

**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: )  
MIKHAIL DORGHALLI, )  
dba Smoke 4 Less )  
Petitioner )

Account Number: LR Q ET 91-312467  
Case ID 506147  
Lancaster, Los Angeles County

Type of Business: Smoke shop  
Seizure Date: April 21, 2009  
Approximate Value: \$973.00<sup>1</sup>

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. This matter was scheduled to be presented to the Board at the December 15, 2009 Board meeting as a consent item, but was rescheduled for Board hearing on January 26, 2010, at petitioner's request.

**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 sole proprietor, owns and operates Smoke 4 Less located at 2839 W Avenue L, Lancaster, California. Petitioner holds the cigarette and tobacco products retailer license referenced above (start date March 19, 2009), and holds seller's permit SR X AR 101-174456 (start date January

<sup>1</sup> Consisting of 4 12-pouch boxes of Bugler roll-your-own (RYO) tobacco, 17 pouches of Bugler RYO tobacco, 3 60-count boxes of Optimo cigarillos, 4 60-count boxes of Swisher Sweets cigarillos, 5 10/5-packs of Black & Mild cigars, 20 six-packs of Swisher Sweets cigars, 14 pouches of Top RYO tobacco, 2 25-count boxes of Black & mild cigars, 10 B1G1 five-packs of Black & Mild cigars, 14 five-packs of Black & Mild cigars, 76 singles Swisher Sweets cigarillos, and 45 single Optimo cigarillos.

1 1, 2009), for this location. Petitioner does not hold a cigarette and tobacco products distributor or  
2 wholesaler license for this location.

3 On April 21, 2009, ID conducted a cigarette and tobacco products inspection of this location.  
4 Petitioner's administrative assistant, Ms. Barbara Maurie Newsome, was on the premises and  
5 authorized the inspection. ID found that all cigarettes were properly stamped. When ID requested  
6 invoices for petitioner's purchases of cigarettes and tobacco products since the start date petitioner's  
7 license, Ms. Newsome provided invoices issued in March and April 2009 from licensed vendors Sam's  
8 Club and Costco. ID found that those invoices did not contain any purchases of tobacco products. ID  
9 explained to Ms. Newsome that the provided invoices did not support cigarettes and tobacco products  
10 found in the back storage room. Ms. Newsome stated that some invoices were at petitioner's home,  
11 and she telephoned petitioner. ID spoke with petitioner, and asked why there were no purchase  
12 invoices for the tobacco products. Petitioner advised that he would come to the store, and shortly  
13 thereafter, petitioner arrived at the store, but did not have any purchase invoices to support the tobacco  
14 products as tax paid. Petitioner stated that he could provide the invoices the following business day.  
15 Petitioner stated that the purchase invoices for the tobacco products were located with licensed vendor  
16 P. Traders and that he paid cash for the tobacco products. When ID asked if petitioner received any  
17 purchase invoices from P. Traders, petitioner stated that he did not.

18 ID seized the tobacco products not supported by invoices showing payment of tax, and issued  
19 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and  
20 Professions Code sections 22974 and 22974.3, subdivision (b). On April 22, 2009, ID contacted P.  
21 Traders, and spoke with a representative by the name of "Raj."<sup>2</sup> Raj stated that he has no record of  
22 selling tobacco products to petitioner, and stated that he always provided a purchase invoice for  
23 products sold. On June 18, 2009, ID served petitioner with a Notice of Seizure and Forfeiture dated  
24 June 11, 2009, which states that tobacco products valued at \$973.00 were seized and are subject to  
25 forfeiture under Business and Professions Code section 22974.3. Petitioner submitted a verified  
26 petition dated July 9, 2009, for release of all of the seized tobacco products, stating that all of the  
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28 <sup>2</sup> We do not know if Raj is the first or last name.

1 tobacco products in question are tax paid and that those tobacco products were purchased from the  
2 store's previous owner. Petitioner did not provide any supporting documentation with his petition.  
3 The Board Proceedings Division allowed petitioner until September 8, 2009, to provide documentation  
4 and arguments to support its petition. In addition, ID contacted Ms. Newsome to obtain additional  
5 invoices. Ms. Newsome stated that she was trying to obtain invoices from the previous owner, but  
6 stated that the previous owner may have thrown away the purchase invoices. ID stated that  
7 Ms. Newsome was unable to provide any additional documentation to ID.

8 In its Reply to Petition, ID states that petitioner has not submitted any invoices to support the  
9 tobacco products in question as tax paid and that, with the exception of 27 pouches of Bugler RYO and  
10 10 B1G1 five-packs of Black & Mild cigars, the manufacture dates of the seized tobacco products are  
11 in 2009, after the date petitioner purchased the business. Thus, ID asserts that the petition should be  
12 denied because petitioner has not shown that tax has been paid on the tobacco products in question.

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

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22 Summary prepared by Cindy Chiu, Tax Counsel  
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