

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Petition for Redetermination ) Under the Cigarette and Tobacco Products Tax ) Law of: ) ADIL ALFONSE KHILLA, dba Sierra Cigar Co. ) Petitioner )	Account Number CP STF 50-001017 <sup>1</sup> Case ID 391101 Woodland Hills, Los Angeles County
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Type of Business: Distributor of tobacco products  
 Liability period: 01/01/04 – 12/31/05

<u>Item</u>	<u>Disputed Amount</u>	
Cigarette tax on unreported distributions of tobacco products	\$22,919	
	<u>Tax</u>	<u>Penalty</u>
As determined	\$22,919.39	\$2,291.96
Post-D&R adjustment	<u>00.00</u>	<u>-2,291.96</u>
Balance, protested	<u>\$22,919.39</u>	<u>\$ 00.00</u>
Tax as determined and protested	\$22,919.39	
Interest through 03/25/15	<u>18,215.01</u>	
Total tax and interest	<u>\$41,134.40</u>	
Monthly interest beginning 03/26/15	<u>\$114.60</u>	

This matter was scheduled for Board hearing in October 2014, but petitioner did not respond to the Notice of Hearing. Thus, the matter was scheduled for decision on the nonappearance calendar, but petitioner subsequently requested that the matter be rescheduled for hearing.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner distributed untaxed tobacco products purchased from unlicensed out-of-state vendors and is therefore liable for excise tax on those distributions. We find petitioner is liable for excise tax, and no adjustments are warranted.

Petitioner obtained a Tobacco Distributor license in May 1996, which was closed effective December 31, 2005, when petitioner failed to file a renewal application. The Property and Special

<sup>1</sup> As part of the reorganization of the Property and Special Taxes Department, effective December 10, 2012, the account numbers for all special taxes and fee programs had the existing district of control or division (in this case, ET) converted to STF. Therefore, prior to December 10, 2012, the account number at issue was CP ET 50-001017.

1 Taxes Department (Department) discovered that petitioner had made purchases of untaxed tobacco  
2 products which were delivered to his California location. The Department used purchase invoices to  
3 compile petitioner's purchases of untaxed tobacco products from unlicensed out-of-state vendors of  
4 \$51,249.39, which exceeded the reported amount of tobacco products distributed of \$2,234 by  
5 \$49,015.39.

6 Petitioner concedes that the amount of purchases compiled by the Department is accurate, but  
7 he contends that all of the unreported purchases of tobacco products represent cigars that were stolen  
8 before they could be sold. As evidence, petitioner submitted supplemental property loss reports listing  
9 a loss of cigars totaling \$32,900 and a loss of various merchandise totaling \$7,382.

10 It is undisputed that petitioner made the purchases of tobacco products at issue and that those  
11 tobacco products were available for sale at his retail store. Since the term "distribution" includes the  
12 placing in this state of untaxed cigarettes or tobacco products in a retail stock for the purpose of selling  
13 the products to customers, petitioner is liable for the excise tax. (Rev. & Tax. Code, § 30008). The  
14 excise tax for distribution of tobacco was incurred at the time of distribution and not at the time  
15 petitioner actually sold the tobacco product. Therefore, the alleged theft of the tobacco products before  
16 the sale of the tobacco in a retail transaction does not relieve petitioner of his liability for the excise tax  
17 due on the wholesale value of the tobacco when he first distributed the tobacco. Accordingly,  
18 petitioner is liable for the excise tax at issue, and no adjustments are warranted.

#### 19 **RESOLVED ISSUE**

20 Upon further review the Department has recommended that the negligence penalty be deleted  
21 due to petitioner's confusion regarding whether to report the distribution on the date of sale versus  
22 when the tobacco products were placed in retail stock, and because this was petitioner's first audit. We  
23 concur.

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25 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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