

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:)

ADOBE BEVERAGES AND FOODS, INC.,)
dba Adobe BVGS and Deli)

Account Number: LR Q ET 91-235168
Case ID 506102

Petitioner)

Petaluma, Sonoma County

Type of Business:

Market

Seizure Date:

May 29, 2009

Approximate Value of Products in Dispute:

\$166.00¹

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.

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 Adobe BVGS and Deli located at 1410 S. McDowell Boulevard, Suite E, Petaluma, California. Petitioner holds the cigarette and tobacco products retailer license² referenced above and seller's permit SR JH 97-987474, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

¹ Consisting 6 pouches of Redman Chewing tobacco, 1 eight-pack of Romeo Y Julietas Petit Julietas cigars, 40 Primetime Happy Hour cigars, 5 Antonio Y Cleopatra Grenadier Coronas cigars, 10 five-packs of Optimo cigarillos, 1 pouch of Beach Nut chewing tobacco, 1 pouch of Drum Halfzware Shag roll-your-own tobacco, and 2 tins of Rooster Long Cut tobacco.

² According to Board records, petitioner's license was closed out on September 24, 2007, because the corporation had been suspended. Subsequently, on June 11, 2009, the license was reinstated when petitioner revived the corporation back to active status.

1 On May 29, 2009, ID conducted a cigarette and tobacco products inspection of this location.
2 Mr. Tilak Raj Shukla, petitioner's president, was on the premises and authorized the inspection. ID
3 found that all cigarettes were properly stamped. ID requested to see petitioner's license. In response,
4 Mr. Shukla stated that petitioner did not possess a valid license, and that he was aware that petitioner
5 was not authorized to sell cigarettes or tobacco products without a license. ID requested invoices for
6 petitioner's purchases of cigarettes and tobacco products for the previous twelve months, and
7 Mr. Shukla provided ID with some purchase invoices. ID found that the provided purchase invoices
8 listed as the purchaser Washington Market located at 905 E. Washington Street, Petaluma, California,
9 which is another store location owned by Mr. Shukla. Mr. Shukla stated that he used the Washington
10 Market license to purchase tobacco products for Adobe BVGS and Deli because the license for Adobe
11 BVGS and Deli was closed out. ID found that those invoices did not support a portion of petitioner's
12 tobacco products inventory. ID asked Mr. Shukla for additional invoices, but he was unable to provide
13 any invoices for the tobacco products in question.

14 ID seized the tobacco products not supported by invoices showing payment of tax, and issued
15 petitioner a Receipt for Property Seized and Civil Citation 4529 for alleged violations of Business and
16 Professions Code sections 22974, 22974.5, 22980.2, subdivision (a), and 22974.3, subdivision (b). On
17 July 3, 2009, ID served petitioner with a Notice of Seizure and Forfeiture dated June 27, 2009, which
18 states that tobacco products valued at \$325.00 were seized and are subject to forfeiture under Business
19 and Professions Code section 22974.3.

20 Petitioner submitted a verified petition dated July 16, 2009, for release of all of the seized
21 tobacco products and attached to the petition one invoice from Altadis and three invoices from
22 California Wholesale, both licensed vendors, to prove that tax was paid on those products.³ In
23 addition, petitioner stated that some of the seized tobacco products were over a year old.

25 ³ Petitioner also submitted a second verified petition dated July 17, 2009, in which petitioner addressed the potential
26 suspension of petitioner's license and explained how the corporation came to be suspended, which led to petitioner's
27 cigarette and tobacco license being closed out on September 24, 2007. We note that the facts surrounding the close-out of
28 petitioner's license and potential suspension are not relevant to whether the tobacco products in question were erroneously
or illegally seized. In addition, petitioner has appealed the Notice of Violation that was issued on July 10, 2009, and the
matter is being set for a conference with the Excise Taxes Division, which is the appropriate forum for petitioner to address
the potential suspension of petitioner's license.

1 Based on those invoices, ID determined that tax had been paid on a portion of the seized tobacco
2 products, and therefore returned those products, with an approximate retail value of \$159.00, to
3 petitioner, leaving products with an approximate retail value of \$166.00 (\$325.00 - \$159.00) in ID's
4 custody and remaining in dispute.⁴ In addition, ID asked petitioner to submit any additional purchase
5 invoices for the remaining seized tobacco products over one year old. To date, petitioner has not
6 provided any additional invoices.

7 In its Reply to Petition, ID asserts that the petition should be denied and the tobacco products
8 remaining in custody should be forfeited because the invoices provided do not show that tax has been
9 paid on those products, and therefore petitioner has not shown that those products were erroneously or
10 illegally seized. ID states that the California Wholesale invoice dated June 24, 2009, provided with the
11 petition cannot support any of the tobacco products in question since that invoice is after the date of the
12 inspection. ID further states that the remaining tobacco products in question are not listed on any of
13 the provided invoices.

14 Business and Professions Code section 22974.3, subdivision (b), provides that, where any
15 person 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 petitioner bears the burden of proving that the
17 applicable taxes have been paid. Here, petitioner has not presented invoices showing that tax has been
18 paid on the tobacco products remaining in custody. Therefore, those products were properly seized
19 and they must be forfeited. Accordingly, we recommend that the petition be denied with respect to the
20 tobacco products remaining in custody.

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22 Summary prepared by Cindy Chiu, Tax Counsel
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27 ⁴ We note that the invoices issued by California Wholesale list Washington Market as the purchaser rather than Adobe
28 BVGS and Deli and therefore do not comply with the requirements of Business and Professions Code section 22978.4. However, ID determined that the tobacco products listed therein are tax paid based upon petitioner's assertion that he purchased tobacco products for the Adobe BVGS & Deli store location using the Washington Market license, and returned a portion of the seized tobacco products based upon some of those invoices.