

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

3	In the Matter of the Petition for Release of	)	
4	Seized Property Under the Cigarette and	)	
5	Tobacco Products Tax Law and the Cigarette	)	
6	and Tobacco Products Licensing Act of 2003 of:	)	
7		)	
8	ZARTOSHT INC.,	)	Account Number: LR Q ET 91-317417
9	dba Alpine Market	)	Case ID 554941
10		)	
11	Petitioner	)	Norwalk, Los Angeles County

12	Type of Business:	Liquor store
13	Seizure Date:	August 24, 2010
14	Approximate Value of Products in Dispute:	\$788.42 <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 Division (ID), and related documents. This matter had been scheduled for decision by the Board on the March 22, 2011 nonappearance calendar but was rescheduled for Board hearing at petitioner’s request. The hearing was scheduled for April 27, 2011, but was rescheduled to the June Culver City Board meeting because petitioner’s residence is closer to Culver City than to Sacramento.

**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 corporation, owns and operates Alpine Market (Alpine) located at 1950 Lake Tahoe Boulevard, South Lake Tahoe, California. Petitioner holds the cigarette and tobacco products

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<sup>1</sup> Consisting of the following tobacco products: 1 five-pouch package of Skoal Mint, 5 pouches of Skoal Mint, 4 tins of Skoal Long Cut Mint, 1 five-tin roll and 11 tins of Skoal Long Cut Straight, 11 pouches of Skoal Wintergreen, 12 tins of Skoal Long Cut Wintergreen, 9 tins of Skoal Long Cut Apple, 1 five-tin roll and 11 Grizzly Long Cut Straight, 13 tins Grizzly Long Cut Wintergreen, 11 tins Grizzly Fine Cut Natural, 6 five-tin rolls and 3 tins of Copenhagen Long Cut, 2 five-tin rolls and 4 tins of Copenhagen Fine Cut, 5 tins of Kodiak Wintergreen, 3 tins of Kodiak Wintergreen, 2 cans of Bugler roll-your-own (RYO), and 2 cans of Top RYO tobacco.

1 retailer license referenced above, and seller's permit SR KH 101-291607, for this location. Petitioner  
2 does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

3 On August 24, 2010, ID conducted a cigarette and tobacco products inspection of this location.  
4 Petitioner's employee, Mr. Clyde Lowe, was on the premises and authorized the inspection. ID found  
5 that all cigarettes in petitioner's inventory were properly stamped. When ID requested invoices for  
6 petitioner's purchases of cigarettes and tobacco for the previous 12 months, Mr. Lowe stated that he  
7 did not know where the purchase invoices were located. Mr. Lowe also stated that petitioner's  
8 president, Mr. Zahra Zabihi, was in Iran and could not be reached. Mr. Lowe then telephoned  
9 petitioner's bookkeeper, Mr. Young Wham Kim, who arrived at the business shortly thereafter with  
10 invoices issued by licensed vendors Coremark and U.S. Wholesale Outlet, Inc. Mr. Kim also provided  
11 invoices from a Costco located in Carson City, Nevada, listing purchases of Copenhagen and Grizzly  
12 tobacco. ID stated that this out-of-state Costco is not a licensed distributor or wholesaler in California,  
13 but Mr. Kim stated that petitioner was entitled to make the purchases from that store because petitioner  
14 held a distributor license for the Alpine location. Mr. Kim provided ID with the distributor license he  
15 was relying on, but it was for the previous owner, Behmard Enterprise, Inc. (Behmard), and had been  
16 closed out effective December 31, 2009. ID notes that, according to Board records, petitioner had  
17 applied for a distributor license in January 2010, but did not complete the application process. As  
18 such, petitioner did not hold a distributor license and was not allowed to possess untaxed tobacco  
19 products. ID further noted that petitioner had not remitted any returns and there was no evidence that  
20 tax had been paid on the products listed on the Nevada Costco invoice. ID concluded that the invoices  
21 provided for this location did not support a portion of the store's tobacco products inventory. When ID  
22 asked for additional purchase invoices, Mr. Kim stated that he did not have any additional invoices.

23 ID seized the tobacco products not supported by invoices showing payment of tax, and issued  
24 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and  
25 Professions Code sections 22974 and 22974.3, subdivision (b). On November 12, 2010, ID served  
26 petitioner with a Notice of Seizure and Forfeiture dated November 9, 2010, stating that tobacco  
27 products valued at \$1,062.18 were seized and are subject to forfeiture under Business and Professions  
28 Code section 22974.3.

1           Petitioner submitted a verified petition on November 15, 2010, for release of all of the seized  
2 tobacco products. Petitioner also owns a second store, Ski Run Market (Ski Run), which it purchased  
3 along with Alpine from Behmard in December 2009.<sup>2</sup> Petitioner stated that Behmard included with  
4 the sale of the stores tobacco products purchased by Behmard. Petitioner attached to the petition  
5 invoices issued to Behmard by licensed vendor Phillips & King International (Phillips) and billed and  
6 shipped to Ski Run for the period January 2009 through December 2009.<sup>3</sup> Petitioner contended that a  
7 portion of the seized products consisted of inventory that it purchased from Behmard. Petitioner  
8 further contended that Behmard transferred products from Ski Run to Alpine, and that the products  
9 seized by ID which are listed on the invoices had been purchased by Behmard tax paid for Ski Run and  
10 transferred to Alpine. Petitioner also contended that the other portion of the seized products it  
11 purchased tax paid from legitimate wholesalers and distributors, and attached to the petition invoices  
12 Phillips had issued to petitioner in 2010 and billed and shipped to Ski Run.<sup>4</sup> In addition, petitioner  
13 attached to the petition transfer records documenting the transfer of tobacco products from Alpine to  
14 Ski Run. Although petitioner also alleged that it possessed a distributor license, such is not the case.  
15 As noted above, petitioner had applied for a distributor license. On January 20, 2010, the Board sent to  
16 petitioner a letter explaining that in order to complete that application process, additional forms were  
17 required. Petitioner did not submit the required forms. Therefore, petitioner does not possess a  
18 distributor license. Petitioner also asserted that ID was unprofessional during the inspection because,  
19 according to petitioner, ID did not properly introduce themselves before conducting the inspection, ID  
20 did not listen to petitioner's employees, ID did not study the invoices provided at the inspection  
21 carefully, and ID interrupted the store's operations.

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24 <sup>2</sup> Petitioner owns and operates Ski Run Market located at 3460 Lake Tahoe Boulevard, South Lake Tahoe, California, and  
holds license LR Q ET 91-317493, for this location.

25 <sup>3</sup> On the same day it inspected petitioner's Alpine store, ID also conducted an inspection of petitioner's Ski Run store,  
seizing tobacco products for which petitioner was unable at that time to provide invoices to show that tax had been paid.  
26 With its verified petitioner for return of the products seized from Ski Run, petitioner attached the same set of Philips  
invoices that it submitted with its petition for Alpine. ID accepted that the products seized from Ski Run had been  
27 purchased from Phillips by Behmard, as documented by the Phillips invoices petitioner submitted, and were then purchased  
by petitioner from Behmard when petitioner purchased the Ski Run store. ID thus returned all those products to petitioner.

28 <sup>4</sup> The invoices issued in 2010 list Behmard's license number, LR Q ET 91-277347, but note that it is unlikely that these  
invoices were issued to Behmard since Behmard sold the business to petitioner in December 2009, and Behmard informed  
the Board on November 23, 2009, that its business was closed out effective December 31, 2009.

1           Petitioner did not provide any records prepared by Behmard in support of its contention that  
2 some of the seized products had been purchased tax paid by Behmard and then transferred from Ski  
3 Run to Alpine. Nevertheless, based upon the similarity of the products sold by Ski Run and Alpine, ID  
4 accepted petitioner's contention that Behmard had transferred products from Ski Run to Alpine. ID  
5 therefore returned those products which could have come within this contention. ID seized the  
6 following brands of tobacco products from Alpine: Macanudo, Romeo Y Julieta, Skoal, Grizzly,  
7 Copenhagen, Kodiak, Bugler, and Top. ID stated that the manufacture dates of the Skoal, Grizzly,  
8 Copenhagen, Kodiak, Bugler, and Top are in 2010. Since Behmard sold both stores to petitioner in  
9 December 2009, Behmard would not have made any purchases for either store after that date. Thus,  
10 ID did not accept that the products manufactured in 2010 had been purchased by petitioner from  
11 Behmard as part of the purchase of the two stores, but rather concluded that petitioner purchased these  
12 brands of tobacco products directly from a vendor. Since the Macanudo and Romeo & Julieta cigars  
13 were manufactured prior to petitioner's purchase of the stores, ID accepted that they had been  
14 purchased by Behmard. Since the Phillips invoices issued to Behmard include Macanudo and Romeo  
15 & Julieta cigars of the type seized from Alpine, ID assumed that Behmard had purchased the cigars  
16 tax-paid per those invoices for Ski Run and then transferred those cigars to Alpine. Accordingly, ID  
17 accepted that petitioner had purchased the seized Macanudo and Romeo & Julieta cigars with an  
18 approximate retail value of \$273.76, tax-paid from Behmard when purchasing the stores. ID thus  
19 returned those cigars to petitioner, leaving products with an approximate retail value of \$788.42 in  
20 ID's custody and remaining in dispute.

21           Petitioner asserts that any of the seized products that were not purchased from Behmard as a  
22 part of its purchase of the stores were purchased by petitioner directly from licensed vendors.  
23 However, ID found that the invoices provided by petitioner for purchases from Phillips in 2010 were  
24 issued to Ski Run, and do not contain any of the seized products. Therefore, ID concludes that those  
25 invoices do not support any of the remaining tobacco products in ID's custody.

26           Subsequently, petitioner provided ID three additional invoices. ID states that two of the  
27 invoices were Phillips invoices issued to Ski Run that did not contain any of the seized products, and  
28 the third was an August 4, 2010 invoice issued by a Costco located in Rancho Cordova, California

1 with the purchaser listed as Ski Run. While this August 4, 2010 invoice lists Behmard's license rather  
2 than petitioner's, ID believes Costco made a mistake listing Behmard's number, and accepts that this  
3 purchase, made almost a year after petitioner purchased the business, was a purchase actually made by  
4 petitioner. Although this invoice could potentially support the return of some products (two cans of  
5 Bulger tobacco, 13 tins of Grizzly Long Cut tobacco, 10 tins of Grizzly Fine Cut tobacco, and 12 tins  
6 of Skoal Long Cut Wintergreen tobacco), ID notes that this invoice was issued to Ski Run, and  
7 petitioner has not documented any transfers *it* made from Ski Run to Alpine. ID concluded that the  
8 same benefit of doubt it gave petitioner for undocumented transfers by Behmard is not applicable to  
9 petitioner's claim of its own transfers. ID asserts that petitioner was aware of the requirements that it  
10 must maintain records to support its inventory as tax paid, as indicated by the fact that petitioner did  
11 create and maintain transfer records. Those transfer records detail the transfer of products from Alpine  
12 to Ski Run because they specifically state "Sold to: Ski Run Market." ID notes that petitioner was  
13 detailed with its record keeping, and believes that petitioner would have created and maintained  
14 transfer records if petitioner had transferred products from Ski Run to Alpine. Since petitioner has not  
15 produced any such transfer records, ID concludes that the August 4, 2010 Costco invoice issued to Ski  
16 Run does not show that tax has been paid on the products seized from Alpine.

17 ID asserts that the petition should be denied as to the products remaining in custody because  
18 petitioner has not shown that tax has been paid on these tobacco products, and therefore has not shown  
19 that those products were erroneously or illegally seized. ID further states that petitioner was provided  
20 Publication 78, "Sales of Cigarettes and Tobacco Products in California," when the Board issued  
21 petitioner's license, which informed petitioner that the law prohibits the possession of untaxed tobacco  
22 products.

23 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person  
24 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco  
25 products are subject to seizure and forfeiture, and that person bears the burden of proving the  
26 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice  
27 which complies with Business and Professions Code section 22978.4 and which shows that applicable  
28 taxes have been paid. Here, the only documentation that arguably supports any additional returns is

1 the Rancho Cordova Costco invoice dated August 4, 2010, issued to Ski Run. However, petitioner has  
2 not presented any transfer documentation showing that the tobacco products in question were  
3 transferred from Ski Run to Alpine. Since petitioner has not presented additional invoices or transfer  
4 documentation showing that tax has been paid on the remaining tobacco products in custody, we find  
5 that those products were properly seized and 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 (Supervisor)  
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