

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**ZIGGY'S SMOKE SHOP, INC.**  
**dba Smoke and Glass Shop**

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) OTA Case No. 230212511  
) CDTFA Case ID: 3-503-311  
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**OPINION**

Representing the Parties:

For Appellant:

Peter Koulouris, Representative

For Respondent:

Sunny Paley, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to California Code of Regulations, title 18, (Regulation) sections 30103(b)(1) and 35065(e)(2), Ziggy's Smoke Shop, Inc., dba Smoke and Glass Shop (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's appeal of a June 29, 2022 Notice of Decision (NOD), which upheld a \$1,000 fine and reduced a license suspension from 30 days to 10 days for violations of Business and Professions Code (B&PC) sections 22974, 22974.3(b), and 22980.1(d)(1).

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to Regulation section 30209(a).

**ISSUE**

Whether CDTFA properly imposed the 10-day license suspension.

**FACTUAL FINDINGS**

1. Appellant, a California corporation dba Smoke and Glass Shop, operates a smoke shop located in Stockton, California. Appellant holds a valid cigarette and tobacco products retailer's license (license).
2. On March 26, 2018, CDTFA inspected appellant's business. During the inspection, CDTFA issued appellant a citation for violations of B&PC sections 22974 and 22974.3(b) and seized unsupported tobacco products. Appellant appealed, and CDTFA issued a decision on February 16, 2021, upholding the violations.

3. On January 7, 2020, CDTFA again inspected appellant's business location. During the inspection, CDTFA found appellant to be in violation of B&PC sections 22974 (for failure to maintain and provide purchase invoices), 22974.3(b) (for possession of untaxed tobacco products), and 22980.1(d)(1) (for purchase of tobacco products from a person without a license or with a suspended/revoked license). Specifically, CDTFA found 398 unsupported tobacco products with a retail cost of \$6,574 and wholesale cost of \$3,287. At the time of the inspection, appellant provided a pro forma invoice<sup>1</sup> from Shenzhen Kakuqi Technology Co., LTD (SKT invoice) dated November 20, 2019. The SKT invoice states the company name as "USA" and the contact person as C. Sharmoug and lists 263 of the 398 unsupported tobacco products. CDTFA did not accept the SKT invoice because it did not include appellant's name and license number, the distributor's license number, nor any information indicating excise taxes were paid. CDTFA issued appellant a civil citation for violations of B&PC sections 22974, 22974.3(b), and 22980.1(d)(1) and seized the unsupported tobacco products.
4. On August 18, 2021, CDTFA issued appellant a Notice of Violation (NOV) for the January 7, 2020 citation. The NOV proposed a 30-day license suspension and \$1,000 fine.
5. On May 17, 2022, CDTFA held a citation conference with appellant. During the conference, appellant provided a spreadsheet version of the SKT invoice, which included the statement "All California Tobacco Taxes are paid" at the bottom.
6. On June 29, 2022, CDTFA issued appellant the aforementioned NOD upholding the violations and the \$1,000 fine. However, the NOD reduced the 30-day license suspension to a 10-day license suspension based on mitigating circumstances; specifically, CDTFA found the wholesale value of the seized products represented a small portion of appellant's business and that appellant lost any potential revenue associated with the unsupported products when the products were seized.
7. Appellant appealed the NOD.
8. On December 28, 2022, CDTFA issued appellant a decision upholding the violations, the 10-day license suspension, and the \$1,000 fine.
9. Appellant filed this timely appeal.

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<sup>1</sup> A pro forma invoice is a preliminary bill of sale describing a shipment of goods before its delivery.

### DISCUSSION

A retailer must retain purchase invoices that meet the requirements set forth in B&PC section 22978.4 for all cigarettes and tobacco products the retailer purchased for a period of four years. (B&PC, § 22974.) Those invoices must be kept at the retail location for at least one year after the purchase and must be made available upon request during normal business hours for review, inspection, and copying by CDTFA. (*Ibid.*) Any retailer found in violation of the invoice requirements or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying shall be subject to penalties pursuant to B&PC section 22981.<sup>2</sup> (*Ibid.*)

Pursuant to B&PC section 22978.4, a valid purchase invoice must include: (1) the name, address, and telephone number of the distributor; (2) the license number of the distributor; (3) the amount of excise taxes due by the distributor on the sale of tobacco products; (4) the name, address, and license number of the retailer to whom tobacco products are sold; (5) an itemized listing of tobacco products sold; and (6) the date the tobacco products are sold. (B&PC, § 22978.4(a)(1-6).) Additionally, a valid purchase invoice must include either (1) a statement that reads “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 CDTFA by the distributor on the distribution of cigarette and tobacco products. (B&PC, § 22978.4(a)(7)(A), (B).)

During CDTFA’s January 7, 2020 inspection, appellant failed to provide valid purchase invoices for 398 unsupported tobacco products, as required by B&PC section 22974. Although appellant provided the SKT invoice listing some of the unsupported tobacco products, the SKT invoice did not include appellant’s name or license number. Furthermore, the SKT invoice did not include the distributor’s license number, or any indication that excise taxes were collected and paid on the purchase.

Appellant argues that it authorized C. Sharmoug, the person named as the contact person on the SKT invoice, to make purchases for appellant. However, B&PC section 22978.4 requires the name and license number of the retailer to whom the tobacco products were sold to be listed on a valid purchase invoice. Appellant also argues that the spreadsheet version of the SKT invoice states that all California excise taxes were paid on the purchase. However, the spreadsheet version of the SKT invoice was not presented at the time of the inspection; furthermore, the spreadsheet version also fails to name appellant as the purchaser.

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<sup>2</sup> Any violation of the Cigarette and Tobacco Products Licensing Act is a misdemeanor, punishable by a fine up to \$5,000, imprisonment for a period not exceeding one year, or both. (B&PC, § 22981.)

Accordingly, OTA finds that appellant failed to provide valid purchase invoices for 398 unsupported tobacco products in violation of B&PC section 22974.

In addition to any other civil or criminal penalties provided by law, any retailer found to be in violation of the Cigarette and Tobacco Products Licensing Act, in the case of a first offense, may have its license revoked or suspended. (See B&PC, §§ 22974.7(a), 22980.3(a).) A first offense for a violation of B&PC sections 22974 or 22980.1(d) shall result in the issuance of a written notice, and a second or subsequent offense shall result in both a 30-day suspension or revocation and a fine. (Cal. Code Regs., tit. 18, § 4603(a), (d).) A violation of B&PC section 22974.3 shall result in: (1) the issuance of a warning notice when the licensee has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during that period; (2) a 10-day suspension for a seizure of less than 20 packs of cigarettes, or the equivalent amount of tobacco products based on wholesale cost; or (3) a 20-day suspension for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost. (Cal. Code Regs., tit. 18, § 4603(d).)

In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed. (Cal. Code Regs., tit. 18, § 4603(e).) However, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation section 4606. (Cal. Code Regs., tit. 18, § 4603(f).) If any suspension period is reduced, the redetermined period shall be 0 days, 5 days, 10 days, or 20 days. (*Ibid.*) Factors to determine whether mitigating circumstances exist include, but are not limited to: (1) how recently the licensee purchased the business or began operations and acquired inventory of cigarettes and tobacco products; (2) the amount of cigarettes without tax stamps and with counterfeit tax stamps in relation to the size of the licensee's overall inventory; (3) the size of the licensee's cigarette and tobacco product business; (4) the retail value of any cigarettes or tobacco products seized; and (5) an absence of prior seizures. (Cal. Code Regs., tit. 18, § 4606.) A licensee has the burden of proving the grounds for the reduction of penalties. (Cal. Code Regs., tit. 18, § 35057(d).)

CDTFA previously issued appellant a citation on March 26, 2018, for violations of B&PC sections 22974 and 22974.3(b). Appellant appealed the prior violation, and CDTFA upheld the violation. Thus, the current violation of B&PC section 22974 is appellant's second offense, for which a 30-day suspension and a fine is proper. CDTFA reduced the 30-day suspension to a 10-day suspension due to mitigating circumstances.

Appellant argues that the 10-day suspension should be further reduced to a zero-day suspension because the suspension would cause the business to close. However, financial

hardship is not one of the mitigating factors. (Cal. Code Regs., tit. 18, §§ 4603(f), 4606.) Appellant also argues for a further reduction based on additional mitigating circumstances. Specifically, appellant asserts that it paid taxes on all of its tobacco products purchases, and that the distributor listed on the SKT invoice held a valid license at the time of the purchase. However, appellant's arguments pertain to whether it violated B&PC sections 22974.3(b) and 22980.1(d)(1), not B&PC section 22974; further appellant fails to address any additional mitigating circumstances. OTA finds that appellant has not substantiated that a further reduction of the suspension imposed due to appellant's violation of B&PC section 22974 is warranted.

### HOLDING

CDTFA properly imposed the 10-day license suspension.

### DISPOSITION

CDTFA's action is sustained.

DocuSigned by:

*Sheriene Anne Ridenour*

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Sheriene Anne Ridenour  
Administrative Law Judge

We concur:

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*Teresa A. Stanley*

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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:

*Suzanne B. Brown*

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Suzanne B. Brown  
Administrative Law Judge

Date Issued: 3/26/2025