

1 for petitioner's purchases of cigarettes and tobacco products for the previous 12 months, Ms. Khinda
2 telephoned petitioner, who came to the store shortly thereafter. Petitioner provided ID with purchase
3 invoices issued by licensed vendors Sam's Club, Costco, Godfrey Group, Inc. (Godfrey), Pitco,
4 Globex Enterprise Incorporation (Globex), and Habib Import, Inc. (Habib) for January 2010 through
5 April 2010. ID reviewed those invoices and found that those invoices did not support a portion of
6 petitioner's tobacco products inventory as tax paid. When ID informed petitioner that a portion of the
7 tobacco products inventory was not supported by the provided invoices, petitioner stated that some of
8 the tobacco products were purchased from the previous owner or transferred from his other store
9 Cigarettes and Cigars located down the street.² ID asked petitioner if he had any documentation
10 showing the transfer of tobacco products from Cigarettes and Cigars to Cool Spot Smoke Shop.
11 Petitioner stated that he did not have any transfer records or any paperwork showing what tobacco
12 products he purchased from the previous owner.

13 ID seized the tobacco products not supported by invoices showing payment of tax, and issued
14 petitioner a Receipt for Property Seized and a Civil Citation for alleged violations of Business and
15 Professions Code sections 22974 and 22974.3, subdivision (b). On June 11, 2010, ID served petitioner
16 with a Notice of Seizure and Forfeiture dated June 4, 2010, stating that tobacco products valued at
17 \$1,055.00 were seized and are subject to forfeiture under Business and Professions Code section
18 22974.3. Petitioner submitted a verified petition dated June 21, 2010, for release of all of the seized
19 tobacco products, and attached to the petition a Habib invoice, three Godfrey invoices, and five Globex
20 invoices. Petitioner stated that these invoices supported a portion of the seized tobacco product, but
21 also stated that some of the seized tobacco products were transferred from his other store.

22 ID reviewed the provided invoices and stated that with the exception of the Habib invoice, it
23 previously reviewed the Godfrey and Globex invoices at the time of the inspection and did not seize
24 any of the tobacco products listed on those invoices. Based upon the Habib invoice, ID determined
25 that tax had been paid on a portion of the seized tobacco products, and therefore returned those
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28 ² Petitioner also owns and operates Cigarettes and Cigars located at 5161 Madison Avenue, Sacramento, California, and holds license LR Q ET 91-221749, for this location.

1 products with an approximate retail value of \$159.80, leaving products with an approximate retail
2 value of \$895.20 (\$1,055.00 - \$159.80) in ID's custody and remaining in dispute.

3 On December 7, 2010, petitioner submitted Sam's Club, Godfrey, Pitco, and Globex invoices
4 listing petitioner's other store Cigarettes and Cigar as the purchaser, and stated that he transferred
5 tobacco products listed on these invoices from Cigarettes and Cigar to Cool Spot Smoke Shop. On
6 December 9, 2010, ID telephoned petitioner to ask whether he had any documentation showing the
7 transfer of tobacco products from Cigarettes and Cigar to Cool Spot Smoke Shop. Petitioner replied
8 that he did not have any transfer documentation.

9 In its Reply to Petition, ID asserts that the petition should be denied because petitioner has not
10 shown that tax has been paid on the tobacco products in question, and therefore petitioner has not
11 shown that those products were erroneously or illegally seized. ID states that there is no documentary
12 evidence such as transfer records to support petitioner's contention that he transferred tobacco products
13 from his other store Cigarettes and Cigar to Cool Spot Smoke Shop. ID further states that petitioner
14 has not submitted any additional invoices to show that tax has been paid on the remaining tobacco
15 products in ID's custody.

16 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
17 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
18 products are subject to seizure and forfeiture, and that person bears the burden of proving that the
19 applicable taxes have been paid to the Board either by proof of such payment, or by a purchase invoice
20 which complies with Business and Professions Code section 22978.4 and which shows that applicable
21 taxes have been paid. Here, petitioner has not presented invoices showing that tax has been paid on the
22 tobacco products remaining in custody. Therefore, those products were properly seized and they must
23 be forfeited. Accordingly, we recommend that the petition be denied with respect to the tobacco
24 products remaining in custody.

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26 Summary prepared by Cindy Chiu, Tax Counsel III (Specialist)
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