

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING 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: )  
)  
KEROLOS H. GUIRGUIS, ) Account Number: LR Q STF 91-363462  
dba Orange Hills Smoke Shop ) Case ID 873783  
)  
Petitioner ) Orange, Orange County

Type of Business: Smoke Shop  
Seizure Date: February 25, 2015  
Approximate Value: \$3,533.82<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 and Special Operations Division (ISOD), and related documents.

**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 Orange Hills Smoke Shop located at 7528 E. Chapman Avenue, Orange, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit SR EA 102-619252, for this location. Petitioner does not hold a cigarette and tobacco products distributor or wholesaler license for this location.

On February 25, 2015, ISOD conducted a cigarette and tobacco products inspection of this location, where petitioner was on the premises and authorized the inspection.<sup>2</sup> ISOD found that

<sup>1</sup> Consisting of 41 individual Signature House Blend Especiales1 cigars; 57 individual Signature House Blend Especiales2 cigars; 46 individual Signature House Blend Magnum58 cigars; 45 individual Signature House Blend Magnum60 cigars; 46 individual Signature House Blend 6-66 cigars; 26 individual Sublimes Grandes cigars; 5 individual Sublimes Magnum cigars; 8 individual Sublimes Robusto cigars; 16 individual Sublimes Robusto Extra cigars; and 28 individual Sublimes Double Robusto cigars.

1 petitioner's cigarette inventory was properly stamped. Petitioner provided ISOD with purchase  
2 invoices from Superking Cash and Carry (a licensed distributor) and Sublimes Cigars (an unlicensed,  
3 out-of-state supplier). The purchase invoices from Sublimes Cigars did not show that tax was paid on  
4 the tobacco product purchases.

5 ISOD seized the cigars and issued petitioner a Receipt for Property Seized and a Civil Citation  
6 for the alleged violations of Business and Professions Code sections 22974.3, subdivision (b), and  
7 22980.2, subdivision (a). Subsequently, ISOD served petitioner with a Notice of Seizure and  
8 Forfeiture dated April 16, 2015, stating that tobacco products valued at \$3,533.82 were seized and  
9 subject to forfeiture under Business and Professions Code section 22974.3. Petitioner submitted a  
10 verified petition dated April 30, 2015, for release of the seized tobacco products. Petitioner states that  
11 it understands Sublimes Cigars to be a wholesaler/distributor and that petitioner was led to believe, by  
12 Sublimes Cigars, that the purchase price was tax included. Petitioner also states that other retailers  
13 were similarly misled by Sublimes Cigars.

14 In its Reply to Petition, ISOD asserts that the petition should be denied because petitioner has  
15 not shown that the tobacco products were purchased tax paid, and therefore petitioner has not shown  
16 that those products were erroneously or illegally seized. ISOD states that the Sublimes Cigars  
17 purchase invoice does not show that the products were tax paid. Therefore, ISOD states that the  
18 seizure was proper.

19 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person  
20 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco  
21 products are subject to seizure and forfeiture, and that person bears the burden of proving the  
22 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice  
23 which complies with Business and Professions Code section 22978.4 and which shows that applicable  
24 taxes have been paid. Here, there is no dispute that petitioner possessed the tobacco products in  
25 question. Moreover, there is no dispute that petitioner purchased the tobacco products from Sublimes  
26 Cigars, an out-of-state, unlicensed supplier. Because petitioner was found possessing tobacco  
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28 <sup>2</sup> ISOD conducted this inspection based on information it obtained from the inspection of an unrelated business. The  
unrelated inspection revealed that Sublimes Cigars, an out-of-state, unlicensed supplier was selling untaxed tobacco  
products to California retailers, petitioner being one of the retailers listed on Sublimes Cigars' website.

1 products, those products are presumed to be untaxed unless petitioner can prove otherwise. (Bus. &  
2 Prof. Code, § 22974.3, subd. (b).) While petitioner asserts that Sublimes Cigars assured it that tax was  
3 included in the purchase price, petitioner has not provided any evidence to support this assertion. We  
4 acknowledge that petitioner has provided his email correspondence Sublimes Cigars' president,  
5 Thomas Jaromirski, as well as email correspondence by some unrelated retailers with Mr. Jaromirski,  
6 all of which question Mr. Jaromirski about his assurances to the retailers that tax was included in the  
7 purchase price of the tobacco products. However, without specific evidence that the cigars were  
8 purchased tax paid, Sublimes Cigars' assurances to petitioner that such was the case are not sufficient  
9 to prove that the tobacco products in question were erroneously seized. Moreover, Sublimes Cigars  
10 was not licensed to distribute tobacco products in California at the time petitioner purchased the  
11 products in question. Therefore, Sublimes Cigars could not have collected and remitted the tax on its  
12 distribution to petitioner. Based on the foregoing, we find that petitioner possessed untaxed tobacco  
13 products in violation of Business and Professions Code section 22974.3, subdivision (b), and we  
14 conclude that those products were properly seized and must be forfeited. Accordingly, we recommend  
15 that the petition be denied.

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17 Summary prepared by Chad T. Bacchus, Tax Counsel  
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