

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION FINAL ACTION SUMMARY

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:)
ZUMA ARC, INC.)
Petitioner)

Account Number: LR Q ET 91-244209
Case ID 466074
Malibu, Los Angeles County

Type of Business: Gas station and mini mart
Seizure Date: May 15, 2008
Approximate Value of Disputed Products: \$368.47¹

This appeal was originally scheduled for decision by the Board on its consent calendar, but was removed by Honorable Bill Leonard. It was then brought back for decision on the Board's May 27, 2009 adjudicatory calendar, at which time the Board granted petitioner 30 days to provide additional supporting documentation and 30 days for the Investigations Division (ID) to respond. This appeal was then scheduled for decision on November 17, 2009, but was put over to the next Board meeting.

The Appeals Division recommended that the Board deny this appeal at its meeting on May 27, 2009, because petitioner was unable to provide invoices to show that tax had been paid on the tobacco products in question. Although petitioner's store location had been burglarized on or about May 11, 2008, and we recognized the possibility that some of petitioner's purchase invoices may have been lost as a result, petitioner also purchased from unlicensed suppliers, as evidenced by the incomplete invoices submitted by petitioner. We concluded that petitioner had failed to establish that tax had been paid with respect to the tobacco products remaining in dispute, and that such products were properly seized and should be forfeited.

FURTHER DEVELOPMENTS

Petitioner had indicated that there might be some records to show that tax was paid on the

¹ Consisting of 50 five-packs of Swisher Sweets cigarillos, 9 cans of Copenhagen chewing tobacco, and 21 cans of Skoal chewing tobacco.

1 seized Skoal and Copenhagen chewing tobacco, though petitioner also indicated that it was unable to
2 provide an invoice for those tobacco products because petitioner had received them in an exchange of
3 products with licensed vendor US Smokeless Tobacco and petitioner had not been issued an invoice
4 for the exchange.

5 On June 1, 2009, ID contacted Mr. Ryan Guilds, Associate Attorney for US Smokeless
6 Tobacco, to verify petitioner's allegation that there was an exchange of the Skoal and Copenhagen
7 chewing tobacco manufactured by US Smokeless Tobacco, prior to the May 15, 2008 inspection. On
8 June 19, 2009, Mr. Guilds contacted ID and stated that US Smokeless Tobacco had reviewed its
9 records and determined that no exchange of products had ever taken place with petitioner. Mr. Guilds
10 further stated that as a matter of company policy, US Smokeless Tobacco generates invoices on all
11 product exchanges that are made with retailers and had an exchange taken place with petitioner, its
12 records would have reflected such an exchange.

13 On September 18, 2009, petitioner submitted a July 5, 2007 invoice issued by licensed vendor
14 LMS International, Inc. to show that tax had been paid on the seized Swisher Sweets cigarillos. ID
15 advises that the Swisher Sweets cigarillos in question were manufactured in November and December
16 2007, which is after the date of the submitted invoice. Therefore, the proffered invoice does not
17 support petitioner's assertion that tax was paid on the tobacco products in question.

18 Business and Professions Code section 22974.3, subdivision (b), provides that, where any
19 person holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
20 products are subject to seizure and forfeiture, and petitioner bears the burden of proving the applicable
21 taxes have been paid. Here, petitioner has not presented purchase invoices or an exchange invoice
22 showing that tax was paid on the tobacco products which remain in dispute. Furthermore, ID
23 confirmed with US Smokeless Tobacco that no exchange of products took place with petitioner, which
24 undermines petitioner's assertion that there was an exchange of Skoal and Copenhagen chewing
25 tobacco. Accordingly, we conclude that the seized tobacco products must be forfeited, and
26 recommend that the petition be denied with respect to the tobacco products remaining in dispute.

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28 Summary prepared by Cindy Chiu, Tax Counsel