



1 ID found that all cigarettes were properly stamped. When ID requested invoices for petitioner's  
2 purchases of cigarettes and tobacco products for the previous twelve months, Mr. Krayem provided  
3 invoices for the period of October through December 2008 from licensed distributors C.W. Brower,  
4 Costco, and Godfrey Group (Godfrey), and purchase invoices for May 2008 from Shaq Distributor  
5 (Shaq). ID found that those invoices did not support the majority of Swisher Sweets, Optimo,  
6 Copenhagen, Bugler, and Midnight Special brand tobacco products in petitioner's inventory. ID asked  
7 Mr. Krayem where petitioner purchased those products, and he replied from either Godfrey or Shaq.  
8 ID also asked Mr. Krayem if petitioner purchased tobacco products from any other vendors, and he  
9 replied that she did not. However, Mr. Krayem also stated that his son recently purchased tobacco  
10 products, but he was unable to locate the invoice for that purchase or contact his son by telephone. In  
11 addition, Mr. Krayem stated that petitioner's accountant had most of petitioner's purchase invoices,  
12 and he unsuccessfully attempted to telephone the accountant several times during the inspection.

13 ID then seized the tobacco products not supported by invoices showing payment of tax and  
14 issued petitioner a Receipt for Property Seized and a Civil Citation for violations of Business and  
15 Professions Code sections 22974 and 22974.3, subdivision (b). Subsequently, ID served petitioner  
16 with a Notice of Seizure and Forfeiture dated December 31, 2008, which states that tobacco products  
17 valued at \$481.00 were seized and are subject to forfeiture under Business and Professions Code  
18 section 22974.3. Petitioner submitted a verified petition dated January 22, 2009, for release of all of  
19 the seized tobacco products, to which she attached two purchase invoices issued by C.W. Brower, one  
20 invoice issued by Godfrey, and six invoices issued by Shaq. Petitioner states that she is new to the  
21 business, and she purchases from licensed vendors as evidenced by her purchase invoices. Petitioner  
22 further states that those invoices were located in the store at the time of the inspection, but her husband  
23 was unable to find them because petitioner is the one who takes care of them. ID reviewed those  
24 invoices and based on the invoice from Godfrey, ID determined that tax had been paid on a portion of  
25 the seized tobacco products with an approximate retail value of \$258.00, and returned those products  
26 to petitioner, leaving products with an approximate value of \$223 (\$481 - \$258) in ID's custody and  
27 remaining in dispute.

28

1 In its Reply to Petition, ID asserts that the petition should be denied and the tobacco products  
2 remaining in custody should be forfeited because the invoices provided to date do not show that tax  
3 has been paid on those products, and therefore petitioner has not shown that those products were  
4 erroneously or illegally seized. With respect to the invoices attached to the petition, ID states that it  
5 reviewed C.W. Brower invoice no. 860614, dated November 21, 2008, during the inspection, and no  
6 tobacco products on that invoice were seized. Also, ID states that although C.W. Brower invoice no.  
7 824163, dated June 21, 2008, includes Copenhagen tobacco products, those purchases were made prior  
8 to the manufacture date of the Copenhagen tobacco products in custody. With respect to the Shaq  
9 invoices attached to the petition, ID states that they appear to be the same May 2008 invoices reviewed  
10 during the inspection (and no products on those invoices were seized), although some of them appear  
11 to be dated in August 2008. ID asserts that those invoices do not show that tax has been paid on any of  
12 the tobacco products remaining in custody because: (1) those invoices do not include such products; or  
13 (2) those invoices were issued before the products in custody were manufactured.

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, since petitioner did not present invoices showing that tax was  
18 paid on the tobacco products which remain in dispute, those tobacco products must be forfeited. We  
19 therefore recommend that the petition be denied with respect to the tobacco products remaining in  
20 dispute.

21  
22 Summary prepared by Cindy Chiu, Tax Counsel  
23  
24  
25  
26  
27  
28