

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:)
KASSEM A. MOHAMED and)
MUNIR GAZEM OBAID,)
dba Colony Market)
Petitioner)

Account Number: LR Q ET 91-317227
Case ID 535640

Shafter, Kern County

Type of Business: Market
Seizure Date: May 11, 2010
Approximate Value: \$435.00¹

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 November 17, 2010 consent calendar, but was pulled by acting Board Member Barbara Alby.

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). We conclude that the seized cigarettes should be forfeited.

Petitioner, a partnership consisting of Mr. Kassem A. Mohamed and Mr. Munir Gazem Obaid, owns and operates Colony Market located at 18699 Beech Avenue, Shafter, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller’s permit SR ARH

¹ Consisting of 7 cartons and 32 packages of Bronco brand cigarettes.
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

1 101-287465, for this location. Petitioner does not hold a cigarette and tobacco products distributor or
2 wholesaler license for this location.

3 On May 11, 2010, ID conducted a cigarette and tobacco products inspection of this location.
4 Petitioner's employee, Yassinobib,³ was on the premises and authorized the inspection. During the
5 inspection, ID found cigarettes for sale behind the main sales counter. ID found all cigarettes in
6 petitioner's inventory bore valid tax stamps. However, included in that inventory were seven cartons
7 and 32 packages of Bronco brand cigarettes, which were not listed in the CTD. Thus, as noted in the
8 footnote above, it was illegal for petitioner to possess those cigarettes. At the conclusion of the
9 inspection, ID provided Yassinobib with information regarding the Cigarette and Tobacco Licensing
10 Act, including Publication 407, "Master Settlement Agreement." ID explained the contents of
11 Publication 407, which states that the Board will allow a retailer two weeks to contact the vendor to
12 obtain a credit for returning non-MSA cigarettes and, if the vendor provides written notice to ID that it
13 will take the product back and grant a credit, ID will return those seized products to the vendor. The
14 publication notes that the retailer may contact ID if it needs assistance with contacting the vendor.

15 ID seized the non-MSA cigarettes and issued petitioner a Receipt for Property Seized. On May
16 26, 2010, ID served petitioner with a Notice of Seizure of Forfeiture dated May 20, 2010, stating that
17 cigarettes valued at \$435.00 were seized and are subject to forfeiture under Revenue and Taxation
18 Code section 30436. Petitioner submitted a verified petition dated June 5, 2010, for release of all of
19 the seized cigarettes. Petitioner stated that the vendors should be blamed for selling the non-MSA
20 cigarettes to petitioner since they receive notice before the retailers that the cigarettes may no longer be
21 sold. Petitioner did not provide any additional information or arguments in support of its petition. The
22 Board Proceedings Division allowed petitioner until July 12, 2010, to provide documentation and
23 arguments to support its petition, but no documentation was received.

24 In its Reply to Petition, ID asserts that the petition should be denied because the seized items
25 are non-MSA cigarettes not listed in the CTD, and therefore are subject to seizure and forfeiture under
26 Revenue and Taxation Code section 30436, subdivision (e), even though they bear valid California tax
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28 not listed in the CTD are subject to seizure and forfeiture. (Rev. & Tax. Code, § 30436, subd. (e).)

1 stamps. ID states that petitioner was provided Publication 78, “Sales of Cigarettes and Tobacco
2 Products in California,” when the Board issued petitioner’s license, which informed petitioner that it
3 may sell only those cigarettes listed on the Attorney General’s CTD, and included a website address
4 for the CTD.⁴ ID states that on March 1, 2010, the Attorney General placed a notice on the website
5 that distributors may not stamp Bronco brand cigarettes effective February 28, 2010, and retailers may
6 not sell those cigarettes after April 29, 2010. ID further states that it provided petitioner with
7 Publication 407 and explained that petitioner could contact ID if it needed assistance with contacting
8 the vendor to return the non-MSA cigarettes to the vendor. However, ID states that petitioner did not
9 contact ID for assistance.

10 Revenue and Taxation Code section 30165.1, subdivision (e)(2), prohibits the possession or
11 sale of non-MSA cigarettes in this state. For purposes of Revenue and Taxation Code section 30436,
12 subdivision (e), non-MSA cigarettes lose their properly stamped status as of the date those cigarettes
13 fall off the CTD. As such, non-MSA cigarettes are unlawful to possess and subject to seizure and
14 forfeiture. Here, the Attorney General updated the CTD on March 1, 2010, advising retailers that the
15 Bronco brand cigarettes could no longer be sold after April 29, 2010. Despite this notice that the
16 Bronco brand cigarettes were being removed from the CTD, petitioner kept the Bronco brand
17 cigarettes in its retail inventory.

18 At the time of the inspection, the Bronco brand cigarettes were not listed on the CTD, and
19 therefore, ID seized those cigarettes. However, we note that ID did not issue a citation for the seizure
20 of the non-MSA cigarettes, and no fine or suspension of petitioner’s license will be imposed as a result
21 of the seizure. We further note that ID provided Publication 407 to petitioner’s employee Yassinobib,
22 and explained the contents of Publication 407. Therefore, we believe that petitioner was aware that if
23 wanted to obtain a credit for the non-MSA cigarettes from its vendor, it needed to provide ID with
24 written notice that the vendor would take those cigarettes back, and ID would return those cigarettes to
25 the vendor. Furthermore, ID stated to Yassinobib that petitioner could contact ID for assistance, but
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27 ³ It is unclear whether Yassinobib is the first or last name.

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

1 petitioner did not do so. Petitioner has not established that the non-MSA cigarettes in question are not
2 subject to seizure and forfeiture under Revenue and Taxation Code section 30436, subdivision (e).
3 Therefore, based upon the foregoing, we conclude that the seized packages of non-MSA Bronco brand
4 cigarettes were properly seized and must be forfeited. Accordingly, we recommend that the petition be
5 denied.

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

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