

**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: )  
)  
)  
)  
ISMAIL AHMAD KARAJAH, )  
dba Farah Smoke Shop )  
)  
)  
Petitioner )

Account Number: LR Q ET 91-259169  
Case ID 534141  
  
San Francisco, San Francisco County

Type of Business: Smoke shop

Seizure Date: February 10, 2010

Approximate Value: \$78.00<sup>1</sup>

The Board heard this petition for release of seized tobacco products on September 15, 2010. The Board allowed petitioner 30 days to provide additional evidence to establish that seized tobacco products are tax paid and the Investigations Division (ID) 30 days to respond.

On October 26, 2010, petitioner submitted the following: (1) a letter dated October 7, 2010, signed by petitioner, describing the exchange of the tobacco products in question between Farah Smoke Shop and Pager Town & Smoke Shop and that there are no transfer records available supporting the exchange; (2) a declaration under penalty of perjury from Mr. Shadi Dahir dated October 7, 2010, stating that on February 6, 2010, he accepted two boxes of Swisher Sweets Wine cigarillos from the manager of Pager Town & Smoke, Mr. Khalil Alkanawi, in exchange for two boxes of Swisher Sweets Regular cigarillos; (3) a declaration under penalty of perjury from Mr. Alkanawi dated October 7, 2010, stating that he accepted two boxes of Swisher Sweets Regular cigarillos from Farah Smoke Shop in exchange for two boxes Swisher Sweets Wine cigarillos because there was an overstock of Swisher Sweets Wine cigarillos at Pager Town & Smoke Shop; and (4) a purchase invoice dated February 1, 2010, from licensed vendor Bargain Line to Pager Town & Smoke Shop containing the purchase of two boxes of Swisher Sweets Wine cigarillos.

<sup>1</sup> Consisting of two 60-count boxes of Swisher Sweets Wine flavored cigarillos.

1 On October 27, 2010, ID met with petitioner at Farah Smoke Shop. During their discussion,  
2 petitioner stated that he became aware of the exchange of tobacco products between his store and  
3 Pager Town & Smoke Shop in early September. Petitioner stated that Mr. Dahir is a son of a friend,  
4 who occasionally helps out at the store.

5 On October 29, 2010, ID telephoned Mr. Alkanawi, who had stated in his declaration that he  
6 exchanged the Swisher Sweets Wine cigarillos for two boxes of Swisher Sweets Regular cigarillos  
7 because there was an overstock of that product. During their telephone conversation, Mr. Alkanawi  
8 stated to ID that he sells five to eight boxes of Swisher Sweets Regular cigarillos every two weeks. ID  
9 asked Mr. Alkanawi why he purchased the two boxes of Swisher Sweets Wine cigarillos on February  
10 1, 2010, if there had been an overstock of that product. Mr. Alkanawi stated that he could not recall if  
11 there was an overstock of that product at the store. Mr. Alkanawi subsequently stated that he made the  
12 exchange of two boxes of Swisher Sweets Wine cigarillos for two boxes of Swisher Sweets Regular  
13 cigarillos because he needed two boxes of Swisher Sweets Regular cigarillos for Pager Town & Smoke  
14 Shop's inventory. ID stated to Mr. Alkanawi that the February 1, 2010 Bargain Line invoice contains  
15 a purchase for seven boxes of Swisher Sweets Regular cigarillos, a normal two week supply.  
16 Mr. Alkanawi then stated that he needed the extra two boxes of Swisher Sweets Regular cigarillos  
17 because that Saturday night he had sold out of Swisher Sweets Regular cigarillos due to the clubs in  
18 the neighborhood.

19 Prior to its most recent contention (that the tobacco products in question were supported by an  
20 invoice issued by licensed vendor MB Tobacco), petitioner's sole assertion to support the tobacco  
21 products in question is that there was an exchange of Swisher Sweets cigarillos between petitioner's  
22 store and Pager Town & Smoke Shop. Exchanges between one retailer and another, such as alleged  
23 here, do happen, but a person holding tobacco products received as a result of such an exchange still  
24 has the burden of presenting actual documentation showing that the tobacco products are tax paid.  
25 Generally, ID will accept that such an exchange has occurred and the tobacco products are tax paid  
26 where the retailer makes a contemporaneous record of the exchange showing the date of exchange and  
27 a listing of the types and amounts of products transferred, and retains a copy of this documentation  
28 along with a copy of the purchase invoice evidencing a tax-paid purchase. Copies of the exchange

1 documents should also be retained at both the transferor location and the transferee location so that,  
2 upon inspection, there is no dispute regarding whether they were in existence before the inspection or  
3 created because of the inspection. Records documenting an exchange that are prepared some time after  
4 the alleged exchange, particularly documents prepared after an inspection, are of little weight in  
5 establishing that the exchange actually occurred.

6 Here, not only does petitioner admit that there were no records created at the time of the  
7 exchange, but also the declarations of Mr. Dahir and Mr. Alkanawi on which petitioner now relies  
8 were not produced until after the Board hearing. Furthermore, when ID contacted Mr. Alkanawi to  
9 discuss his declaration, he provided an explanation different from the one in that declaration (stating in  
10 his declaration that the exchange was due to his store's overstock of Swisher Sweets Wine cigarillos  
11 and then stating to ID that the exchange was because his store needed more Swisher Sweets Regular  
12 cigarillos). For these reasons, we are unable to accept that the petitioner's submissions validly  
13 document the purported exchange. Rather, we find that petitioner has not established that the seized  
14 tobacco products were tax paid, and that the tobacco products in question thus were properly seized  
15 and must be forfeited. Accordingly, we recommend that the petition be denied.

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17 Summary prepared by Cindy H. Chiu, Tax Counsel III (Specialist)