STATE BOARD OF EQUALIZATION
CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT APPEAL

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:	
WAHID AHMAD TAKI, dba News and Cigarettes City	Account Number: LR Q ET 91-249490 Case ID 547438
Petitioner	Vallejo, Solano County

Type of Business:	Smoke shop
Seizure Date:	May 20, 2010
Approximate Value of Products in Dispute:	$8,240.00[1]

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. This matter was scheduled for Board hearing on January 27, 2011, but was postponed at petitioner's request to allow time for him to find new representation.

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 News and Cigarettes City located at 4300 Sonoma Boulevard, Suite 808, Vallejo, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit SR JHF 97-727922, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On May 20, 2010, ID conducted a cigarette and tobacco products inspection of this location. Petitioner's manager Mr. Flash Hastings was on the premises and authorized the inspection. ID found that all cigarettes in petitioner's inventory were properly stamped. During the inspection, Mr. Hastings

[1] Consisting of 44 60-count boxes of Swisher Sweets Regular flavored cigarillos, 30 boxes of 20/5-packs of Swisher Sweets Regular flavored cigarillos, 8 boxes of 20/5-packs of Swisher Sweets Grape flavored cigarillos, 20 boxes of 20/5-packs of Swisher Sweets Wine flavored cigarillos, and 36 60-count boxes of Optimo Peach flavored cigarillos.

provided ID with some invoices. ID reviewed those invoices and found that those invoices did not support a portion of petitioner's tobacco products inventory. Mr. Hastings telephoned another manager to come to the store to provide additional purchase invoices. Shortly thereafter, Mr. Greg Alcantara arrived at the store, but was unable to locate any additional invoices. Mr. Alcantara telephoned licensed vendor Bargain Line, which faxed to the store an invoice dated May 6, 2010. ID reviewed this invoice, but still found that a portion of petitioner's tobacco products inventory was not supported as tax paid. ID allowed Mr. Alcantara additional time to locate more purchase invoices, but Mr. Alcantara was unable to find any additional invoices

During the inspection, a man entered the store and went behind the counter area. Mr. Hastings stated to this man, "I need an invoice." ID asked this man for his identification and whether he was a distributor or a wholesaler. The man responded that he was not and quickly left the store. ID went outside to speak with the man, who identified himself as Mr. Surjit Singh Bhardwaj. ID again asked Mr. Bhardwaj if he was a distributor or wholesaler and whether he sold cigarettes and tobacco products to petitioner. Mr. Bhardwaj responded no to both questions.

Also during the inspection, Mr. Alcantara spoke with petitioner by telephone. During this telephone conversation, Mr. Alcantara stated to ID that purchase invoices were located at petitioner's home and asked if the unsupported tobacco products could be left at the store until petitioner returned. ID stated to Mr. Alcantara that those tobacco products could not be left at the store without evidence that tax had been paid on those products.

ID seized the tobacco products not supported by invoices showing payment of tax, and issued petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and Professions Code sections 22974 and 22974.3, subdivision (b). On May 26, 2010, petitioner faxed to ID Bargain Line invoices dated April 10, March 22, March 17, March 9, and April 21, 2010; a Costco invoice dated February 11, 2010 and a Costco invoice with date unknown; a Pitco invoice dated April 12, 2010; and a Tobacco Wholesale invoice dated May 12, 2010. ID reviewed the Bargain Line, Costco, and Pitco invoices, and found that those invoices did not contain any of the seized tobacco products. Thus, ID concluded that those invoices did not support the return of any of the seized products.

On June 3, 2010, ID met with the owner of Tobacco Wholesale regarding the Tobacco Wholesale invoice dated May 12, 2010, that petitioner provided. ID compared the invoice provided by petitioner with Tobacco Wholesale's copy. Tobacco Wholesale's copy of the invoice was light and somewhat illegible. However, Tobacco Wholesale's owner stated that he believed petitioner's invoice had been altered because petitioner's invoice included 11 line items of products while Tobacco Wholesale's copy contained only eight line items. ID also found that for the second line item of tobacco products, petitioner's invoice lists the price as $64, while Tobacco Wholesale's copy lists the price as $36. Tobacco Wholesaler's owner also stated that the handwriting on petitioner's copy was not his handwriting. Tobacco Wholesale's owner further stated that his records showed he sold approximately $3,200 in products to petitioner while petitioner's invoice showed a sale of $10,544. Based upon its discussion with Tobacco Wholesale's owner, ID determined that petitioner's copy of the Tobacco Wholesale invoice dated May 12, 2010, had been altered and thus concluded that this invoice did not support any of the seized tobacco products.

On July 14, 2010, ID served petitioner with a Notice of Seizure and Forfeiture dated June 29, 2010, stating that tobacco products valued at $8,400.00 were seized and are subject to forfeiture under Business and Professions Code section 22974.3. Due to the quantity of the tobacco products seized, a notice of seizure and forfeiture was posted on the Board's website on July 21, 2010. (Rev. & Tax. Code, § 30437, subd. (b).)

Petitioner submitted a verified petition dated July 19, 2010, for release of all of the seized tobacco products and attached to the petition Pitco invoices dated February 10, March 10, March 29, April 29, and April 30, 2010; a Bargain Line invoice dated May 29, 2010; a Swisher International invoice dated May 6, 2010; and also the same Pitco, Bargain Line, and Costco invoices previously submitted on May 26, 2010. Based upon the Pitco invoice dated February 10, 2010, ID determined that tax had been paid on a portion of the seized tobacco products, and therefore returned those products, with an approximate retail value of $160.00 to petitioner, leaving products with an approximate retail value of $8,240.00 ($8,400.00 - $160.00) in ID's custody and remaining in dispute. ID stated that Bargain Line invoice dated May 29, 2010, is dated after the May 20, 2010 inspection, and thus does not support the return of any of the seized products. ID stated that the Bargain Line

invoices, the Costco invoices, and remaining Pitco invoices do not contain any of the seized tobacco products, and therefore do not support the return of any seized products.

On September 3, 2010, ID again contacted the owner of Tobacco Wholesale. ID stated to Tobacco Wholesale's owner that the Tobacco Wholesale invoice submitted by petitioner is invoice number 226048 and requested Tobacco Wholesale's copies of the invoices before and after invoice number 226048. ID found that the invoices before and after invoice 226048 are dated May 21 and May 24, 2010, which are after the date of the May 20, 2010 inspection. Since the invoices before and after invoice 226048 are dated after the date of the inspection, ID believes that the date of the sale for invoice 226048 occurred after the date of May 20, 2010 inspection and not on May 12, 2010 as listed on petitioner's copy, lending further support to ID's conclusion that this invoice does not support any of the tobacco products remaining in custody.

In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not shown that tax has been paid on the tobacco products in question, and therefore petitioner has not shown that those products were erroneously or illegally seized. ID further states that petitioner was provided Publication 78, "Sales of Cigarettes and Tobacco Products in California," when the Board issued petitioner's license, which informed petitioner that the law prohibits the possession of untaxed tobacco products.

Business and Professions Code section 22974.3, subdivision (b), provides that, where a person holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco products are subject to seizure and forfeiture, and that person bears the burden of proving that the applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice which complies with Business and Professions Code section 22978.4 and which shows that applicable taxes have been paid. Here, petitioner provided a Tobacco Wholesale invoice, which contains products that match all of the products in ID's custody. However, based upon Tobacco Wholesale's records and discrepancies cited by Tobacco Wholesale's owner, we agree with ID's conclusion that the Tobacco Wholesale invoice proffered by petitioner was altered, and does not support the return of any of the tobacco products remaining in ID's custody. Petitioner has not provided any additional invoices showing that tax has been paid on the seized tobacco products remaining in custody. Therefore, we

conclude that those products were properly seized and they must be forfeited. Accordingly, we recommend that the petition be denied with respect to the tobacco products remaining in custody.

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