



1 Rosedale Hwy., Bakersfield, California, and holds the cigarette and tobacco products retailer license  
2 referenced above, and seller's permit number SR ARH 101-024731, for this business location.

3 Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this  
4 location.

5 On September 24, 2008, ID conducted a cigarette and tobacco products inspection of this  
6 location. Partner Mr. Kil Hwan Chang was on the premises and authorized the inspection. ID  
7 reviewed petitioner's purchase invoices, which supported the tobacco products inventory as tax paid.  
8 During the inspection, ID found all cigarettes in petitioner's inventory bore valid tax stamps.  
9 However, ID found 41 packages of Bonus Value brand cigarettes, which were not listed in the CTD.<sup>3</sup>  
10 At the conclusion of the inspection, ID provided petitioner with information regarding the Cigarette  
11 and Tobacco Licensing Act, including Publication 407, "Master Settlement Agreement." ID explained  
12 the contents of Publication 407, which states that the Board will allow a retailer two weeks to contact  
13 the vendor to obtain a credit for returning non-MSA cigarettes, and, if the vendor provides written  
14 notice to ID that it will take the product back and grant a credit, ID will return those seized products to  
15 the vendor. The publication notes that the retailer may contact ID if it needs assistance with contacting  
16 the vendor.

17 ID seized the 41 packages of non-MSA cigarettes and issued petitioner a Receipt for Property  
18 Seized. Subsequently, ID served petitioner with a Notice of Seizure and Forfeiture dated November  
19 13, 2008, which states that cigarettes valued at \$145.00 were seized and are subject to forfeiture under  
20 Revenue and Taxation Code section 30436. Petitioner submitted a verified petition dated December 9,  
21 2008, for release of all of the seized cigarettes without explanation as to why those cigarettes were  
22 erroneously or illegally seized. In its Revised Reply to Petition, ID asserts that the petition should be  
23 denied because the seized items are non-MSA cigarettes not listed in the CTD, and are therefore  
24 subject to seizure and forfeiture under Revenue and Taxation Code section 30436, subdivision (e),  
25 even though they bear valid California tax stamps. ID further states that it provided petitioner with  
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27 <sup>3</sup> We note that while these Bonus Value brand cigarettes bore tax stamps, as previously discussed, it is illegal to put a state  
28 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).)

1 Publication 407 and explained that petitioner could contact ID if it needed assistance with contacting  
2 the vendor to return the non-MSA cigarettes to the vendor. However, ID states that petitioner did not  
3 contact ID for assistance.

4 Revenue and Taxation Code section 30165.1, subdivision (e)(1), prohibits the stamping or  
5 payment of California excise taxes on non-MSA cigarettes, and subdivision (e)(2) of section 30165.1  
6 prohibits the possession or sale of non-MSA cigarettes in this state. Revenue and Taxation Code  
7 section 30436, subdivision (e), provides that non-MSA cigarettes which are stamped or tax paid, in  
8 violation of Revenue and Taxation Code section 30165.1, are subject to seizure and forfeiture.

9 Petitioner has not established that the 41 packages of non-MSA Bonus Value brand cigarettes are not  
10 subject to seizure and forfeiture under Revenue and Taxation Code section 30436, subdivision (e). We  
11 further note that ID provided Publication 407 to petitioner, and explained the contents of Publication  
12 407 to petitioner. Therefore, we believe that petitioner was aware of the fact that it should contact its  
13 vendor to obtain a credit for returning the non-MSA cigarettes, and upon written notice to ID that the  
14 vendor would take the non-MSA cigarettes back, ID would return those cigarettes to the vendor. ID  
15 states that petitioner did not contact ID for assistance, and we are not aware that petitioner has  
16 contacted its vendor to return the non-MSA cigarettes. Based upon the foregoing, we conclude that the  
17 41 packages of non-MSA Bonus Value brand cigarettes were properly seized and must be forfeited.

18 Accordingly, we recommend that the petition be denied.  
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20 Summary prepared by Cindy Chiu, Tax Counsel III (Specialist)  
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