

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:)

AVIS CORPORATION)
dba Jackson 76)

Account Number: LR Q ET 91-243175
Case ID 457948

Petitioner)

Hayward, Alameda County

Type of Business: Gas station and mini mart

Seizure Date: April 8, 2008

Approximate Value: \$34.71¹

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, operates Jackson 76, a gas station and mini mart located at 210 West Jackson Street, Hayward, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit number SR CH 97-497363, for this business location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

¹ ID seized tobacco products consisting of 13 pouches of Bugler roll-your-own (RYO) tobacco, 14 pouches of Midnight Special RYO tobacco, 2 pouches of Top RYO tobacco, and 9 five-packs of Swisher Sweets cigarillos, with an approximate value of \$116.82. However, based on ten purchase invoices provided with the petition, ID concluded that petitioner had paid tax on seized tobacco products consisting of 12 pouches of Bugler RYO tobacco, 14 pouches of Midnight Special RYO tobacco, 2 pouches of Top RYO tobacco, and 1 five-pack of Swisher Sweets cigarillos, with an approximate value of \$82.11, and ID returned those products to petitioner. The tobacco products which remain in dispute are one pouch of Bugler RYO tobacco and eight five-packs of Swisher Sweets grape cigarillos, with a combined approximate value of \$34.71.

1 On April 8, 2008, ID conducted a cigarette and tobacco products inspection of this location.
2 Petitioner's cashier, Arun Kumar, was on the business premises and authorized the inspection. During
3 the inspection, ID found a number of tobacco products for which petitioner could not show that tax
4 was paid. ID seized those tobacco products and issued a Receipt for Property Seized and a Civil
5 Citation for violation of Business and Professions Code sections 22980, subdivision (b), 22974, and
6 22974.3, subdivision (b). Subsequently, ID served petitioner with a Notice of Seizure and Forfeiture
7 dated May 28, 2008, which states that tobacco products valued at \$116.82 were seized and are subject
8 to forfeiture under Business and Professions Code section 22974.3.

9 Petitioner submitted a verified petition dated June 24, 2008, for release of the seized tobacco
10 products, stating that it purchased all of the seized tobacco products from "legal distributors," purchase
11 invoices for all of those products were provided at the time of the inspection, and purchase invoices
12 attached to the petition show that petitioner paid tax on all of the seized products.² As noted above,
13 after reviewing those invoices, ID determined that petitioner had paid tax on a portion of the seized
14 tobacco products and returned those products to petitioner. The tobacco products which remain in
15 dispute consist of one pouch of Bugler RYO tobacco manufactured in September 2007, and eight five-
16 packs of Swisher Sweets grape cigarillos manufactured in February 2008, with a combined
17 approximate value of \$34.71.

18 In its Reply to Petition, ID recommends that the petition be denied with respect to the tobacco
19 products remaining in dispute because the invoices petitioner provided both during the inspection and
20 with the petition do not show that it paid tax on those products, ID states that with respect to the eight
21 five-packs of Swisher Sweets grape cigarillos in dispute, the available invoices include purchases of
22 such product made through December 2007, and that they therefore do not include the seized products
23 that were manufactured later, in February 2008. With respect to the one pouch of Bugler RYO
24 tobacco, ID states that all of the Bugler RYO product seized during the inspection was manufactured in

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26 ² Those invoices are all issued by licensed distributors, as follows: (1) one invoice, dated March 12, 2008, issued by On
27 Time Distributor, Inc.; (2) six invoices, dated February 22, 2007, May 18, 2007, June 5, 2007, September 19, 2007,
28 November 23, 2007, and December 22, 2007, issued by All Stars Distributor, Inc.; and (3) three invoices, dated April 26,
2007, July 12, 2007, and December 31, 2007, issued by Pitco Foods.

1 or after September 2007, and the only available invoice which could possibly include that product is
2 invoice number 0227, dated March 12, 2008, issued by On Time Distributor, Inc., which includes one
3 box (twelve pouches) of Bugler RYO tobacco. However, since that invoice has already served as the
4 basis for the return of twelve pouches of Bugler RYO to petitioner, there are no additional documented
5 tax-paid purchases to support release of the one pouch which remains in dispute.

6 Business and Professions Code section 22974.3, subdivision (b), provides that, where any
7 person 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, and petitioner bears the burden of proving that the
9 applicable taxes have been paid. Here, since petitioner did not present invoices showing that tax was
10 paid on the seized tobacco products which remain in dispute, those tobacco products must be forfeited.

11 We therefore recommend that the petition be denied with respect to the tobacco products which
12 remain in dispute.

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15 Summary prepared by Cindy Chiu, Tax Counsel
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