

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

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:)

ASAL MELODY IRANPOUR,)
dba Rocklin Food Mart,)

Account Number: LR Q ET 91-247475
Case ID 488813

Petitioner)

Rocklin, Placer County

Type of Business: Mini mart

Seizure Date: February 9, 2009

Approximate Value: \$442.85¹

We have not held an appeals conference in this matter. This summary is prepared based on the information contained in the Petition, Revised Reply to Petition of the Investigations Division (ID), and related documents. This matter was scheduled for Board hearing on December 15, 2009, but was postponed to January 26, 2010, at petitioner's request.

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 a mini mart located at 3800 Rocklin Road, Rocklin, California. Petitioner holds the cigarette and tobacco products retailer license referenced above, and seller's permit SR KH 100-350839, for this business location. At the time of the inspection, petitioner did not hold a cigarette and tobacco products distributor or wholesaler license for this location.

¹ Consisting of 34 five-packs of Swisher Sweets cigarillos, 30 five-packs of Optimo cigarillos, 24 pouches (0.75 oz.) of Bugler roll-your-own (RYO) tobacco, 2 cans (6 oz.) of Bugler RYO tobacco, 16 pouches (0.75 oz.) of Top RYO tobacco, 2 cans (6 oz.) of Top RYO tobacco, and 11 five-packs of Middleton's cigars.

1 On February 9, 2009, ID conducted a cigarette and tobacco products inspection of this location.
2 Mr. Keyvan Madani, petitioner's clerk, was on the premises and authorized the inspection. ID found
3 that all cigarettes were properly stamped. Shortly thereafter, Mr. Siavash Iranpour, petitioner's
4 manager, arrived at the store. When ID requested petitioner's purchase invoices for the previous
5 twelve months, Mr. Iranpour provided invoices for the period of January 2008 through May 2008 and
6 July 2008 through January 2009 from licensed vendors Sam's Club, Costco, and Pitco. ID found that
7 those invoices did not support a majority of the Swisher Sweets, Middleton's, Bugler, Top, and
8 Optimo brand tobacco products, which were manufactured between October 2008 through February
9 2009. ID asked Mr. Iranpour where he purchased those tobacco products, and Mr. Iranpour initially
10 responded that he only purchased the cigarettes and tobacco products from Sam's Club, Costco, and
11 Pitco, but upon further questioning, Mr. Iranpour stated that he purchased tobacco products a couple of
12 times from a man who came to petitioner's store in a white van between 7:00 p.m. to 8:00 p.m.
13 Mr. Iranpour stated that this person did not provide an invoice for the last purchase because he was in a
14 rush, and Mr. Iranpour did not want to delay him. Mr. Iranpour stated that he has no receipt book for
15 these tobacco purchases because he paid with cash, but believes that the person is licensed because his
16 friend who referred this person to Mr. Iranpour purchases from him as well. However, Mr. Iranpour
17 stated that he did not know this person's name or contact information. ID informed Mr. Iranpour that
18 without invoices to support the Swisher Sweets, Middleton's, Bugler, Top, and Optimo brand tobacco
19 products in petitioner's inventory, those products would be considered untaxed and subject to seizure.

20 In the absence of invoices showing payment of tax on the tobacco products in question, ID
21 seized the products and issued petitioner a Receipt for Property Seized and a Civil Citation for alleged
22 violations of Business and Professions Code sections 22974 and 22974.3, subdivision (b). On March
23 25, 2009, ID served petitioner with a Notice of Seizure and Forfeiture dated March 20, 2009, which
24 states that tobacco products valued at \$442.85 were seized and are subject to forfeiture under Business
25 and Professions Code section 22974.3.

26 Petitioner submitted a petition dated April 10, 2009, for release of all of the seized tobacco
27 products. Petitioner asserts that she has a receipt for the seized tobacco products and is therefore not in
28 violation of the law, but she did not include a copy of the receipt with her submission. Petitioner

1 identifies the person from whom she purchased the subject tobacco products as Mr. Nidan.² Petitioner
2 states that she spoke with Mr. Ed Bell, a territory sales manager for National Tobacco, who verified
3 that Mr. Nidan is licensed to sell tobacco products. The Board Proceedings Division allowed
4 petitioner until June 4, 2009, to provide documentation and arguments to support her petition. On June
5 23, 2009, the Board Proceedings Division sent petitioner a letter noting that, as of that time, had not
6 supplemented her appeal with any additional documentation. On July 2, 2009, petitioner sent a letter
7 to the Board Proceedings Division requesting an oral hearing and asking whether there is any
8 additional documentation that she may submit. On July 23, 2009, petitioner provided a letter with
9 further explanation regarding the seized tobacco products. Petitioner states that she purchased items
10 from a man named Mr. Nidan, who provided a handwritten receipt. Petitioner states that she asked for
11 a regular sales receipt, but that Mr. Nidan stated he did not have his receipt book and promised to
12 return to the store in a couple of days to provide a sales receipt. Petitioner states that Mr. Nidan has
13 not returned with a receipt, and she has made several attempts to contact Mr. Nidan to obtain a receipt,
14 but has been unsuccessful. Petitioner advised that she had Mr. Nidan's contact information and could
15 provide that information. On July 29, 2009, petitioner provided a copy of a handwritten invoice
16 containing a list of tobacco products and prices.

17 On August 28, 2009, ID contacted petitioner via telephone to obtain the contact information for
18 Mr. Nidan. On September 1, 2009, petitioner emailed ID and stated that she purchased the tobacco
19 products in question from Mr. Nidan and provided contact information and a license for the business
20 21st Amendment. ID found that 21st Amendment is a licensed retailer, but does not possess a
21 wholesaler or distributor license. Upon further review, ID found licensed wholesaler Nidhan
22 Distributor owned and operated by sole proprietor Mr. Charanjit Singh.³ ID contacted Mr. Singh, who
23 stated that he has no customers in Rocklin, California, and has not sold anything to Rocklin Food Mart
24 at any time.

26 ² We note that petitioner used several spellings "Nidar," "Nidian," and "Nidan" in her communications to both the Board
27 Proceedings Division and ID to identify the person from whom she claims to have purchased the tobacco products in
28 question. In an email to ID dated September 1, 2009, petitioner stated that she purchased the tobacco products in question
from one person and that person is Mr. Nidan. We use the spelling "Nidan" to refer to this person.

³ ID found that Mr. Singh was a former partner with the owner and operator of 21st Amendment.

1 In its Revised Reply to Petition, ID asserts that the petition should be denied because the
2 invoices provided to date do not show that tax has been paid on the seized tobacco products. ID
3 reviewed the handwritten invoice and states that it does not support the release of any of the tobacco
4 products in custody because it does not comply with Business and Professions Code section 22978.4,
5 subdivision (a), since it does not contain any information about the buyer or seller or a statement that
6 the excise tax has been paid.⁴

7 Business and Professions Code section 22974.3, subdivision (b), provides that, where a person
8 holds tobacco products for which tax is due but such tax has not been paid, the untaxed tobacco
9 products are subject to seizure and forfeiture. Petitioner has the burden of proving that the applicable
10 taxes have been paid to the Board either by proof of such payment, or by a purchase invoice which
11 complies with section 22978.4 and which shows that applicable taxes have been paid. Petitioner has
12 not presented invoices showing that tax has been paid on the tobacco products in question. Therefore,
13 those products were properly seized and they must be forfeited. Accordingly, we recommend that the
14 petition be denied.

15
16 Summary prepared by Cindy Chiu, Tax Counsel
17
18
19
20
21
22
23
24

25 ⁴ Business and Professions Code section 22978.4 requires, among other things, that invoices for purchases of cigarettes and
26 tobacco products include the name, address, telephone number, and license number of the distributor or wholesaler making
27 the sale; the name, address, and license number of the retailer, distributor, or wholesaler to whom the cigarettes or tobacco
28 products are sold; and the amount of excise taxes due to the Board by the distributor on the sale of cigarettes and tobacco
products. Invoices issued by a distributor that is also a retailer or manufacturer must include either: (1) the statement “All
California cigarette and tobacco product taxes are included in the total amount of this invoice,” or (2) the amount of excise
taxes due to the Board by the distributor on the distribution of cigarettes and tobacco products.