

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

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4 In the Matter of the Petition for Release of)
5 Seized Property Under the Cigarette and)
6 Tobacco Products Tax Law and the Cigarette)
7 and Tobacco Products Licensing Act of 2003 of:)
8 U.S. Business Associates, Inc.) Account Number: LR Q ET 91-280652
9 dba Punjab International) Case ID 469810
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Type of Business: Convenience store

Seizure Date: July 30, 2008

Approximate Value of Disputed Product: \$940.00¹

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 for Board hearing on April 15, 2009, but was postponed to May 28, 2009, at the request of petitioner's representative.

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, owns and operates Punjab International, a convenience store at 2338 Florin Road, Sacramento, California. Petitioner holds the cigarette and tobacco products retail license referenced above, and seller's permit number SR KH 100-688561, for this business location.

Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

¹ Consisting of two 25-count boxes of Black & Mild Wine flavored pipe tobacco, two 60-count boxes of Optimo Mint cigarillos, two 60-count boxes of Swisher Sweets Cinnamon cigarillos, one 50-count box of Swisher Sweets Giant cigars, two 60-count boxes of Swisher Sweets Tequila flavored cigarillos, three 50-count boxes of White Owls Sport cigars, nine 12-pouch boxes of Bugler roll-your-own (RYO) regular tobacco, and one 12-pouch box of Bugler RYO menthol flavored tobacco.

1 On July 30, 2008, ID conducted a cigarette and tobacco products inspection of this location.
2 Petitioner's treasurer, Mr. Satwan Rai Verma, was on the business premises and authorized the
3 inspection. ID found that all cigarettes were properly stamped. ID states that it asked Mr. Verma
4 where petitioner purchased several boxes of tobacco products that were stacked behind the store
5 counter, and he replied that an employee from licensed distributor United Wholesale delivered them
6 the previous night, without his approval, and petitioner was only interested in purchasing a few of
7 those products and intended to return the rest. According to ID, Mr. Verma indicated that United
8 Wholesale provided no invoices for those products. ID states that it then telephoned the owner of
9 United Wholesale, who confirmed Mr. Verma's statements and indicated that he was unable to leave
10 an invoice for those products because his computer printer was not working at the time of delivery, but
11 he would immediately fax the invoice to petitioner's store.

12 ID states that it then asked Mr. Verma for petitioner's cigarette and tobacco products purchase
13 invoices, and he provided three boxes containing the store's purchase invoices for a variety of
14 products, for several years, and two binders containing cigarette and tobacco products purchase
15 invoices from licensed vendors Costco and Pitco. ID then found a large inventory of tobacco products
16 in a storage area in the back of the store. Shortly thereafter, United Wholesale faxed an invoice to the
17 store. ID reviewed the purchase invoices petitioner provided and found that all of those invoices had
18 been issued by licensed vendors. However, ID concluded that the invoices provided did not support a
19 significant portion of the tobacco products in petitioner's inventory at the time of the inspection. ID
20 then seized the tobacco products not supported by invoices showing payment of tax, and issued
21 petitioner a Receipt for Property Seized and a Civil Citation for violations of Business and Professions
22 Code sections 22974, and 22974.3, subdivision (b). Subsequently, ID served petitioner with a Notice
23 of Seizure and Forfeiture dated October 10, 2008, which states that tobacco products valued at
24 \$1,895.00 were seized and are subject to forfeiture under Business and Professions Code
25 section 22974.3. Due to the quantity of the tobacco products seized, a notice of seizure and forfeiture
26 was posted on the Board's website on October 20, 2008. (Rev. & Tax. Code, § 30437, subd. (b).)

27 Petitioner submitted a verified petition dated October 26, 2008, for release of all of the seized
28 tobacco products, to which it attached copies of two invoices issued by distributor United Wholesale to

1 show that tax had been paid on those products, dated April 22, 2008, and May 19, 2008. Petitioner
2 also attached a declaration signed under penalty of perjury by Mr. Jaswant Singh, which states that he
3 is the owner of United Wholesale, and that he personally delivered the tobacco products listed on the
4 invoices attached to the petition to petitioner's store. After reviewing those invoices, ID determined
5 that tax had been paid on a portion of the seized tobacco products, with an approximate value of
6 \$955.00, and therefore ID returned those products to petitioner. Thus, the tobacco products remaining
7 in custody and in dispute have a combined approximate value of \$940.00.

8 In its Reply to Petition, ID asserts that the petition should be denied with respect to the tobacco
9 products remaining in dispute because the invoices petitioner provided both during the inspection and
10 with the petition do not show that tax has been paid on those products. ID points out that although
11 United Wholesale's invoice dated April 22, 2008, includes Bugler RYO regular tobacco, it does not
12 support release of the nine 12-pouch boxes of Bugler RYO regular tobacco remaining in custody
13 because that product was manufactured during May 2008, after the invoice was issued.

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, petitioner has not presented invoices showing that tax was paid
18 on the tobacco products which remain in dispute. Therefore, those products were properly seized, and
19 they must be forfeited. Accordingly, we recommend that the petition be denied with respect to the
20 tobacco products remaining in dispute.

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23 Summary prepared by Cindy Chiu, Tax Counsel
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