

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SKAFF PETROLEUM, INC.

v.

COMMISSIONER OF REVENUE

Docket No. C346277

Promulgated:
December 15, 2023

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 68 from the decision of the Commissioner of Revenue ("appellee" or "Commissioner") to impose a 60-Day suspension of a cigarette and smokeless tobacco retailer's license upon a retail store owned and operated by Skaff Petroleum, Inc. ("appellant").

Commissioner Good heard this appeal. She was joined by Chairman DeFrancisco and Commissioners Elliott, Metzger, and Bernier in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Dale R. Kiley, Esq., for the appellant.

Martin J. Saulen, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documentary evidence submitted by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

The appellant owns and operates a Mobil gas station and convenience store located in Worcester and is licensed as a retailer to sell products that are subject to Massachusetts tobacco excise.

On June 7, 2022, the Massachusetts Department of Revenue ("DOR") issued a notice to the appellant stating that the Commissioner intended to suspend the appellant's cigarette and smokeless tobacco retail license for sixty days for violations of the following: G.L. c. 64C, §§ 6, 7A and 7C, which impose a combined excise of 210 per cent of the price paid by a licensee to purchase smokeless tobacco that is sold, imported or acquired; G.L. c. 64C, § 11, which requires every retailer to keep complete and accurate records of all cigarette and smokeless tobacco purchased or otherwise acquired; G.L. c. 64C, § 2, which prohibits any person from acting as an unclassified acquirer without a license; and G.L. c. 62C, § 16 (c), which requires importers or acquirers of tobacco products to file a return with the commissioner stating the quantity of tobacco products imported or acquired. On June 13, 2022, the appellant filed a timely appeal with the Board and filed the appropriate surety bond in accordance with

G.L. c. 62C, § 68 ("§ 68"). Based on the above findings, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.¹

The parties presented their cases primarily through the testimony of Jhon Skaff ("Mr. Skaff") for the appellant and DOR Tax Examiner Matthew Maguire ("Examiner Maguire") and Evan Garcia, Director of the DOR's Miscellaneous Excises Unit ("Director Garcia") for the appellee.

The license suspension arose from a routine inspection of the appellant's convenience store on April 5, 2022. At that time, Mr. Skaff, the appellant's principal, was present when Examiner Maguire observed for sale flavored cigars, which are banned in Massachusetts. Examiner Maguire then requested access to the back office of the convenience store, where he observed a handwritten inventory of different types of chewing tobacco. Examiner Maguire testified that this seemed out of the ordinary to him, as in his experiences, inventories are generally computer generated, not handwritten.

Mr. Skaff admitted to Examiner Maguire that these items were purchased from a friend in New Hampshire and that excises were not paid on them. Examiner Maguire seized these items and then detailed

¹ This suspension has been inoperative during the pendency of this appeal pursuant to G.L. c. 62C, § 68, which states: "During the pendency of any such appeal the decision of the commissioner so appealed from shall, unless otherwise ordered by said board, be inoperative."

his inspection in a report that included an itemized list of the seized products and their retail prices. The seized items included 150 units of smokeless tobacco, the products that are at issue in this appeal. With reference to its internal guidelines for cigarette and smokeless tobacco excise infractions, the Commissioner determined that a sixty-day suspension was appropriate for this violation.

At the hearing, Mr. Skaff admitted that the appellant did not pay Massachusetts excises on the seized products. He further acknowledged that he had intended to sell the products at the appellant's convenience store. The appellant then offered into evidence a self-prepared report claiming that the appellant would lose about \$750,000 in business if the license suspension is upheld because of the effect of "bundled transactions."²

Director Garcia then credibly testified that the Commonwealth loses millions of dollars every year from untaxed sales of cigarettes and smokeless tobacco.

The Commissioner is charged with applying § 68, the enforcement statute pertaining to unpaid cigarette and smokeless tobacco excises, by such means that include license suspension and revocation. As will be explained in the Opinion below, § 68 also grants the Board equitable powers to grant relief from the

² "Bundled transactions" are purchases of other products along with gas, including tobacco products and sundries.

penalties. The appellant asked the Board to invoke its equitable powers to reduce its sixty-day suspension.

Based on the evidence advanced, and for the reasons stated more fully in the following Opinion, the Board declined to exercise its equitable powers and issued a decision for the appellee in the instant appeal upholding the sixty-day license suspension imposed against the appellant.

OPINION

The Commissioner is authorized by § 68 to "suspend or revoke" a retailer's cigarette and smokeless tobacco license for, among other offenses, "willfully fail[ing] to comply with any provision of the tax laws of the commonwealth." This statute also grants the Board the power to review a license suspension or revocation and "grant such relief as may be equitable."

The appellant advanced various arguments against the Commissioner's implementation of the penalty, none of which the Board found persuasive. Section 68 affords the Commissioner and his delegees discretion in suspending and revoking retail cigarette and smokeless tobacco licenses for any failure to pay the requisite excise. The appellant knowingly engaged in illegal activity to enrich himself, to the detriment of other Massachusetts taxpayers who pay taxes due under the relevant statutes governing the taxation of smokeless tobacco. See, e.g., G.L. c. 64C, §§ 6,

7A and 7C. Considering the facts of the instant appeal, the Board here found no reason to invoke its equitable powers.

Accordingly, the Board issued a decision for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board