

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

In the Matter of the Petition for )  
 Redetermination Under the Cigarette and )  
 Tobacco Products Tax Law of: )  
 ASHRAF ALFONOSE YOUSSEF, dba ) Account Number CP ET 50-002284  
 The Liquor Chest, aka Encino Cigar Company ) Case ID 358704  
 Petitioner ) Granada Hills, Los Angeles County

Type of Business: Distributor of tobacco products  
 Audit period: 10/01/99 – 04/30/02

<u>Item</u>	<u>Disputed Amount</u>	
Unreported cost of tobacco products distributed	\$1,895,586	
Fraud Penalty	\$ 275,701	
	<u>Tax</u>	<u>Penalty</u>
As determined	\$1,124,383.95	\$281,096.02
Post-D&R adjustment	- 21,579.57	- 5,394.91
Proposed redetermination, protested	<u>\$1,102,804.38</u>	<u>\$275,701.11</u>
Proposed tax redetermination	\$1,102,804.38	
Interest through 05/25/12	1,040,516.83	
Fraud penalty	<u>275,701.11</u>	
Total tax, interest, and penalty	\$2,419,022.32	
Payments	- 200,700.01	
Balance Due	<u>\$2,218,322.31</u>	
Monthly interest beginning 05/26/12	<u>\$ 5,262.28</u>	

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner is liable for tax on purchases and distributions of untaxed tobacco products and whether adjustments are warranted. We find petitioner is liable for the tax, and no adjustment is warranted.

Petitioner distributed various products for resale, delivering them to small groceries and liquor stores from his own motor vehicle. The Excise Tax and Fees Division of the Property and Special Taxes Department (Department) investigated petitioner after receiving tips that he was selling tobacco products at prices well below market averages. During the execution of a search warrant served on petitioner, the Department seized bank records and some source documents. In addition, the

1 Department acquired information from unlicensed out-of-state vendors and from the United Parcel  
2 Service. Based on these records, the Department determined that petitioner had purchased tobacco  
3 products from 29 unlicensed out-of-state vendors, 28 of which sold only tobacco products. The  
4 Department used the records to compile petitioner's purchases of untaxed tobacco products during the  
5 audit period. Based on additional records provided both before and after the appeals conference, the  
6 Department made adjustments to purchases from one vendor, and it made an adjustment for ending  
7 inventory. After those adjustments, the audited amount of purchases of untaxed tobacco products from  
8 out-of-state suppliers of \$1,914,461 exceeds reported amounts of \$18,875 by \$1,895,586.

9 Petitioner contends that, without purchase invoices to support every transaction, the  
10 Department cannot sustain the established measure of tobacco products purchased, and contends that  
11 the established measure should be adjusted for spoilage. In addition, petitioner states that he had a  
12 humidor containing unsold tobacco products, and that those products in ending inventory should not be  
13 included in the established measure. Finally, based on his allegation that there are so many "open  
14 issues" regarding this matter, petitioner argues that the measure should be reduced to the amount  
15 determined in the criminal proceedings against him in the Superior Court of California, Los Angeles  
16 County, which he asserts totaled approximately \$150,000.<sup>1</sup>

17 The Department may compute and determine the amount to be paid based on any information  
18 available to it. (Rev. & Tax. Code, § 30201.) We find that neither court case cited by petitioner,  
19 which found that the established amount of income tax had been based on insufficient evidence, is  
20 applicable here because the Department has obtained records of purchases of tobacco products from 29  
21 unlicensed out-of-state vendors, and those records provide substantial evidence of the amount of  
22 petitioner's purchases. Since petitioner has not overcome the presumption that the purchases were  
23 untaxed and distributed, except for the product remaining in petitioner's possession, we find the tax is  
24 properly imposed. (Rev. & Tax. Code, § 30109.) We find no adjustment is warranted for spoilage  
25 because petitioner obtained credit from vendors for spoiled tobacco products, and those credits have  
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27 <sup>1</sup> The Department states that the court ordered petitioner to pay restitution of \$199,000, but neither party has provided  
28 documentation. In any event, we find that order is irrelevant here, except to the extent payments made per the order are  
applied to the liability.

1 been taken into account in the audit calculations. We also find petitioner has not shown that the  
2 adjustment already made for ending inventory should be increased. Thus, we find petitioner is liable  
3 for tax on the distribution of untaxed tobacco products, and no adjustment is warranted.

4 **Issue 2:** Whether the Department has proven fraud by clear and convincing evidence. We find  
5 that it has.<sup>2</sup>

6 As support for the finding of fraud, the Department notes, among other things, that: 1)  
7 petitioner was found guilty by the Los Angeles Superior Court of a felony count of tax evasion and two  
8 misdemeanor counts of tobacco tax evasion; 2) petitioner was actively involved in the daily business  
9 operations; 3) petitioner knowingly made false statements to the Department, stating repeatedly that he  
10 did not purchase any products from out-of-state vendors; and 4) petitioner's purchases of untaxed  
11 tobacco products of \$1,914,461 exceeded reported purchases of \$18,875 by 10,043 percent. Petitioner  
12 disputes the penalty on the basis that his statements to the Department regarding the business should be  
13 disregarded because English is not his first language.

14 Petitioner is an experienced businessman who was very familiar with the tobacco products  
15 distribution industry in general and with the excise tax laws in particular. Nevertheless, he reported  
16 less than 1 percent of his purchases of untaxed tobacco products from unlicensed out-of-state vendors.  
17 Regarding petitioner's argument that English is not his first language, we find that without regard to  
18 this factor, the Department has established fraud by clear and convincing evidence. In any event, we  
19 have reviewed the statements petitioner made to the Department and find that they are clear and  
20 detailed, and that there is no indication that petitioner misunderstood the issues. We find the  
21 Department has established fraud by clear and convincing evidence, and the penalty was properly  
22 applied.

### 23 **OTHER MATTERS**

24 None.

25 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III

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27 <sup>2</sup> Absent a finding of fraud, the determination would not have been timely for any portion of the audit period, since it was  
28 issued more than three years from the last day of the month following the most recent quarterly period in the audit period.