

1 subdivision (e). We conclude that the seized cigarettes should be forfeited.

2 Petitioner, a husband-and-wife partnership, owns and operates J.J. Liquor located at 14055
3 Rosedale Hwy., Bakersfield, California, and holds the cigarette and tobacco products retailer license
4 referenced above, and seller's permit number SR ARH 101-024731, for this business location.

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

7 On September 24, 2008, ID conducted a cigarette and tobacco products inspection of this
8 location. Partner Mr. Kil Hwan Chang was on the premises and authorized the inspection. ID
9 reviewed petitioner's purchase invoices, which supported the tobacco products inventory as tax paid.
10 During the inspection, ID found all cigarettes in petitioner's inventory bore valid tax stamps.
11 However, ID found 41 packages of Bonus Value brand cigarettes, which were not listed in the CTD
12 that was updated on August 22, 2008. Thus, as noted in the footnote above, it was illegal to have put
13 state tax stamps on these cigarettes. At the conclusion of the inspection, ID provided petitioner with
14 information regarding the Cigarette and Tobacco Licensing Act, including Publication 407, "Master
15 Settlement Agreement." ID explained the contents of Publication 407, which states that the Board will
16 allow a retailer two weeks to contact the vendor to obtain a credit for returning non-MSA cigarettes
17 and, if the vendor provides written notice to ID that it will take the product back and grant a credit, will
18 return those seized products to the vendor. The publication notes that the retailer may contact ID if it
19 needs assistance with contacting the vendor.

20 ID seized the 41 packages of non-MSA cigarettes and issued petitioner a Receipt for Property
21 Seized. Subsequently, ID served petitioner with a Notice of Seizure and Forfeiture dated November
22 13, 2008, which states that cigarettes valued at \$145.00 were seized and are subject to forfeiture under
23 Revenue and Taxation Code section 30436. Petitioner submitted a verified petition dated December 9,
24 2008, for release of all of the seized cigarettes without explanation as to why petitioner believes the
25 seizure of those cigarettes was erroneous or illegal.

26 At the request of Board Member Steel's office, ID assisted petitioner in attempting a return of
27 the cigarettes in question. Petitioner's invoices did not disclose from whom petitioner purchased the
28 cigarettes in question, and petitioner could not recall. Although ID was unable to determine the vendor

1 from whom petitioner purchased the cigarettes in question, ID was able to determine based upon the
2 tax stamps that Costco had properly stamped the cigarettes in question on April 18, 2006, when they
3 were still listed on the CTD. On September 13, 2010, ID telephoned Costco on behalf of petitioner to
4 inquire whether Costco would accept the return of the cigarettes in question. On September 14, 2010,
5 Costco contacted ID and declined to take those cigarettes.

6 In its Revised Reply to Petition, ID asserts that the petition should be denied because the seized
7 items are non-MSA cigarettes not listed in the CTD, and are therefore subject to seizure and forfeiture
8 under Revenue and Taxation Code section 30436, subdivision (e), even though they bear valid
9 California tax stamps. ID notes that it did not issue petitioner a citation for this seizure, and no fine or
10 suspension of petitioner's license will be imposed as a result of the seizure of non-MSA cigarettes.

11 Revenue and Taxation Code section 30165.1, subdivision (e)(2), prohibits the possession or
12 sale of non-MSA cigarettes in this state. For purposes of Revenue and Taxation Code section 30436,
13 subdivision (e), non-MSA cigarettes lose their properly stamped status as of the date those cigarettes
14 fall off the CTD. As such, non-MSA cigarettes are unlawful to possess and subject to seizure and
15 forfeiture. As discussed earlier, ID allows a retailer the opportunity to contact a vendor to obtain a
16 credit for returning seized non-MSA cigarettes to the vendor, and, if the vendor provides written notice
17 to ID that it will take the cigarettes back and grant a credit, ID will return those seized cigarettes to the
18 vendor. Here, ID contacted Costco on behalf of petitioner in order to obtain a credit for the non-MSA
19 cigarettes in question, but Costco declined to accept the return of those cigarettes. Petitioner has not
20 established that the 41 packages of non-MSA Bonus Value brand cigarettes are not subject to seizure
21 and forfeiture under Revenue and Taxation Code section 30436, subdivision (e), we conclude that the
22 41 packages of non-MSA Bonus Value brand cigarettes were properly seized, and since Costco has
23 declined to accept their return, we conclude that they must be forfeited.

24 Accordingly, we recommend that the petition be denied.

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