

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

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:)
A2Z ASSOCIATES, INC.,)
dba Spirit Gas & Food Mart)
Petitioner)

Account Number: LR Q ET 91-290287
Case ID 506279
Corning, Tehama County

Type of Business: Mini mart
Seizure Date: May 14, 2009
Approximate Value of Products in Dispute: \$59.85¹

We have not held an appeals conference in this matter. This summary is prepared based on the information contained in the Petition, Revised Reply to Petition of the Investigations Division (ID), and related documents.

UNRESOLVED ISSUE

Issue: 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 tobacco products should be forfeited.

Petitioner, a corporation, owns and operates Spirit Gas & Food Mart located at 2015 Solano Street, Corning, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and holds seller's permit SR KHM 100-885040, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On May 14, 2009, ID conducted a cigarette and tobacco products inspection of this location. Petitioner's clerk, Mr. Eimad Abdulaziz, was on the premises and authorized the inspection. ID found that all cigarettes in petitioner's inventory were properly stamped. Mr. Eimad Abdulaziz had to leave the store, but shortly thereafter, petitioner's president Mr. Abdulaziz F. Abdulaziz arrived at the store.

¹ Consisting of 9 five-packs of Black & Mild wine flavored cigars and 6 seven-packs of Black & Mild Filter Tip cigars.

1 When ID requested invoices for petitioner's purchases of cigarettes and tobacco products for the
2 previous twelve months, Mr. Abdulaziz provided invoices from licensed suppliers MTC, Costco,
3 Kings, and Coremark. ID found that the provided invoices did not support a portion of petitioner's
4 tobacco products inventory, which were manufactured in November 2008 to March 2009, as tax paid.
5 Mr. Abdulaziz stated that some of the purchase invoices were located with the bookkeeper. ID asked
6 if the bookkeeper could fax the purchase invoices to the store, but Mr. Abdulaziz stated that the
7 bookkeeper was unavailable. Mr. Abdulaziz asked if he could go to his house about 15 minutes away
8 to see if he had some purchase invoices there. ID agreed to let Mr. Abdulaziz go to his house to look
9 for additional purchase invoices. When Mr. Abdulaziz returned to the store, he stated that he was
10 unable to find any additional purchase invoices.

11 ID seized the tobacco products not supported by invoices showing payment of tax, and issued
12 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and
13 Professions Code sections 22974 and 22974.3, subdivision (b). On June 18, 2009, ID served petitioner
14 with a Notice of Seizure and Forfeiture dated June 10, 2009, which states that tobacco products valued
15 at \$320.40 were seized and are subject to forfeiture under Business and Professions Code section
16 22974.3. Petitioner submitted a verified petition dated June 24, 2009, for release of all of the seized
17 tobacco products, and attached to the petition two purchase invoices from Costco and one purchase
18 invoice from licensed supplier King Wholesale. Petitioner stated that it forgot to make copies of these
19 invoices before providing them to its bookkeeper. Based on those invoices, ID determined that tax had
20 been paid on a portion of the seized tobacco products, and therefore returned those products, with an
21 approximate retail value of \$233.16. Subsequently on January 20, 2010, Staff re-reviewed the Costco
22 invoices submitted with the petition, and determined that tax had been paid on the 11 tins of Grizzly
23 Wintergreen flavored tobacco, with an approximate retail value of \$27.39, based upon the Costco
24 invoice dated May 13, 2009. Therefore, ID will return the 11 tins of Grizzly Wintergreen flavored
25 tobacco to petitioner, leaving products with an approximate retail value of \$59.85 ($\$320.40 - \$233.16 -$
26 $\$27.39$) in ID's custody and remaining in dispute.

27 In its Reply to Petition, ID asserts that the petition should be denied and the tobacco products
28 remaining in custody should be forfeited because the invoices provided do not show that tax has been

1 paid on those products, and therefore petitioner has not shown that those products were erroneously or
2 illegally seized. ID states that provided invoices do not contain any of the remaining tobacco products
3 in custody. ID states that the King Wholesale invoice lists Black & Mild “Fast Break,” “Wood Tip,”
4 and “Regular” cigars, but those products are different from the Black & Mild Wine flavored and Filter
5 Tip cigars in custody.

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

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14 Summary prepared by Cindy Chiu, Tax Counsel