



1 timely appealed that Notice of Violation. A conference with the Department was held on August 15,  
2 2005, and a Notice of Decision (NOD) was issued on August 26, 2005, in which the Department found  
3 that appellant committed the cited violation and recommended a 30-day license suspension. Appellant  
4 timely appealed that NOD. A conference with the Appeals Division was held on January 24, 2006,  
5 and a Notice of Second Decision was issued on May 19, 2006, finding that appellant committed the  
6 cited violation but recommending the suspension of appellant's license be reduced from a 30-day  
7 suspension to a 10-day suspension.

8 In accordance with the Second Decision, the Department mailed a Notice of Suspension to  
9 appellant on June 30, 2006, notifying appellant that its license would be suspended for 10 days, from  
10 July 17, 2006, through July 26, 2006. To verify that appellant was complying with the suspension  
11 order, ID entered appellant's business on July 18, 2006, to conduct an undercover purchase of  
12 cigarettes and tobacco products. When ID entered appellant's business, it observed a sign posted on a  
13 cigarette display informing customers that the store was not selling cigarettes. Despite the posted sign,  
14 ID was able to purchase two Optimo cigarillos at approximately 9:03 a.m. and a package of Marlboro  
15 Light cigarettes at 9:22 a.m. After purchasing the cigarettes and tobacco products, ID informed  
16 appellant's cashier, Mr. Moussa Maou, that appellant was in violation of BPC section 22980.2,  
17 subdivision (c), because he had sold cigarettes and tobacco products while appellant's license was  
18 suspended. ID requested to speak with appellant, but Mr. Maou stated that appellant was out of the  
19 country for three months. Another of appellant's employees, Mr. Ramez Aldaoud, stated to ID that he  
20 had read the Notice of Suspension and was aware that cigarettes and tobacco products could not be  
21 sold during the suspension period. During the inspection, Mr. Maou was unable to provide ID with 12  
22 months of purchase invoices. In addition, ID found a cigarette carton top that contained a list of  
23 tobacco products with the quantity and price listed for each item. ID stated that this carton top  
24 appeared to be an invoice that did not comply with the requirements of BPC section 22978.4, and  
25 concluded that appellant purchased from an unlicensed vendor in violation of BPC section 22980.1,  
26 subdivision (d).

27 Based on the results of its undercover purchase of cigarettes and tobacco products, ID issued to  
28 appellant a Notice to Appear for violations of BPC section 22974 (failing to have the necessary

1 invoices on the premises and available for inspection), BPC section 22980.1, subdivision (d)  
2 (purchasing cigarettes or tobacco products from an unlicensed person), BPC section 22980.2,  
3 subdivision (a) (unlicensed sales of cigarettes or tobacco products), and BPC section 22980.2,  
4 subdivision (c) (continued sale of cigarettes during suspension period). ID then seized appellant's  
5 entire inventory of cigarettes and tobacco products (valued at approximately \$16,389), and issued  
6 appellant a receipt for that property.

7       On April 25, 2008, the Department issued appellant a Notice of Violation, stating that the  
8 penalties for the cited violations were a revocation of appellant's license and a \$1,000 fine.<sup>2</sup> Appellant  
9 filed a timely request for an appeals conference with the Department dated May 5, 2008, and the  
10 Department conducted a telephone conference on March 25, 2009. Following the conference, on May  
11 8, 2009, the Department issued an NOD in which it concluded that appellant violated BPC sections  
12 22974, 22980.1, subdivision (d), 22980.2, subdivision (a), and 22980.2, subdivision (c), and upheld the  
13 revocation of appellant's license and a \$1,000 fine as the penalties for those violations.

14       On May 13, 2009, appellant filed a timely request for an appeals conference with the Appeals  
15 Division. The Appeals Division held a conference on March 3, 2010, during which appellant did not  
16 dispute the facts. Appellant admitted that he received the Notice of Suspension, that appellant was  
17 aware of the suspension period, and that the sales of cigarettes and tobacco products occurred during  
18 the suspension period. While appellant did not dispute that the 10-day license suspension had been  
19 properly imposed, he asserted that the May 11, 2005 violation of BPC section 22974.3, subdivision  
20 (a)(1), on which it was based was not a serious violation. Appellant asserted that, because ID inspected  
21 appellant's store early in the suspension period (on the second day of the suspension period),  
22 appellant's employees had little time to adjust to avoid selling cigarettes. Appellant asserted that he  
23 had intended to abide by the suspension but that he was out of the country and had to rely upon his  
24 employees. Appellant contended that the violations were unintentional, and that there have been no  
25 subsequent violations since the July 18, 2006 inspection. Appellant argued that appellant has already

---

26  
27 <sup>2</sup> Neither the Notice of Violation nor the NOD issued by the Department mentions the seizure and potential forfeiture of  
28 appellant's cigarette and tobacco products. However, we did address this issue in our Second Decision, explaining, as  
discussed below, that the forfeiture is a penalty prescribed by BPC section 22980.2, subdivision (c).

1 been penalized since he had to appear at the criminal proceedings and pay court fines in the Superior  
2 Court of Kern County. Appellant contended that lesser penalty than revocation should be imposed,  
3 such as a suspension, and requested that his cigarette and tobacco products be returned.

4 ID asserted that the revocation should be sustained because appellant sold cigarettes and  
5 tobacco products during the suspension period in violation of BPC section 22980.3, subdivision (c).

6 BPC section 22980.3, subdivision (c), provides that “continued sales after the notification of  
7 suspension shall constitute a violation of the licensing provisions of this division and shall result in the  
8 revocation of a license.” This provision is mandatory and explicit, and does not allow for any  
9 mitigation (e.g., based on having not been cited for further violations or payment of fines to another  
10 jurisdiction). Regardless of the seriousness of appellant’s prior violation, it was a violation for which a  
11 suspension could be, and was, properly imposed. Appellant was duly served with notice of that  
12 suspension, as he concedes. We reject appellant’s explanation that his employees had little time to  
13 adjust to the suspension since the inspection occurred during its second day. Notice of the suspension  
14 was mailed to appellant on June 30, 2006, more than two weeks before the period of suspension  
15 commenced, and appellant and his employees had more than sufficient time to prepare for that  
16 suspension. Since appellant continued selling cigarettes and tobacco products after the suspension was  
17 in effect, we find that revocation of his license is required.

18 Since appellant was making sales of cigarettes and tobacco products while his license was  
19 suspended, ID properly seized all cigarettes and tobacco products in appellant’s position, and they  
20 must be forfeited pursuant to BPC section 22980.2, subdivision (c).

#### 21 **RESOLVED ISSUE**

22 In the NOD dated May 8, 2009, the Department recommended a \$1,000 fine be imposed for  
23 appellant’s violation of BPC sections 22974, 22980.1, subdivision (d), and 22980.2, subdivision (a).  
24 However, California Code of Regulations, title 18, section 4603, subdivision (e), provides that, in cases  
25 such as here involving multiple violations, the violation punishable by the most severe penalties will be  
26 used for purposes of determining the penalty assessed. The mandatory license revocation and  
27 forfeiture penalties imposed for making sales with a suspended license are clearly more severe than the  
28 penalty for appellant’s other violations resulting from the subject inspection. Thus, we find that

1 revocation and forfeiture are the proper penalties to impose for all of the subject violations, and that the  
2 \$1,000 fine should be removed.

3 **OTHER DEVELOPMENTS**

4 None.

5  
6 Summary prepared by Cindy Chiu, Tax Counsel III (Supervisor)

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28