OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

SAM INVESTMENTS, INC.,
dba Santee Mini Market

OTA Case No.: 250823026
CDTFA Case ID: 5-505-379

OPINION

Representing the Parties:

For Appellant: Steve S. Mattia, Attorney

For Respondent: Sunny Paley, Attorney

For Office of Tax Appeals: Crystal Spratley, Business Taxes Specialist

K. WILSON, Hearing Officer: Pursuant to California Code of Regulations, title 18, (Regulation) sections 30103(b)(1) and 35065(e)(2), Sam Investments, Inc., dba Santee Mini Market (appellant) appeals an August 7, 2025 decision issued by respondent California Department of Tax and Fee Administration (CDTFA). CDTFA's decision denies appellant's appeal of a Notice of Decision (NOD) dated June 12, 2024. The NOD upheld the violations of Business and Professions Code (B&PC) sections 22974 and 22974.3(a)(3) as asserted in a Notice of Citation (citation notice) and mitigated the 20-day license suspension to a 5-day license suspension.

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).

ISSUES

1. Whether appellant violated B&PC section 22974.
2. Whether appellant violated B&PC section 22974.3(a)(3).
3. Whether CDTFA abused its discretion in suspending appellant's license for 5 days.

FACTUAL FINDINGS

1. Appellant, a California corporation, operates a liquor store selling cigarettes and tobacco products in Santee, California. Appellant holds a valid cigarette and tobacco products retailer's license, issued with a start date of January 10, 2020.
2. On May 12, 2023, CDTFA inspected appellant's business location. Appellant was only able to produce three invoices, which did not cover all of the cigarette and tobacco products at the business location. Appellant brought additional invoices to the business location. CDTFA also found 66 unstamped packages of cigarettes.
3. Accordingly, CDTFA found appellant to be in violation of B&PC section 22974 (for failure to maintain and provide purchase invoices) and 22974.3(a)(3) (for possession of more than 20 packages of unstamped cigarettes.) CDTFA issued a civil citation and seized the unstamped cigarettes along with the cannabis product that was also found on the premises.[1]
4. On December 12, 2023, CDTFA issued appellant a Notice of Violation (NOV) for the violations listed in the civil citation. Appellant timely appealed the NOV.
5. On May 23, 2024, CDTFA held a citation conference with appellant by telephone, and subsequently issued the NOD dated June 12, 2024. The NOD upheld the violations, and imposed a 5-day license suspension, mitigated from a 20-day suspension because the retail value of products seized was small relative to the size of appellant's business.
6. Appellant timely appealed the NOD to CDTFA's Appeals Bureau.
7. On May 13, 2025, CDTFA's Appeals Bureau held a second level citation conference, and subsequently issued a decision on August 7, 2025, sustaining the NOD in full.
8. This timely appeal followed.

DISCUSSION

CDTFA is responsible for administering a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarette and tobacco products pursuant to the California Cigarette and Tabacco Products Licensing Act of 2003 (Licensing Act). (Stats. 2009, ch. 890 (Assem. Bill No. 71); B&PC, § 22970.2.) CDTFA has authority to administer and enforce the provisions of the Licensing Act and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of the Licensing Act. (B&PC, § 22971.2.) CDTFA employees, granted limited peace officer status, are authorized to enter

[1] Appellant's appeal does not address the cannabis product seized; therefore, OTA will not discuss this item further.

any place at which cigarette or tobacco products are sold, produced, or stored and to conduct inspections for compliance with the Licensing Act as set forth in B&PC section 22980. During an appeal before CDTFA involving a Licensing Act violation or penalty, the taxpayer has the burden of proof as to the grounds for dismissal of any violation or the reduction of any penalties. (See Cal. Code Regs., tit. 18, § 35057(d).) The taxpayer likewise bears the burden of proof in an appeal before OTA. (Cal. Code Regs., tit. 18, § 30219(a).)

<u>Issue 1: Whether appellant violated B&PC section 22974.</u>

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.[2]

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).)

In the instant appeal, appellant provides purchase invoices for most of its cigarette and tobacco products inventory during the inspection; however, appellant does not have any purchase invoices or receipts for the 66 unstamped cigarette packages that were seized. Additionally, the invoices were not all on the premises at the start of the inspection; rather, only three were provided when requested; and additional invoices were later brought to the business location. OTA finds that appellant’s failure to keep records on location and available for inspection upon request for at least a year is a violation of the B&PC section 22974.

[2] Any violation of the 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.)

Issue 2: Whether appellant violated B&PC section 22974.3(a)(3).

The Licensing Act makes it unlawful for a retailer to possess, store, own, or make a retail sale of an unstamped package of cigarettes and authorizes CDTFA or any law enforcement agency to seize any unstamped packages of cigarettes that it discovers at a retailer's location, or any other location. (B&PC, § 22974.3(a).) A first violation (within five years) involving seizure of a total quantity of 20 packages of unstamped cigarettes or more is a misdemeanor punishable by a fine of $2,000, or imprisonment not to exceed one year, or both. (B&PC, § 22974.3(a)(3).)

Here, CDTFA contends that appellant violated B&PC section 22974.3(a)(3). Thus, OTA must determine whether this was appellant's first seizure of 20 or more packages of unstamped cigarettes within the last five years. CDTFA submitted photographs of a sample of cigarette products that were seized as an attachment to the civil citation package. The seized cigarette packages were all unstamped. CDTFA's photographs, statement of facts, inspection sheet, and seizure receipt all demonstrate that CDTFA seized more than 20 packages of unstamped cigarettes, and, on appeal, appellant offers no argument or evidence to refute that they were unstamped and located within the business premises, i.e., being stored on the business premises. Instead, appellant maintains that the unstamped cigarettes belonged to an employee and were purchased in Mexico, and therefore, no receipt or invoice was available. Additionally, appellant contends that the unstamped cigarettes were in the back area of the business, not on the shelf for sale, and that brand was never sold in the store.

Regardless of whether the unstamped products were for personal use or otherwise, the fact remains that they were on the business premises and subject to seizure and forfeiture. B&PC section 22974.3 states, "upon discovery . . . that a retailer or any other person possesses, stores, owns . . . an unstamped package of cigarettes [CDTFA] shall be authorized to seize the unstamped package of cigarettes at the retail, or any other person's location." Here, there is no dispute that the cigarette packages seized were unstamped and thus subject to seizure. CDTFA seized 66 packages of unstamped cigarettes on May 12, 2023. Appellant has no prior violations of the Licensing Act. Thus, this was appellant's first seizure within the prior five years. Therefore, OTA finds that appellant violated B&PC section 22974.3(a)(3).

Issue 3: Whether CDTFA abused its discretion in suspending appellant's license for 5 days.

According to B&PC section 22974.7(a), in addition to any other civil or criminal penalties provided by law, when CDTFA finds that a retailer has violated any provision of the Licensing Act, in the case of a first offense, the law grants CDTFA the discretion to revoke or suspend the retailer's license. Regulation section 4603(a) provides that a first violation of B&PC section 22974 will result in a Warning Notice. Regulation section 4603(d)(3) provides that a violation of B&PC section 22974.3(a)(3), involving a first offense for a seizure of 20 packages or more of unstamped cigarettes, will result in a 20-day license suspension. Regulation section 4603(e) provides that in cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed. In this case, the more severe penalty is the 20-day license suspension for violation of B&PC section 22974.3(a)(3), which CDTFA used to determine the applicable penalty. CDTFA's imposition of the 20-day license suspension for the violations in this case met the requirements under B&PC section 22974.3(a)(3).

There is no statutory right to relief of a license suspension. In interpreting the discretionary authority authorized under B&PC section 22974.7, CDTFA promulgated Regulation section 4606, which gives CDTFA the discretion to reduce the length of a suspension period if mitigating circumstances are present. (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.*) Mitigating factors that CDTFA will consider in determining whether to reduce the penalty are as follows: (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.) In reviewing discretionary acts taken by CDTFA, OTA will generally defer to CDTFA's decision absent evidence of an abuse of discretion. (See *Appeal of Micelle Laboratories, Inc*., 2020-OTA-290P.) A licensee has the burden of proving such evidence. (Cal. Code Regs., tit. 18, § 35057(d).)

CDTFA considered the mitigating circumstances in the NOD and upheld those findings in the decision, specifically taking into account the value of the seized products in relation to the average inventory the business kept, along with the fact that this is appellant's first violation of the licensing act. Based on these factors, CDTFA was acting within its discretion in upholding a 5-day license suspension. Appellant has not established, through evidence or argument, that any additional, unconsidered, mitigating factors exist. The first mitigating factor listed does not apply as appellant was not a new licensee; the other factors were already taken into consideration in reducing the suspension term. Therefore, OTA finds that appellant failed to prove that CDTFA abused its discretion in upholding a 5-day license suspension.

HOLDINGS

1. Appellant violated B&PC § 22974.3.
2. Appellant violated B&PC § 22974.3(a)(3).
3. CDTFA did not abuse its discretion in suspending appellant's license for 5 days.

DISPOSITION

CDTFA's action upholding the violations and reducing the license suspension from 20 days to 5 days is sustained.

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

Signed by:
Suzanne B. Brown
47F45ABE89E34D0...
Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
67E043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 4/3/2026