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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:)
BRENTWOOD EMPORIUM,)
dba Brentwood Emporium)
Petitioner)

Account Number: LR Q ET 91-262873
Case ID 518190
Brentwood, Contra Costa County

Type of Business: Convenience store
Seizure Date: June 5, 2009
Approximate Value: \$1,253.52¹

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 partnership consisting of Mr. Larry L. Lindsay, Ms. Patricia Ann Lindsay, and Mr. Larry Laron Lindsay, owns and operates Brentwood Emporium located at 561 1st Street, Brentwood, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit SR BH 100-523716, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On June 2, 2009, ID conducted a cigarette and tobacco products inspection of this location. Partner Mr. Larry Laron Lindsay was on the premises and authorized the inspection. ID found that all

¹ Consisting of the following cigars: 119 Plasencia, 25 Consuegra, 20 Oliveros, 6 J.R.6 H. Upmann, 24 Dominican Estates, 47 Flor de Baloney, 1 Belinda, and 1 Don Diego.

1 cigarettes were properly stamped. When ID requested petitioner's purchase invoices for the previous
2 twelve months, Mr. Larry Laron Lindsay telephoned, Mr. Larry L. Lindsay, his partner and father, who
3 arrived at the store shortly thereafter with some purchase invoices. ID found that those invoices did
4 not support the cigars located in the display case. Mr. Larry Laron Lindsay stated that the purchase
5 invoices for the tobacco products were unavailable, and stated that they would fax the purchase
6 invoices to ID.

7 On June 4, 2009, ID received a fax from partner Ms. Patricia Lindsay with invoices from J.R.
8 Tobacco of America, Inc. (J.R.), an unlicensed out-of-state vendor located in Burlington, North
9 Carolina. ID notes that the J.R. invoice includes 44 boxes of various cigars, but states that the J.R.
10 invoice did not contain a statement that California cigarette and tobacco product taxes are included in
11 the total amount of this invoice in accordance with BPC section 22978.4.² On June 5, 2009, ID
12 returned to petitioner's store and informed Mr. Larry Laron Lindsay that the J.R. invoice faxed to ID
13 did not support the cigars in the display case as tax paid and therefore those cigars were subject to
14 seizure.

15 ID seized the tobacco products not supported by invoices showing payment of tax, and issued
16 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and
17 Professions Code sections 22974 and 22974.3, subdivision (b). On July 3, 2009, ID served petitioner
18 with a Notice of Seizure and Forfeiture dated June 27, 2009, which states that tobacco products valued
19 at \$1,253.52 were seized and are subject to forfeiture under Business and Professions Code section
20 22974.3. Petitioner submitted a verified petition dated July 21, 2009, for release of all of the seized
21 tobacco products, stating that it has paperwork to present to the Board. The Board Proceedings
22 Division allowed petitioner until September 8, 2009, to provide documentation and arguments to
23 support its petition, but no documentation was received.

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25 ² Business and Professions Code section 22978.4 requires, among other things, that invoices for purchases of cigarettes and
26 tobacco products include the name, address, telephone number and license number of the distributor or wholesaler making
27 the sale; the name, address and license number of the retailer, distributor or wholesaler to whom the cigarettes or tobacco
28 products are sold; and the amount of excise taxes due to the Board by the distributor on the sale of cigarettes and tobacco
products. Invoices issued by a distributor that is also a retailer or manufacturer shall include either: (1) the statement "All
California cigarette and tobacco product taxes are included in the total amount of this invoice," or (2) the amount of excise
taxes due to the Board by the distributor on the distribution of cigarettes and tobacco products.

1 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not
2 shown that tax has been paid on the tobacco products in question. ID states that at the time the tobacco
3 products in question were purchased, neither petitioner nor J.R. was a licensed California distributor,
4 wholesaler, manufacturer, or importer. ID states that petitioner should have been aware of its
5 responsibilities with respect to purchases of untaxed tobacco products because when the Board issued
6 petitioner’s license, the Board provided petitioner with Publication 78, “Sales of Cigarettes and
7 Tobacco Products in California,” which states that “you must obtain a distributor’s [sic] license before
8 you purchase cigarettes or tobacco products from an out-of-state seller who does not have a license
9 issued under this law.” ID further states that the J.R. invoice does not establish that tax has been paid
10 on the tobacco products in question.

11 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
12 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
13 products are subject to seizure and forfeiture. Petitioner has the burden of proving that the applicable
14 taxes have been paid to the Board either by proof of such payment, or by a purchase invoice which
15 complies with Business and Professions Code section 22978.4 and which shows that applicable taxes
16 have been paid. Petitioner has not provided evidence showing that tax has been paid on the tobacco
17 products in question. Therefore, those products were properly seized and they must be forfeited.
18 Accordingly, we recommend that the petition be denied.

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20 Summary prepared by Cindy Chiu, Tax Counsel
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