

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:)
KASHMIR SINGH KHINDA,)
dba Cigarettes and Cigar)
Petitioner)

Account Number: LR Q ET 91-221749
Case ID 549135

Sacramento, Sacramento County

Type of Business: Smoke shop
Seizure Date: April 30, 2010
Approximate Value of Products in Dispute: \$6,659.90¹

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 January 26, 2011 consent calendar, but was pulled from that calendar by Honorable Michelle Steel. This matter has thus been rescheduled as an adjudicatory item.

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), and whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b). We conclude that the cigarettes and tobacco products and should be forfeited.

¹ Consisting of 28 cartons and 24 packages of Bronco brand cigarettes and 1,664 of various tobacco products.
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

1 Petitioner, a sole proprietor, owns and operates Cigarettes and Cigar located at 5161 Madison
2 Avenue, Sacramento, California. Petitioner holds the cigarette and tobacco products retailer license
3 referenced above, and holds seller's permit SR KH 100-118692, for this location. Petitioner does not
4 hold a cigarette and tobacco products distributor or wholesaler license for this location.

5 On April 30, 2010, ID conducted a cigarette and tobacco products re-inspection of this
6 location.³ Petitioner was on the premises and authorized the inspection. During the inspection, ID
7 found all cigarettes in petitioner's inventory bore valid tax stamps. However, ID found 28 cartons and
8 34 packages of Bronco brand cigarettes, which were not listed in the CTD that was updated on March
9 1, 2010. Thus, as noted in the footnote above, it was illegal for petitioner to possess those cigarettes.

10 When ID requested invoices for petitioner's purchases of cigarettes and tobacco products for
11 the previous 12 months, petitioner provided invoices issued by licensed vendors Altadis USA, Inc.
12 Sahara Hookah, Globex Enterprises Incorporation, Habib Imports, Republic Tobacco, L.P., Phillips &
13 King, and Godfrey Group, Inc. Petitioner also stated that he purchased tobacco products from Casillas
14 Cigars, and provided ID with a Casillas Cigars invoice dated April 23, 2010. ID verified with the
15 Board's Special Taxes and Fees Division that Casillas Cigars is not a licensed vendor, and ID informed
16 petitioner that Casillas Cigars is not a licensed distributor or wholesaler. During the inspection, ID
17 found tobacco products located on shelves, behind the front counter, and in five humidors. Inside the
18 humidors, ID found cigars located inside an ice cream freezer. ID asked petitioner where he purchased
19 those cigars, and petitioner responded that he purchased those cigars from a vendor located in Los
20 Angeles. ID stated to petitioner that those cigars in the freezer are brands exclusively sold by Cuban
21 Crafters, an unlicensed out-of-state vendor located in Florida. Petitioner then admitted that he
22 purchased those cigars from a business located in Florida. ID asked petitioner to remove from each
23 humidor cigars purchased from Cuban Crafters. Petitioner went through each humidor and pulled
24 some boxes from each humidor. ID asked petitioner if there were any other cigars purchased from
25

26 not listed in the CTD are subject to seizure and forfeiture. (Rev. & Tax. Code, § 30436, subd. (e).)

27 ³ ID previously inspected Cigarettes and Cigar on February 28, 2008. As a result of that inspection, ID issued to petitioner
28 a Civil Citation for violations of Business and Professions Code section 22974 and 22974.3, subdivision (b). Petitioner
appealed those violations, and on July 31, 2009, the Special Taxes and Fees Division issued a Notice of Decision
dismissing the violation of Business and Professions Code section 22974.3, subdivision (b), but upheld the violation of
Business and Professions Code 22974.

1 Cuban Crafters, and petitioner responded no. Upon further inspection of the humidors, ID found more
2 boxes of cigars from Cuban Crafters. ID again asked petitioner if there were anymore Cuban Crafters
3 cigars located in the store, and petitioner again stated no. ID then found a hidden compartment to the
4 side of the front door of one of humidors and found more Cuban Crafters cigars inside the
5 compartment.

6 At the conclusion of the inspection, ID provided petitioner with information regarding the
7 Cigarette and Tobacco Licensing Act, including Publication 407, "Master Settlement Agreement." ID
8 explained the contents of Publication 407, which states that the Board will allow a retailer two weeks
9 to contact the vendor to obtain a credit for returning non-MSA cigarettes and, if the vendor provides
10 written notice to ID that it will take the product back and grant a credit, ID will return those seized
11 products to the vendor. The publication notes that the retailer may contact ID if it needs assistance
12 with contacting the vendor.

13 ID seized the non-MSA cigarettes and tobacco products not supported by invoices showing
14 payment of tax, and issued petitioner a Receipt for Property Seized and a Civil Citation for alleged
15 violations of Business and Professions Code sections 22974 and 22974.3, subdivision (b). On August
16 3, 2010, ID served petitioner with a Notice of Seizure and Forfeiture dated July 14, 2010, stating that
17 cigarettes and tobacco products valued at \$7,436.25 were seized and are subject to forfeiture under
18 Business and Professions Code section 22974.3 and Revenue and Taxation Code section 30436. Due
19 to the quantity of the tobacco products seized, a notice of seizure and forfeiture was posted on the
20 Board's website on July 30, 2010. (Rev. & Tax. Code, § 30437, subd. (b).)

21 Petitioner submitted a verified petition dated August 6, 2010, for release of all of the seized
22 tobacco products and cigarettes. Petitioner stated that in petitioner's case before the Sacramento
23 County Superior Court, the court did not convict petitioner of the violations of Business and
24 Professions Code section 22974.3, subdivision (b), or Revenue and Taxation Code section 30436.
25 Petitioner argues that since the Sacramento County Superior Court did not convict petitioner of those
26 violations there is no basis for the forfeiture of the seized cigarettes and tobacco products. Petitioner
27 also attached to the petition one invoice issued by Godfrey Group, Inc. Based on that invoice, ID
28 determined that tax had been paid on 15 bags of Bronco tobacco. In addition, ID determined that tax

1 had been paid on 69 Magnum cigars based upon the Casillas Cigars invoice dated April 23, 2010.
2 Therefore ID returned those products, with an approximate retail value of \$776.35 to petitioner,
3 leaving products with an approximate retail value of \$6,659.90 (\$524.75 - \$484.50) in ID's custody
4 and remaining in dispute.

5 In its Reply to Petition, ID asserts that the petition should be denied. ID asserts that the
6 outcome in petitioner's case with the Sacramento Superior Court is not determinative with respect to
7 the Board's consideration of the civil violations. ID states that the seized cigarettes are non-MSA
8 cigarettes not listed in the CTD, and therefore are subject to seizure and forfeiture under Revenue and
9 Taxation Code section 30436, subdivision (e). ID states that petitioner was provided Publication 78,
10 "Sales of Cigarettes and Tobacco Products in California," when the Board issued petitioner's license,
11 which informed petitioner that it may sell only those cigarettes listed on the CTD, and included a
12 website address for CTD maintained on the Attorney General's website.⁴ ID states that on March 1,
13 2010, the Attorney General placed a notice on the website that Bronco brand cigarettes could no longer
14 be stamped effective February 28, 2010, and a retailer may not sell those cigarettes after April 29,
15 2010. ID further states that at the conclusion of the inspection it provided petitioner with Publication
16 407. ID states that it explained to petitioner the contents of Publication 407 and that petitioner could
17 contact ID if it needed assistance with contacting the vendor to return the non-MSA cigarettes to the
18 vendor. However, ID states that petitioner did not contact ID for assistance.

19 ID states that petitioner has not shown tax has been paid on the tobacco products in question,
20 and therefore petitioner has not shown that those products were erroneously or illegally seized. ID
21 further states that petitioner was provided Publication 78, "Sales of Cigarettes and Tobacco Products in
22 California," when the Board issued petitioner's license, which informed petitioner that the law
23 prohibits the possession of untaxed tobacco products.

24 Revenue and Taxation Code section 30165.1, subdivision (e)(2), prohibits the possession or
25 sale of non-MSA cigarettes in this state. For purposes of Revenue and Taxation Code section 30436,
26 subdivision (e), non-MSA cigarettes lose their properly stamped status as of the date those cigarettes

27 _____
28 ⁴ The website address for the Attorney General's CTD is <http://ag.ca.gov/tobacco/directory.php>.

1 fall off the CTD. As such, non-MSA cigarettes are unlawful to possess and subject to seizure and
2 forfeiture. As discussed earlier, ID allows a retailer the opportunity to contact a vendor to obtain a
3 credit for returning seized non-MSA cigarettes to the vendor, and, if the vendor provides written notice
4 to ID that it will take the cigarettes back and grant a credit, ID will return those seized cigarettes to the
5 vendor. Here, ID provided Publication 407 to petitioner, and explained the contents of Publication
6 407. Therefore, we believe that petitioner was aware that if it wanted to obtain a credit for the non-
7 MSA cigarettes from its vendor, it needed to provide ID with written notice that the vendor would take
8 those cigarettes back, and ID would return those cigarettes to the vendor. Furthermore, ID stated to
9 petitioner that he could contact ID for assistance, but petitioner did not do so. Petitioner has not
10 established that the non-MSA cigarettes in question are not subject to seizure and forfeiture under
11 Revenue and Taxation Code section 30436, subdivision (e). Therefore, based upon the foregoing, we
12 conclude that the seized packages of non-MSA Bronco brand cigarettes were properly seized and must
13 be forfeited.

14 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
15 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
16 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
17 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
18 which complies with Business and Professions Code section 22978.4 and which shows that applicable
19 taxes have been paid. Here, petitioner has not presented invoices showing that tax has been paid on the
20 seized tobacco products remaining in custody. Therefore, those products were properly seized and
21 they must be forfeited.

22 Accordingly, we recommend that the petition be denied as to the non-MSA cigarettes and
23 tobacco products remaining in custody.

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