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**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

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: )  
)  
RUBY ONE INVESTMENTS INC., ) Account Number: LR Q STF 91-330719  
dba Blown Away ) Case ID 745225  
)  
Petitioner ) Simi Valley, Ventura County

Type of Business: Smoke Shop  
Seizure Date: March 20, 2013  
Approximate Value of Products in Dispute: \$284.00<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 and Special Operations Division (ISOD), and related documents.

**UNRESOLVED ISSUE**

**Issue:** Whether the cigarettes not listed in the California Tobacco Directory (CTD) (non-MSA)<sup>2</sup> should be forfeited because they are described by Revenue and Taxation Code section 30436, subdivision (e), and 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 cigarettes and tobacco products should be forfeited.

Petitioner, a corporation, owns and operates a smoke shop, dba Blown Away, located at 1397 E Los Angeles Avenue, Suite C, Simi Valley, California. Petitioner holds the cigarette and tobacco

<sup>1</sup> Consisting of: 16 packages of Kick brand cigarettes; 11 (250-gram) cans of Starbuzz tobacco; and 5 (100-gram) cans of Starbuzz tobacco.

<sup>2</sup> The term "MSA" refers to the Master Settlement Agreement reached between states and tobacco companies regarding liability for medical costs for smoking-related illnesses, and as used here, "non-MSA cigarettes" refers to cigarettes which are not listed in the California Tobacco Directory (CTD). The California Attorney General is required by law to maintain and publish on its website a list of the CTD approved cigarettes made by manufacturers who are in compliance with California law. (Rev. & Tax. Code, § 30165.1, subd. (c).) It is illegal to put a state tax stamp on cigarettes unless the manufacturer and the brand family of those products are listed in the CTD. (Rev. & Tax. Code, § 30165.1, subd. (e)(1).) It is also illegal to sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a manufacturer or brand family not included in the CTD. (Rev. & Tax. Code, § 30165.1, subd. (e)(2).) Tax-paid cigarettes not listed in the CTD are subject to seizure and forfeiture. (Rev. & Tax. Code, § 30436, subd. (e).)

1 products retailer license referenced above, and seller's permit SR AR 102-033378, for this location.  
2 Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this  
3 location.

4 On March 20, 2013, ISOD conducted a cigarette and tobacco products inspection of this  
5 location. Petitioner's employee, Mr. Raghu Sayane, was on the premises and authorized the  
6 inspection. ISOD found that all cigarettes in petitioner's inventory were properly stamped. However,  
7 included in that inventory were Kick brand cigarettes, which were not listed in the CTD. The Kick  
8 brand cigarettes were removed from the CTD on November 18, 2011. Thus, as noted in the footnote  
9 above, it was illegal for petitioner to possess these cigarettes. ISOD noted that the Kick brand  
10 cigarettes were properly stamped prior to being removed from the CTD and that petitioner purchased  
11 the cigarettes prior to their removal from the CTD. At the conclusion of the inspection, ISOD  
12 provided Mr. Sayane with information regarding the Cigarette and Tobacco Licensing Act, including  
13 Publication 407, "Master Settlement Agreement." ISOD explained the contents of Publication 407,  
14 which states that the Board will allow a retailer two weeks to contact the vendor to obtain a credit for  
15 returning non-MSA cigarettes, and if the vendor provides written notice to ISOD that it will take the  
16 product back and grant a credit, will return those seized products to the vendor. The publication notes  
17 that the retailer may contact ISOD if it needs assistance with contacting the vendor.

18 When ISOD requested invoices for petitioner's purchases of tobacco products for the previous  
19 12 months, Mr. Sayane provided ISOD with all of the purchase invoices located at the business. While  
20 inspecting the tobacco product inventory, ISOD noticed that petitioner had counterfeit Starbuzz  
21 tobacco products. ISOD noted that the Starbuzz tobacco products in question did not have a "use by  
22 date" stamp on the lid of the can or a Starbuzz logo on the inside of the packaging as is customary for  
23 real Starbuzz tobacco products. ISOD spoke with petitioner's president, Mr. Zulfikar Hirani, on the  
24 telephone, who said that petitioner purchased Starbuzz tobacco products from various different  
25 vendors. Upon reviewing the purchase invoices, ISOD found purchases of Starbuzz tobacco products  
26 from Starmax Enterprises Inc. ISOD contacted Starmax and was informed that its inventory came  
27 directly from Starbuzz and confirmed that its inventory did not contain any counterfeit Starbuzz  
28 products. ISOD then contacted Starbuzz and confirmed that any Starbuzz tobacco products not

1 containing a “use by date” stamp or Starbuzz logo were indeed counterfeit. ISOD determined that the  
2 Starbuzz tobacco products in question could not have come from Starmax, but must have come from  
3 one of petitioner’s other vendors. ISOD also found Swisher Sweets and Black & Mild tobacco  
4 products that were not supported by valid purchase invoices.

5 ISOD seized the non-MSA cigarettes and tobacco products not supported by valid purchase  
6 invoices showing payment of tax, and issued petitioner a Receipt for Property Seized and a Civil  
7 Citation for alleged violations of Business and Professions Code sections 22974 and 22974.3,  
8 subdivision (b). Subsequently, ISOD served petitioner with a Notice of Seizure and Forfeiture dated  
9 April 15, 2013, stating that cigarettes and tobacco products valued at \$395.00 were seized and are  
10 subject to forfeiture under Revenue and Taxation Code section 30436 and Business and Professions  
11 Code section 22974.3. Petitioner submitted a verified petition dated April 26, 2013, for release of all  
12 of the seized tobacco products. Petitioner stated that he purchased all his products tax paid and  
13 provided purchase invoices to support the seized cigarettes and tobacco products. Petitioner attached  
14 to his petition purchase invoices from: (1) US Global Imports dated February 25, 2012, March 10,  
15 2012, March 17, 2012, March 24, 2012, March 31, 2012, April 21, 2012, April 28, 2012, May 5, 2012,  
16 May 12, 2012, May 19, 2012, May 26, 2012, June 2, 2012, June 9, 2012, June 16, 2012, and June 23,  
17 2012; (2) Starmax dated June 30, 2012, July 14, 2012, August 11, 2012, August 18, 2012, August 28,  
18 2012, September 7, 2012, September 14, 2012, September 21, 2012, September 28, 2012, October 6,  
19 2012, October 12, 2012, October 19, 2012, October 26, 2012, November 2, 2012, November 17, 2012,  
20 November 21, 2012, December 1, 2012, December 8, 2012, December 15, 2012, December 21, 2012,  
21 January 4, 2013, January 11, 2013, January 18, 2013, January 26, 2013, February 1, 2013, February 8,  
22 2013, February 15, 2013, February 25, 2013, March 2, 2013, March 9, 2013, March 19, 2013, and  
23 March 23, 2013; (3) Sam’s Club dated July 12, 2012, September 23, 2012, November 7, 2012,  
24 December 20, 2012, and February 20, 2013; and (4) Cigar Cartel dated April 19, 2011, May 4, 2011,  
25 June 13, 2011, July 22, 2011, August 12, 2011, August 19, 2011, and April 10, 2012. ISOD reviewed  
26 the purchase invoices and determined that tax had been paid on a portion of the seized tobacco  
27 products, and therefore returned those products with an approximate retail value of \$111.00 to  
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1 petitioner, leaving 16 packages of Kick brand cigarettes and 11 (250-gram) cans and 5 (100-gram) cans  
2 of Starbuzz tobacco with an approximate retail value of \$284.00 in ISOD's custody.

3 In its Reply to Petition, ISOD asserts that the petition should be denied because the Kick brand  
4 cigarettes are not listed in the CTD, and are therefore subject to seizure and forfeiture under Revenue  
5 and Taxation Code section 30436, subdivision (e), even though they bear valid California tax stamps  
6 and were stamped and purchased prior to being removed from the CTD. ISOD states that petitioner  
7 was provided Publication 78, "Sales of Cigarettes and Tobacco Products in California," when the  
8 Board issued petitioner's license, which informs licensees that they may sell only those cigarettes  
9 listed on the CTD, and includes a website address for the CTD.<sup>3</sup> ISOD further states that it provided  
10 petitioner with Publication 407, and explained that petitioner could contact ISOD if it needed  
11 assistance with contacting the vendor to return the non-MSA cigarettes to the vendor. However, ISOD  
12 states that petitioner did not contact ISOD for assistance.

13 As for the seized tobacco products, ISOD asserts that the petition should be denied because the  
14 Starbuzz tobacco products are counterfeit, and are therefore subject to seizure and forfeiture under  
15 Revenue and Taxation Code section 30474.1, subdivision (a). Moreover, ISOD states that petitioner  
16 has not proven that it purchased the Starbuzz tobacco products in question from US Global Imports or  
17 Starmax. Therefore, ISOD states that the provided purchase invoices do not support the seized tobacco  
18 products as tax paid.

19 Revenue and Taxation Code section 30165.1, subdivision (e)(2), prohibits the possession or  
20 sale of non-MSA cigarettes in this state. For purposes of Revenue and Taxation Code section 30436,  
21 subdivision (e), non-MSA cigarettes lose their properly stamped status as of the date those cigarettes  
22 fall off the CTD. As such, non-MSA cigarettes are unlawful to possess and subject to seizure and  
23 forfeiture. Here, the Board provided petitioner with Publication 78, which informed petitioner that it  
24 may sell only those cigarettes listed on the CTD. At the time of the inspection, the Kick brand  
25 cigarettes were not listed on the CTD and therefore, ISOD seized those cigarettes. We further note that  
26 ISOD explained the contents of Publication 407 to petitioner and provided Mr. Sayane with a copy of  
27 Publication 407. Therefore, we believe that petitioner was aware that if he wanted to obtain a credit  
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<sup>3</sup> The website address for the Attorney General's CTD is <http://ag.ca.gov/tobacco/directory.php>.

1 for the non-MSA cigarettes from its vendor, it needed to provide ISOD with written notice that the  
2 vendor would take those cigarettes back, and ISOD would return those cigarettes to the vendor.  
3 Furthermore, ISOD stated to petitioner that it could contact ISOD for assistance, but petitioner did not  
4 do so. Petitioner has not established that the non-MSA cigarettes in question are not subject to seizure  
5 and forfeiture under Revenue and Taxation Code section 30436, subdivision (e). Therefore, we  
6 conclude that the seized packages of non-MSA Kick brand cigarettes were properly seized and must be  
7 forfeited.

8 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person  
9 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco  
10 products are subject to seizure and forfeiture, and that person bears the burden of proving the  
11 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice  
12 which complies with Business and Professions Code section 22978.4 and which shows that applicable  
13 taxes have been paid. Moreover, Revenue and Taxation Code section 30474.1, subdivision (a),  
14 provides that the sale or possession for sale of counterfeit tobacco products by a retailer will result in  
15 the seizure of the tobacco products by the Board. Here, petitioner has provided several purchase  
16 invoices from US Global Imports and Starmax, all of which show tax paid purchases of Starbuzz  
17 tobacco products that match the description provided by ISOD in the Notice of Seizure and Forfeiture  
18 (i.e., 250-gram cans and 100-gram cans). However, while the purchase invoices could possibly  
19 support the seized tobacco products are being tax paid,<sup>4</sup> Starbuzz's vice president has confirmed that  
20 its tobacco products are stamped with a "use by date" on the lid and a Starbuzz logo on the inside of  
21 the packaging, characteristics that are not found on the Starbuzz tobacco products in question. Without  
22 those defining characteristics the Starbuzz tobacco products in question must be counterfeit products  
23 subject to seizure pursuant to Revenue and Taxation Code section 30474.1, subdivision (a). We note  
24 that even if petitioner could somehow prove that the seized tobacco products were purchased tax paid,  
25 which it has not, because they are counterfeit products they are subject to seizure by the Board and the  
26 Board cannot return counterfeit products. (Cal. Code Regs., tit. 18, § 4703, subd. (e)(2).) Therefore,

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28 <sup>4</sup> ISOD found 118 (250-gram) cans and 74 (100-gram) cans of Starbuzz tobacco products in petitioner's inventory at the  
time of the seizure. Petitioner provided purchase invoices showing tax paid purchases of 121 (100-gram) cans and 123  
(250-gram) cans of Starbuzz tobacco products during the period February 25, 2012, through March 19, 2013.

1 we conclude that those products were properly seized and must be forfeited. Accordingly we  
2 recommend that the petition be denied.

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Summary prepared by Chad T. Bacchus, Tax Counsel