

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION PETITION FOR REHEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Cigarette and Tobacco Products Tax)
Law of:)

AKOP JACK CHICHYAN, VICKEN)
DJEREDJIAN, and MNATSAKAN MIKE)
GRIGORYAN)

Account Number: CR ET 02-002289
Case ID 388129

Petitioner)

Glendale, Los Angeles County

Type of Business: Distributor of tobacco products

Audit period: 10/01/00– 02/28/02

<u>Item</u>	<u>Disputed Amount</u>	
Unreported tax on distributions of tobacco products	\$2,815,668	
Penalties	\$ 985,484	
	<u>Tax</u>	<u>Penalty</u>
As determined	\$3,262,500.00	\$1,141,875.00
Post-D&R adjustment	- 261,000.00	- 91,350.00
Post-Board hearing adjustment	- 185,832.00	- 65,041.20
Proposed redetermination protested	<u>\$2,815,668.00</u>	<u>\$ 985,483.80</u>
Proposed tax redetermination	\$2,815,668.00	
Interest through 08/25/13	2,776,082.57	
Fraud penalty	703,917.00	
Failure-to-file penalty	281,566.80	
Total tax, interest, and penalty due	<u>\$6,577,234.37</u>	
Monthly interest beginning 08/26/13	<u>\$14,078.34</u>	

The Board heard this matter on November 15, 2012, and concluded petitioner did not report its distributions of untaxed cigarettes, no further adjustments were warranted, the understatement was the result of fraud, and relief is not warranted from the failure-to-file penalties assessed for the period October 1, 2000, through February 28, 2002. Accordingly, the Board ordered the tax and penalties redetermined to \$3,001,500 and \$1,050,525, respectively. Petitioner filed a timely petition for rehearing, which was scheduled for Board consideration on the Consent calendar in May 2013. However, since petitioner submitted additional documentation on May 14, 2013, Chairman Horton requested that the matter be removed from the Consent calendar.

UNRESOLVED ISSUE

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2 **Issue:** Whether the petition for rehearing should be granted. We recommend that it be denied.
3 However, we also recommend reductions of the tax, fraud penalty, and failure to file penalty, of
4 \$185,832.00, \$46,458.00, and 18,583.20, respectively.

5 In its petition for rehearing, petitioner reiterates its argument that the tax liability is invalid
6 because a partnership never existed between Messrs. Chichyan, Djeredjian, and Grigoryan. Petitioner
7 asserts that there is no documentary evidence that the alleged partnership existed, that the alleged
8 partnership purchased untaxed cigarettes in Virginia, or that the alleged partnership distributed the
9 untaxed cigarettes in California. Petitioner also states that the cigarette purchases and distributions at
10 issue were made by licensed distributors in California and that Messrs. Chichyan, Djeredjian, and
11 Grigoryan made the purchases of cigarettes as officers and/or employees of those distributors. As
12 support, petitioner has provided copies of three purchase invoices, 13 bills of lading, and two cigarette
13 distributor licenses.

14 Regarding its assertion that no partnership of these three individuals ever existed, petitioner has
15 provided no new evidence or contentions. Petitioner merely raises the same arguments that were
16 thoroughly and fully considered at the Board hearing. With respect to petitioner's assertion that the
17 purchases and distributions of cigarettes at issue were actually made by licensed distributors in
18 California, petitioner, by email dated May 14, 2013, submitted additional documentation showing that
19 the Bureau of Alcohol, Tobacco and Firearms issued a search warrant against Sell for Less, a
20 California cigarette distributor, and seized 330 boxes of cigarettes. Petitioner asserts that the Virginia
21 cigarette wholesaler sold the cigarettes to Sell for Less, and that Sell for Less was solely responsible
22 for the cigarette excise taxes. The documentation presented shows that sales of cigarettes were made
23 to Sell for Less, a fact that is not in dispute. The documentation does not establish that the sales of
24 cigarettes used to establish the amount of cigarette excise tax determined against petitioner were in fact
25 sales to Sell for Less. Here, the audit workpapers indicate that the Investigations and Special
26 Operations Division (ISOD) separately compiled the amounts of cigarettes sold and delivered to
27 petitioner and the amounts of cigarettes sold and delivered directly to Sell for Less. Then, ISOD billed
28 petitioner and Sell for Less for the tax applicable only to the sales made to the appropriate business. In

1 other words, the additional evidence provides no basis for a reduction of the measure of tax (nor for a
2 rehearing) because it does not establish the cigarettes in question were included in the determination.

3 Further, petitioner pled guilty to a felony federal indictment for transporting 75,000,000 sticks
4 of untaxed cigarettes into California. The fact that cigarette vendors issued invoices and bills of lading
5 related to sales to other licensed distributors does not negate that guilty plea because there is no proof
6 that the invoices or bills of lading are related to the untaxed cigarettes in the indictment. Moreover,
7 there is evidence in the indictment that petitioner created “dummy” invoices and that the Bureau of
8 Alcohol, Tobacco, and Firearms, in its undercover operation, generated fake bills of lading as part of
9 the sale of untaxed cigarettes. Under those circumstances, there is no way to tell whether the invoices
10 or bills of lading provided by petitioner are genuine. Thus, we find petitioner has not provided
11 credible evidence or any new argument, or any other basis for a rehearing.

12 However, ISOD notified the Appeals Division, in an email dated June 28, 2013, that it has
13 identified one transaction that was inadvertently included in the computation of the amount determined
14 against petitioner and in the amount determined against Sell for Less (CR ET 02-001750).¹ ISOD
15 advises that for this transaction only, due to an error in compiling the sales of cigarettes, there is a
16 duplication of the amount billed, such that tax on the same transaction is included in the determinations
17 issued to each of the taxpayers. ISOD has determined that Sell for Less owes the tax on this specific
18 transaction, which is \$185,832.00, and that it was incorrect to determine tax of that amount against
19 petitioner. Accordingly, ISOD recommends a reduction of tax of \$185,832.00 for a transaction which
20 occurred in August 2001, with corresponding adjustments to the fraud penalty and failure-to-file
21 penalty. In light of ISOD’s concession, we recommend reductions of the tax, fraud penalty, and
22 failure-to-file penalty of \$185,832.00, \$46,458.00, and 18,583.20, respectively. With the exception of
23 that recommended adjustment, we find the Board correctly decided this matter. Thus, we recommend
24 the petition for rehearing be denied.

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

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27 ¹ ISOD became aware of the duplication in the determined tax while preparing for an appeals conference held June 6, 2013,
28 regarding the determination issued to Sell 4 Less.