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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **PARTNERSHIP OF M. PEREZ AND F. GOMEZ,** **dba Tulare's Finest Smoke Shop**	OTA Case No.: 241017880 CDTFA Case ID: 4-950-971

OPINION

Representing the Parties:

For Appellant: M. Perez

For Respondent: Sunny Paley, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Partnership of M. Perez and F. Gomez (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent) denying appellant's timely petition for redetermination of a Notice of Decision (NOD) issued on January 31, 2024. The NOD reduced the 30-day license suspension to a zero-day license suspension and upheld a $1,000 fine for violations of Business and Professions Code (B&PC) sections 22974 and 22974.3(b).

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 California Code of Regulations, title 18, (Regulation) section 30209(a).

ISSUE

Whether appellant violated B&PC sections 22974 and 22974.3(b) and whether respondent properly imposed the zero-day license suspension and $1,000 fine.

FACTUAL FINDINGS

1. Appellant owns and operates Tulare's Finest Smoke Shop, located in Tulare, California. Appellant holds a Cigarette and Tobacco Products Retailer License (license) under the Cigarette and Tobacco Products Licensing Act of 2003 (Act) for this location but does not hold a distributor or wholesaler license under the Act.[1]
2. On January 8, 2018, respondent inspected appellant's business location and found appellant to be in violation of B&PC sections 22974 (for failure to maintain and provide purchase invoices) and 22974.3(b) (for possession of untaxed tobacco products). Respondent issued appellant a civil citation for the violations and seized the unsupported products.
3. On September 10, 2019, and October 2, 2019, respondent again inspected appellant's business location and found no violations.
4. On February 23, 2022, respondent inspected appellant's business location and found appellant to be in violation of B&PC sections 22974 (for failure to maintain and provide purchase invoices) and 22974.3(b) (for possession of untaxed tobacco products). Specifically, respondent found 48 salt-flavored disposable vape products (vape products) for which appellant did not provide invoices. Respondent determined that the vape products had an estimated retail value of $719.52 (wholesale cost of $360) and were counterfeit. Respondent also seized 63 items of untaxed or unsecured packaging of cannabis or cannabis products with an estimated retail value of $1,804.37 (wholesale cost of $902.50). Respondent issued a civil citation for violations of B&PC sections 22974 and 22974.3(b).
5. On May 12, 2023, respondent issued a Notice of Violation (NOV) for the February 23, 2022 citation. The NOV proposed a 30-day license suspension and a $1,000 fine.
6. Appellant appealed the NOV, and respondent held a citation conference with appellant on December 8, 2023. Subsequently respondent issued an NOD dated January 31, 2024, which upheld the violations and imposed a $1,000 fine. The NOD also reduced the 30-day license suspension to zero days due to mitigating circumstances.

[1] As relevant herein, under the Act, appellant's retailer's license enables it only to possess, own, store, or sell cigarettes or tobacco products on which the cigarette and tobacco products excise taxes have been paid.

7. Appellant appealed the NOD to respondent's Appeals Bureau. Appellant provided an invoice for the seized vape products. The invoice does not contain any salt-flavored products. (*Ibid*.) Respondent issued a Decision on October 1, 2024, upholding the violations and sustaining the reduction of the 30-day license suspension to a zero-day license suspension, and the $1,000 fine.
8. This timely appeal followed.

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 respondent. (*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. (*Ibid*.)

Possession of untaxed tobacco products is a violation of the Cigarette and Tobacco Products Licensing Act. (B&PC, § 22974.3(b).) If a retailer possesses, stores, owns, or has made a retail sale of such tobacco products for which tax is due but has not been paid, respondent is authorized to seize the untaxed tobacco products. (*Ibid*.) It is presumed that tax has not been paid to respondent on all tobacco products in the possession of a retailer until the contrary is established by a proof of payment to respondent or by a purchase invoice showing the retailer paid the tax-included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in B&PC 22978.4. (*Ibid*.) The purchase invoice must include, among other things, an itemized listing of the cigarettes or tobacco products sold. (B&PC, § 22978.4(a)(5).) The retailer in possession of the tobacco products bears the burden of proof to show that tax has been paid. (*Ibid*.)

Appellant does not dispute the violation but rather requests relief of the $1,000 fine. Appellant asserts that the fine should be relieved because appellant provided an invoice for the products that were seized. Appellant further states that because it purchased the products from California-licensed distributors, appellant assumed that the products it purchased were authentic. Appellant also states that it is unable to pay the fine due to financial hardship.

The invoice appellant provided is not sufficient to establish that appellant did not violate B&PC section 22974 because, per appellant's own admission, the invoice was not available at

the time of the inspection as required by the regulations. Moreover, because the invoice appears to be for products other than those that were seized by respondent, the invoice is insufficient to establish that appellant did not violate B&PC section 22974.3(b). Respondent seized vape products that were salt flavored, while the invoice does not contain any salt-flavored vape products. Thus, appellant has failed to show that the fine should be relieved.

With regard to appellant's argument that it is unable to pay the fine due to financial hardship, Regulation section 4607(b)(2)(A) and (b)(2)(B) provide for a $1,000 fine for a second offense for a violation of B&PC sections 22974 and 22974.3(b), respectively. There is no authority that establishes that the fine for a second violation may be relieved, even if there are mitigating circumstances. Thus, there is no basis to relieve the $1,000 for financial hardship.

Appellant further asserts that it is unable to afford to hire an attorney and requests that OTA provide legal assistance. OTA is an independent administrative agency whose jurisdiction to hear taxpayer appeals is limited by its enabling legislation. (*Appeal of Liljestrand Irrevocable Trust*, 2019-OTA-012P.) OTA is ultimately charged with deciding legal questions. (*Appeal of Mather*, 2024-OTA-377P.) Appellant provides no legal authorities, and OTA is not aware of any, that establish that OTA could, or is required to, provide legal assistance to taxpayers. In fact, OTA is prohibited from engaging in *ex parte* communications[2] with either party and thus is unable to provide legal assistance to any party. (Cal. Code Regs. tit. 18, § 30215(c).) In any event, appellant is not required to be represented by an attorney. Appellant may authorize any person of at least 18 years of age to represent it in an appeal before OTA or may choose to represent itself. (Cal. Code Regs. tit. 18, §§ 30211(a), 30216(a).) Further, OTA provides an ombudsperson to assist appellants with procedural matters regarding their appeals before OTA.[3]

[2] *Ex parte* communications are where a judge or hearing officer communicates with only one party in a legal matter.

[3] Contact information for OTA's ombudsperson can be found on OTA's website at: https://ota.ca.gov/ombudsperson/.

HOLDING

Appellant violated B&PC sections 22974 and 22974.3(b), and respondent properly imposed the zero-day license suspension and $1,000 fine.

DISPOSITION

Respondent's decision reducing the 30-day suspension to a zero-day license suspension but otherwise denying appellant's appeal is sustained.

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

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Keith T. Long
Administrative Law Judge

DocuSigned by:
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

Date Issued: 12/1/2025