

1 occurred and the tobacco products are tax paid where the retailer makes a contemporaneous record of
2 the exchange showing the date of exchange, the distributor or wholesaler's name and date the products
3 were purchased from the distributor or wholesaler, and a listing of the packaging, configuration, flavor
4 and amounts of products transferred, and retains a copy of this documentation along with a copy of the
5 purchase invoice evidencing a tax-paid purchase. Copies of the exchange documents should also be
6 retained at both the transferor location and the transferee location so that, upon inspection, there is no
7 dispute regarding whether they were in existence before the inspection or created because of the
8 inspection. Records documenting an exchange that are submitted some time after the alleged
9 exchange, particularly transfer records submitted after an inspection, are of little weight in establishing
10 that the exchange actually occurred.

11 While the paper petitioner provided describes Swisher products that are Grape and Wine
12 flavored, the paper does not contain a description of the configuration or packaging of the products
13 transferred. Therefore, we cannot identify exactly what tobacco products petitioner allegedly
14 transferred. The piece of paper also does not contain any distributor information so that piece of paper
15 does not specifically connect to any tobacco products listed on the invoices provided with its petition
16 dated October 6, 2010.² Petitioner did not retain a copy of the purchase invoice at Palm Bluffs Liquor
17 along with a copy of the recently submitted piece of paper.

18 According to ID, when it inspected petitioner's business on August 19, 2010, it did not find any
19 invoices or transfer records to support any of the tobacco products in question, and partner Mr. Vikram
20 Vohra stated during the inspection that petitioner did not have records documenting the transfer of
21 products. Prior to the Board hearing, petitioner had the opportunity to make known that it had this
22 piece of paper when it submitted its petition for release of the seized products or its opening brief, but
23 did not do so until the Board hearing. For these reasons, we are unable to accept that the petitioner's
24 submission validly documents the purported exchange. Rather, we find that petitioner has not
25 established that the seized tobacco products were tax paid, and that the tobacco products in question
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28 ² Petitioner provided three invoices from licensed distributor O.K. Sales issued to Fast 'N' Esy #4 containing products that match all of the seized products, which is why ID indicated at the hearing it would accept that the disputed products were tax-paid if petitioner could document the alleged transfer.

1 thus were properly seized and must be forfeited. Accordingly, we recommend that the petition be
2 denied.

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