

1 that those invoices did not support the cigars in petitioner's inventory. Ms. Ortega stated that the
2 purchase invoices for the cigars were located at the main corporate office in Miami, Florida. Ms.
3 Ortega stated that the main office purchased cigars from Cigar Werks located in St. Charles, Illinois
4 and sent the cigars to several locations in California. ID contacted Cigar Werks to inquire whether it
5 was licensed in California. Cigar Werks provided distributor license LD Q 90-003009. ID found that
6 according to Board records, Cigar Werks' license was closed out effective December 31, 2006, and
7 Cigar Werks was not currently a licensed California supplier. In the absence of invoices showing
8 payment of tax and Cigar Werks' license being closed out, ID concluded that the cigars in petitioner's
9 inventory were not tax paid.

10 ID seized the cigars not supported by invoices showing payment of tax and issued petitioner a
11 Receipt for Property Seized and a Civil Citation for alleged violations of Business and Professions
12 Code sections 22974 and 22974.3, subdivision (b). On October 13, 2009, ID served petitioner with a
13 Notice of Seizure and Forfeiture dated October 9, 2009, which states that tobacco products valued at
14 \$665.61 were seized and are subject to forfeiture under Business and Professions Code section
15 22974.3. Petitioner submitted a verified petition dated October 21, 2009, for release of all of the
16 seized tobacco products. Petitioner stated that all of the cigars in question are tax paid, and provided
17 Cigar Werks purchase invoices dated March 23 and July 28, 2009. ID reviewed the provided purchase
18 invoices and stated that both invoices show the purchase of various Macanudo brand cigars and
19 includes a line item for tobacco tax being charged on the invoice. ID reviewed Board records and
20 found that although Cigar Werks' distributor license was closed out, Cigar Werks has been remitting
21 tax returns and making payment of excise taxes. Based on those invoices, ID determined that tax had
22 been paid on the seized Macanudo brand cigars, and therefore returned those products, with an
23 approximate retail value of \$325.78, to petitioner, leaving 17 Cohiba cigars with an approximate retail
24 value of \$339.83 (\$665.61 - \$325.78) in ID's custody and remaining in dispute.

25 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not
26 shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
27 shown that those products were erroneously or illegally seized. ID further states that petitioner was
28 provided Publication 78, "Sales of Cigarettes and Tobacco Products in California," when the Board

1 issued petitioner’s license, and therefore petitioner should have been aware that the law prohibits
2 possession of untaxed tobacco products.

3 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
4 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
5 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
6 applicable taxes have been paid. Here, petitioner has not presented invoices showing that tax has been
7 paid on the tobacco products remaining in custody. Therefore, those products were properly seized
8 and they must be forfeited. Accordingly, we recommend that the petition be denied with respect to the
9 tobacco products remaining in custody.

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11 Summary prepared by Cindy Chiu, Tax Counsel

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