,932 | | |
| As determined: | | \$11,932.08 | \$1,193.21 |
| Adjustment - Appeals Division | | <u>- 2,340.82</u> | <u>- 234.08</u> |
| Proposed redetermination, protested | | <u>\$ 9,591.26</u> | <u>\$ 959.13</u> |
| Proposed tax redetermination | | \$ 9,591.26 | |
| Interest | | 3,426.31 | |
| Failure-to-file penalty | | <u>959.13</u> | |
| Total tax, interest, and penalty | | \$13,976.70 | |
| Payments | | <u>- 11,932.08</u> | |
| Balance Due | | <u>\$ 2,044.62</u> | |

This matter was previously scheduled for Board hearing on March 25, 2011, but was postponed at petitioner's request due to a scheduling conflict.

UNRESOLVED ISSUES

Issue 1: Whether petitioner distributed untaxed tobacco products from an unlicensed out-of-state vendor and is therefore liable for excise tax on those distributions. We find petitioner is liable for excise tax.

Petitioner operated a gasoline station with a mini-market that sold cigarettes, tobacco products, beverages, and snacks from July 1, 1995, through June 27, 2005. Petitioner also held a retailer's

1 license (LR ET 91-227741) to sell tax-paid cigarettes and tobacco products, but did not hold a license
2 to distribute tobacco products purchased from unlicensed out-of-state vendors.

3 Using a database of shipping information compiled by the Board's Investigations Division, the
4 Excise Taxes Division of the Property and Special Taxes Department (Department) discovered that
5 Borough Hall-Oxford Tobacco (BH-OT), a New York vendor of untaxed tobacco products, shipped
6 packages to petitioner's business address from February 12, 2002, to April 2, 2002. The Department
7 also obtained New York State Department of Taxation and Finance records and other records from
8 BH-OT reflecting sales from BH-OT to petitioner. Using actual purchase amounts where available
9 and average purchase amounts for the remaining shipments, the Department computed that petitioner
10 had made nine purchases of untaxed tobacco products from BH-OT, with a total wholesale cost of
11 \$18,216.90. Since the Department found that petitioner no longer had these tobacco products in his
12 possession, the Department concluded that petitioner had distributed the products; since petitioner had
13 not reported these distributions to the Board, the Department concluded that petitioner was liable for
14 excise tax of \$18,216.90 on those unreported distributions of untaxed tobacco products.

15 Petitioner contends he did not make any of the disputed purchases and did not receive or
16 distribute any of the untaxed tobacco products in the identified shipments. Petitioner asserts the
17 documentation provided by the Department is circumstantial, at best, and does not establish he ever
18 purchased tobacco products from BH-OT. Specifically, petitioner states that nothing on the UPS
19 document shows any direct link to him, noting that the document does not list identifying information,
20 such as invoice numbers or the customer name. Moreover, petitioner states that the tracking numbers
21 can no longer be confirmed by UPS because UPS purges that information after 18 months. In addition,
22 petitioner claims that the names identified on the document as signatures for receipt of the packages do
23 not match petitioner's name or the name of any of his employees. Petitioner questions the listed
24 purchases from RJ Reynolds on the basis that he cannot recall making purchases from RJ Reynolds'
25 Virginia location.

26 The Department can no longer locate the original audit workpapers for this case and thus
27 cannot produce copies of many of the records it relied on in making the determination. It is unable to
28 locate the New York State Department of Taxation and Finance records that allegedly reflect sales

1 from BH-OT to petitioner. Instead, the available evidence is the one-page printout the Department
2 gathered using an online database of UPS shipping information, which lists 18 shipments from BH-OT
3 to petitioner's business address during the period February 2002 through April 2002 (three in
4 February, 12 in March, and three in April). We find the records of UPS shipments by BH-OT to
5 petitioner's business address are strong evidence of purchases by petitioner from that vendor. Also,
6 the signatures of the individual accepting the packages for the March 2002 shipments are Rehen and
7 Rehem, which are each very similar to petitioner's last name, Rehman. We therefore find it likely that
8 petitioner signed for those packages himself, which is further evidence that the BH-OT packages were
9 delivered to petitioner. We thus reject petitioner's claim that the UPS data fails to show any direct link
10 to him. In the absence of any documentation (or allegation) that another business was receiving
11 shipments at petitioner's business address, we find the available evidence supports a finding that
12 petitioner made purchases from BH-OT. We further find that, while the tracking information could
13 provide some minor additional details, those details are not essential to our analysis of whether the
14 purchases were made by petitioner.

15 Although petitioner questioned the authenticity of the UPS shipping document, the Department
16 has explained that it has access to an online database created by the Board's Investigations Division,
17 using shipping information obtained from UPS and other common carriers. We believe that the
18 information showing shipments from RJ Reynolds' Virginia location is reliable, and petitioner has not
19 shown to the contrary.

20 Unless the contrary is established, it is presumed that all acquired tobacco products are untaxed.
21 (Rev. & Tax. Code, § 30109.) Petitioner has presented no evidence showing that he paid excise taxes
22 on the tobacco products purchased from BH-OT, either at the time of purchase or at the time of
23 distributions. Accordingly, we find that petitioner acquired untaxed tobacco products from BH-OT.
24 Since there is no evidence that the tobacco products petitioner purchased from BH-OT are still in
25 petitioner's possession, petitioner is presumed to have distributed those tobacco products in California.
26 (See Rev. & Tax. Code, § 30109.) We therefore find the Department has met its burden of proving
27 that petitioner distributed in California tobacco products with a wholesale cost of \$18,216.90 that it
28 purchased from BH-OT, and petitioner is liable for the excise taxes thereon.

1 With respect to petitioner's claim for refund, although we recommended an adjustment to the
2 liability (discussed below under "Resolved Issue," the amount of tax, penalty, and interest due after
3 that adjustment is more than the amount petitioner has paid towards the determination. Accordingly,
4 we find that there was no overpayment, and recommend that the claim for refund be denied.

5 **Issue 2:** Whether relief of the failure-to-file penalty is warranted. We find no basis to
6 recommend relief.

7 Although we explained to petitioner, at the appeals conference and in subsequent
8 correspondence, that relief of the failure-to-file penalty could be granted under certain circumstances,
9 and provided a form petitioner could use to request relief, he has not done so. Since petitioner has not
10 submitted the requisite statement, signed under penalty of perjury, requesting relief and explaining his
11 basis for the request, we have no basis to consider recommending relief.

12 **RESOLVED ISSUE**

13 In addition to the audited purchases from BH-OT, the Department had concluded that petitioner
14 made purchases of untaxed tobacco products from Ideal Tobacco Wholesale, Inc. (Ideal). We find in
15 the D&R that the available documentation is insufficient to establish that Ideal shipped tobacco
16 products to petitioner or that petitioner purchased, acquired, or exercised any right or power over
17 tobacco products shipped from Ideal. Accordingly, we recommend that the unreported measure be
18 reduced by \$4,446.16, the audited amount of purchases from Ideal.

19 **OTHER DEVELOPMENTS**

20 None.

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22 Summary prepared by Thea Etheridge, Business Taxes Specialist II
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