

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION 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:)
BARGAIN CIGARETTES 1,)
dba Bargain Cigarettes)
Petitioner)

Account Number: LR Q ET 91-301705
Case ID 536568
Tehachapi, Kern County

Type of Business: Smoke shop
Seizure Date: May 4, 2010
Approximate Value: \$485.00¹

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 decision on the Board’s November 17, 2010 consent calendar, but was pulled by acting Board Member Barbara Alby.

UNRESOLVED ISSUE

Issue: Whether the cigarettes not listed in the California Tobacco Directory (CTD) (non-MSA)² should be forfeited because they are described by Revenue and Taxation Code section 30436, subdivision (e). We conclude that the seized cigarettes should be forfeited.

Petitioner, a corporation, owns and operates Bargain Cigarettes located at 815 Tucker Road, Suite F, Tehachapi, California. Petitioner holds the cigarette and tobacco products retailer license

¹ Consisting of the following cigarettes: 3 cartons and 16 packages of Bronco and 7 cartons and 18 packages of GT One.
² 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 referenced above, and seller's permit SR ARH 101-049397, for this location. Petitioner does not hold
2 a cigarette and tobacco products distributor or wholesaler license for this location.

3 On May 4, 2010, ID conducted a cigarette and tobacco products inspection of this location.
4 Petitioner's employee, Ms. Joan Rice, was on the premises and telephoned Ms. Sina Kassas, the sister
5 of corporate president Mr. Nur Kassas, who authorized the inspection. During the inspection, ID
6 found all cigarettes in petitioner's inventory bore valid tax stamps. However, included in that
7 inventory were GT One and Bronco brand cigarettes, which were not listed in the CTD. Thus, as
8 noted in the footnote above, it was illegal for petitioner to possess those cigarettes. At the conclusion
9 of the inspection, ID provided Ms. Rice with information regarding the Cigarette and Tobacco
10 Licensing Act, including Publication 407, "Master Settlement Agreement." ID explained the contents
11 of Publication 407, which states that the Board will allow a retailer two weeks to contact the vendor to
12 obtain a credit for returning non-MSA cigarettes and, if the vendor provides written notice to ID that it
13 will take the product back and grant a credit, will return those seized products to the vendor. The
14 publication notes that the retailer may contact ID if it needs assistance with contacting the vendor.

15 ID seized the non-MSA cigarettes and issued petitioner a Receipt for Property Seized. On May
16 28, 2010, ID served petitioner with a Notice of Seizure and Forfeiture dated May 25, 2010, stating that
17 cigarettes valued at \$485.00 were seized and are subject to forfeiture under Revenue and Taxation
18 Code section 30436. Petitioner submitted a verified petition dated June 7, 2010, for release of all of
19 the seized cigarettes. Petitioner stated that its wholesaler misinformed petitioner as to when the non-
20 MSA cigarettes were to be removed from the CTD and further stated that the State did not provide
21 petitioner with information about non-MSA cigarettes. Attached to the petition was an undated letter
22 addressed to "To whome [sic] it may concern," which appeared to be a claim for refund for the value
23 of the seized cigarettes or the value of the tax stamps.

24 Since it appeared that petitioner was requesting that a wholesaler or distributor provide
25 petitioner with a refund for the seized non-MSA cigarettes, ID forwarded this undated letter to the
26 Excise Taxes Division. However, petitioner did not provide any information regarding the vendor
27 from whom petitioner purchased the cigarettes in question and also did not provide written notice that
28 the vendor would take the seized cigarettes back and grant a credit. The Board Proceedings Division

1 allowed petitioner until July 26, 2010, to provide documentation and arguments to support its petition,
2 but no documentation was received.

3 In its Reply to Petition, ID asserts that the petition should be denied because the seized items
4 are non-MSA cigarettes not listed in the CTD, and are therefore subject to seizure and forfeiture under
5 Revenue and Taxation Code section 30436, subdivision (e), even though they bear valid California tax
6 stamps. ID states that petitioner was provided Publication 78, "Sales of Cigarettes and Tobacco
7 Products in California," when the Board issued petitioner's license, which informed petitioner that it
8 may sell only those cigarettes listed on the Attorney General's CTD, and included a website address
9 for the CTD.³ ID states that the on March 1, 2010, the Attorney General placed a notice on the website
10 that GT One and Bronco brand cigarettes could no longer be stamped effective February 28, 2010, and
11 retailers may not sell those cigarettes after April 29, 2010. ID further states that it provided petitioner
12 with Publication 407 and explained that petitioner could contact ID if it needed assistance with
13 contacting the vendor to return the non-MSA cigarettes to the vendor. However, ID states that
14 petitioner did not contact ID for assistance.

15 Revenue and Taxation Code section 30165.1, subdivision (e)(1), prohibits the stamping or
16 payment of California excise taxes on non-MSA cigarettes, and subdivision (e)(2) of section 30165.1
17 prohibits the possession or sale of non-MSA cigarettes in this state. Revenue and Taxation Code
18 section 30436, subdivision (e), provides that non-MSA cigarettes which are stamped or tax paid, in
19 violation of Revenue and Taxation Code section 30165.1, are subject to seizure and forfeiture. Here,
20 the Board provided petitioner with Publication 78, which informed petitioner that it may sell only those
21 cigarettes listed on the CTD. The Attorney General updated the CTD on March 1, 2010, advising
22 retailers that GT One and Bronco brand cigarettes could no longer be sold after April 29, 2010.
23 Despite this notice that the GT One and Bronco brand cigarettes were being removed from the CTD,
24 petitioner kept those cigarettes in its retail inventory.

25 At the time of the inspection, the GT One and Bronco brand cigarettes were not listed on the
26 CTD, and therefore, ID seized those cigarettes. However, we note that ID did not issue a citation for

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28 ³ The website address for the Attorney General's CTD is <http://ag.ca.gov/tobacco/directory.php>.

1 the seizure of the non-MSA cigarettes, and no fine or suspension of petitioner’s license will be
2 imposed as a result of the seizure. We further note that while petitioner submitted a letter which
3 appeared to be a request to a wholesaler or distributor for a credit for the seized non-MSA cigarettes,
4 petitioner did not submit any evidence that the wholesaler or distributor would take the seized
5 cigarettes back and grant a credit. ID explained to petitioner’s employee Ms. Rice, the procedures
6 outlined in Publication 407. Therefore, we believe that petitioner was aware that it needed to provide
7 ID with written notice that the vendor would take the non-MSA cigarettes back, and ID would return
8 the cigarettes to the vendor. Furthermore, ID stated to Ms. Rice that petitioner could contact ID for
9 assistance, but petitioner did not do so. Petitioner has not established that the non-MSA cigarettes in
10 question are not subject to seizure and forfeiture under Revenue and Taxation Code section 30436,
11 subdivision (e). Based upon the foregoing, we conclude that the seized packages of non-MSA Bronco
12 and GT One brand cigarettes were properly seized and must be forfeited. Accordingly, we recommend
13 that the petition be denied.

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15 Summary prepared by Cindy Chiu, Tax Counsel III (Specialist)
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