

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
NASRIN BITHI	:	
for Revision of a Determination or for Refund of	:	
Cigarette Tax under Article 20 of the Tax Law for the	:	
Period December 3, 2019.	:	DETERMINATION
	:	DTA NOS. 850171
	:	AND 850657
In the Matter of the Petition	:	
of	:	
A & B FOOD CORP.	:	
for Revision of a Determination or for Refund of	:	
Cigarette Tax under Article 20 of the Tax Law for the	:	
Period January 12, 2020.	:	

Petitioner, Nasrin Bithi, filed a petition for revision of a determination or for refund of cigarette tax under article 20 of the Tax Law for the period December 3, 2019.

Petitioner, A & B Food Corp., filed a petition for revision of a determination or for refund of cigarette tax under article 20 of the Tax Law for the period January 12, 2020.

A consolidated formal hearing by videoconference was held on November 21, 2024, before Jennifer L. Baldwin, Administrative Law Judge, with all briefs to be submitted by March 28, 2025, which date began the six-month period for the issuance of this determination.

Petitioners appeared by Lazzaro Law Firm, PC (Lance Lazzaro, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Melanie Spaulding, Esq., of counsel).

ISSUES

- I. Whether petitioner, Nasrin Bithi, is liable for the penalty imposed by Tax Law § 481 (1) (b) (i) as a person in possession or control of unstamped or unlawfully stamped cigarettes.
- II. Whether petitioner, A & B Food Corp., is liable for the penalty imposed by Tax Law § 480-a (3).

FINDINGS OF FACT

1. On December 3, 2019, the Division of Taxation (Division) conducted a regulatory inspection of petitioner A & B Food Corp. (A & B) at 7402 17th Avenue, Brooklyn, New York. According to the report of investigation (form EN-752) of the same date, “[t]he inspection resulted in the seizure of 96.7 cartons of untaxed cigarettes (95.7 bearing counterfeit NYS/NYC tax stamp G2002 and 1.0 bearing Virginia tax stamps) [and] the suspension of the location[’]s 2019 Certificate of Registration . . .” The report of investigation identifies four investigators from the Division’s Criminal Investigations Division (CID), including Evan Benigno and Gennady Fedorov, as conducting the inspection and two other individuals present in the store during the inspection, neither of which was petitioner Nasrin Bithi.

2. The report of investigation further provides:

“The cigarettes were recovered by Inv. Benigno from inside the back-office of the store as well as from within the cigarette display rack located behind the register counter.

* * *

A. ISLAM informed investigators that the owner is a person named Nasrin BITHI. A. ISLAM informed investigators that he sells the packs for \$13 each.

During the inspection, investigators had A. ISLAM call Nasrin BITHI to determine where the cigarette invoices were located. During the phone call, BITHI told investigators that A. ISLAM is her husband and that they have owned the store for over 8 years.

* * *

An EMPIRE search revealed the responsible person to be Nasrin BITHI.

The evidence recovered was vouchered and transported to the NYSDTF Metrotech District Office under EN-651 # 79443 and 79442.”

The report of investigation is signed by Investigator Benigno and a supervising investigator on December 3, 2019.

3. The cigarettes were vouchered on two forms EN-651, Office of Tax Enforcement property receipt/release. Voucher number 79442, dated December 3, 2019, indicates that 15.5 cartons of various brands of cigarettes were seized by Investigator Benigno from behind the register counter all “bearing counterfeit # G2002.” The form is signed as “[r]eceived by” Investigator Fedorov and “[r]eceived from” Abul Islam on December 3, 2019. A copy of the form is also signed as “[v]erified” by the evidence technician on December 9, 2019. Voucher number 79443, also dated December 3, 2019, indicates that 81.2 cartons of various brands of cigarettes were seized by Investigator Benigno from the back office all “bearing counterfeit # G2002” except 1 carton “bearing VA stamps.” The form is signed as “[r]eceived by” Investigator Fedorov and “[r]eceived from” Abul Islam on December 3, 2019. A copy of the form is also signed as “[v]erified” by the evidence technician on December 9, 2019.

A third form EN-651, voucher number 79441, dated December 3, 2019, indicates that A & B’s 2019 certificate of registration was seized from the front display. The form is signed as “[r]eceived by” Investigator Fedorov on December 3, 2019 and “[r]eceived from” Abul Islam.

4. A form EN-185, regulatory report: cigarettes, alcohol and tobacco (regulatory report), for A & B indicates that a seizure of 96.7 cartons of cigarettes was made on December 3, 2019 and a phone conversation with the “owner” of A & B, petitioner Bithi, took place. The regulatory report does not indicate a supplier’s name for cigarette tax purposes and the lines for

“Counterfeit Stamp Numbers” and “Other State” are blank. The regulatory report is signed by Investigator Fedorov on the same date.

5. A form EN-180, notice of suspension of registration as a retail dealer of cigarettes and/or tobacco products (notice of suspension), issued to A & B on December 3, 2019, provides, in pertinent part:

“This is to advise you that your registration as a retail dealer of cigarettes and/or tobacco products, issued under the provisions of section 480-a of the New York State Tax Law, is hereby immediately **suspended**, effective upon your receipt of this notice. Accordingly, you may not sell cigarettes or tobacco products from this location within the state until the designated period of suspension has expired.

The designated period of suspension is determined by statute (first offense is up to six months; second offense is up to three years; and third offense is up to five years).

Your registration has been suspended as a result of your possession or sale or both of unstamped or unlawfully stamped packages of cigarettes, in accordance with the provisions of Tax Law section 480-a(4)(a).”

The notice of suspension further provides instructions for review of the suspension. The notice of suspension is signed by Investigator Fedorov and Abul Islam on December 3, 2019.

6. A report of investigation, dated November 16, 2020, provides:

“On December 3, 2019, a regulatory inspection at A & B Food Corp [], located at 7402 17th Avenue, Brooklyn, New York, NY 11214, resulted in a recovery and seizure of ninety-six point seven (96.7) cartons of untaxed cigarettes, and suspension of the store’s 2019 Certificate of Registration.

* * *

On January 29, 2020, as a result of the Department hearing, the suspension of the store’s Certificate was upheld for six (6) months.

* * *

All necessary referrals have been made, no further action needed, and the case has been submitted for closing.”

This report of investigation is signed by Investigator Fedorov and a supervising investigator on November 16, 2020.

7. On January 12, 2020, the Division conducted a regulatory re-inspection of A & B. According to the report of investigation of the same date, “[t]he follow up inspection resulted in the seizure of 1.5 cartons of counterfeit stamped cigarettes of various brands bearing NYS tax stamp 2005V.” The report of investigation identifies six investigators, including Greg Aurigemma and Diana Stringer, as well as two other Division employees as conducting the re-inspection and one other individual present in the store during the re-inspection, but not petitioner Bithi. The report of investigation indicates that the cigarettes were found in “a black bag on a shelf under the sales counter” and that the individual in the store “stated that she does not sell those cigarettes, she knows the store is already suspended.” The report of investigation is signed by Investigator Stringer on January 12, 2020 and Supervising Investigator Aurigemma on January 11, 2020.

8. The cigarettes were vouchered on form EN-651 under voucher number 20236. The form indicates that 1.5 cartons of various brands of cigarettes were seized, including 0.2 cartons of “counterfeit stamped Newport Brand cigarettes 2005V/19474 2005V/19491,” 0.4 cartons of “counterfeit stamped Parliament Brand cigarettes 2005V/19545, 19560, 19562, 19467,” and 0.9 cartons of “counterfeit stamped Marlboro brand cigarettes 2005V/19462, 19475, 19433, 19476 [and] more – all different.” The form is signed as “[r]eceived by” Investigator Stringer and “[r]eceived from” Shumona Islam on January 12, 2020. A copy of the form is also signed as “[v]erified” by the evidence technician on January 13, 2020.

9. A regulatory report for A & B indicates that a seizure of 1.5 cartons of cigarettes was made on January 12, 2020 and that no “legal” cigarettes or tobacco was found behind the

counter. The line for “Counterfeit Stamp Numbers” reads “2005V/19474, 19491, 19545, 19433 – all different [illegible] #.” The regulatory report is signed by Investigator Stringer on the same date.

10. A second notice of suspension was issued to A & B on January 12, 2020 for “possession or sale or both of unstamped or unlawfully stamped packages of cigarettes.” The notice of suspension is signed by Investigator Stringer on the same date.

11. A report of investigation, dated February 2, 2021, provides:

“On 01/12/2020, members of CID-Cigarette Strike Force conducted a regulatory re-inspection on, [sic] after a C of R Suspension on 12/03/2019.

[A & B]

During the inspection on January 12, 2020, a total of 1.5 cartons of counterfeit stamped cigarettes were seized. A Notice of Possession and Seizure of Untaxed Cigarettes, Cigars and/or Tobacco Products was given in lieu of a summons. [A & B’s] Certificate of Registration was also suspended on December 3, 2019 after being found in possession of 96 cartons of unlawfully stamped cigarettes.

A decision letter dated March 2, 2020 determined that the suspension of the cigarette retail registration would be upheld for a period of three (3) years effective January 12, 2020. The suspension is upheld through January 12, 2023.

Case to be closed.”

The report of investigation is signed by Investigator Stringer and a supervisor on February 2, 2021.

12. As a result of the December 3, 2019 inspection of A & B, the Division conducted an audit of petitioner Bithi. The Division’s auditor, Jiewen Zhang, determined that petitioner Bithi was liable for a civil tax penalty of \$55,020.00 pursuant to Tax Law § 481 (1) (b) (i) (A). Auditor Zhang imposed the penalty for possession of 91.7 unstamped or unlawfully stamped cartons of cigarettes at the rate of \$600.00 per carton.

13. Auditor Zhang based her determination on the belief that petitioner Bithi “claimed to be” the president and responsible person of A & B on forms DTF-17, DTF-716 and DTF-719.

A form DTF-17, application to register for a sales tax certificate of authority, for A & B, dated February 12, 2013, indicates that petitioner Bithi is the sole responsible person, described as including, but not limited to, “owners, partners, members, officers, and any other person responsible for the business’s day-to-day operations,” of A & B and her title is president. The form is not signed but lists petitioner Bithi’s name and title in the section “[s]ignature of responsible person.”

A form DTF-716, application for registration of retail dealers and vending machines for sales of cigarettes and tobacco products, for A & B, dated February 12, 2013, is signed by an applicant whose title is president but the name of the applicant is not listed.

A form DTF-719, renewal application for registration of retail dealers and vending machines for sales of cigarettes and tobacco products, for A & B, dated September 6, 2018, is signed on October 15, 2018 by an applicant whose title is president but the name of the applicant is not listed.

14. On April 9, 2021, the Division issued a notice of determination, bearing assessment identification number L-053122429, to petitioner Bithi asserting penalty due of \$55,020.00. The notice explained as follows:

“We may impose penalty of not more than \$600 for each 200 cigarettes (one carton) in excess of 1,000 cigarettes (five cartons) in unstamped or unlawfully stamped packages in the possession or under the control of any person (NYS Tax Law section 481). We assessed the civil penalty rate of \$600.00 per carton (in excess of five cartons) because you possessed or controlled 96.7 cartons of untaxed cigarettes on 12/03/19.”

15. As a result of the January 12, 2020 re-inspection of A & B, the Division conducted an audit of petitioner A & B. Auditor Zhang determined that petitioner A & B was liable for a

penalty of \$10,000.00 for “[f]ailure to maintain a valid certificate of registration” pursuant to Tax Law § 480-a (3). Auditor Zhang imposed such amount because this was “the **first** instance the business was found to be selling cigarette[] products without a valid Certificate of Registration.”

16. On April 14, 2021, the Division issued a notice of determination, bearing assessment identification number L-053137252, to petitioner A & B asserting penalty due of \$10,000.00.

The notice explained as follows:

“On 01/12/20 investigators from the New York State Department of Taxation and Finance inspected your business premise and found cigarettes, tobacco products, or both, offered for sale while:

- you are not registered to sell these products, or
- your registration is suspended or revoked.

This is the first instance where we found your business to be selling cigarettes and tobacco products without a valid certificate. Therefore, we issued a civil penalty assessment of \$10,000.00.”

17. Petitioner Bithi requested a conciliation conference with the Division’s Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice issued to her. By conciliation order, dated March 11, 2022, BCMS sustained the notice.

18. Petitioner Bithi thereafter filed a timely petition with the Division of Tax Appeals in protest of the conciliation order, which was acknowledged by the Division of Tax Appeals on June 17, 2022. The acknowledgement letter explained as follows:

“The Division of Tax Appeals acknowledges receipt of the petition in the above-referenced matter.

As this petition is deemed in proper form, it has been forwarded to the NYS Department of Taxation and Finance, Office of Counsel for preparation of an answer. The answer is due from the Office of Counsel on or before August 31, 2022. Upon receipt of the answer, an administrative law judge will be assigned to your case in due course. You will be notified when that assignment is made.”

The Division filed its answer to the petition on August 17, 2022.

19. Petitioner A & B requested a conciliation conference with BCMS in protest of the notice issued to it. By conciliation order, dated April 15, 2022, BCMS sustained the notice.

20. Petitioner A & B thereafter filed a timely petition with the Division of Tax Appeals in protest of the conciliation order, which the Division of Tax Appeals acknowledged on October 19, 2023. The acknowledgement letter explained as follows:

“The Division of Tax Appeals acknowledges receipt of the petition in the above-referenced matter. Although the petition was filed with this agency on June 8, 2022, it was inadvertently placed in a case file with another petition and was just discovered.

As this petition is deemed in proper form, it has been forwarded to the NYS Department of Taxation and Finance, Office of Counsel for preparation of an answer. The answer is due from the Office of Counsel on or before January 2, 2024. Upon receipt of the answer, an administrative law judge will be assigned to your case in due course. You will be notified when that assignment is made.”

The Division filed its answer to the petition on December 13, 2023.

21. At the hearing, the Division presented the testimony of Investigator Fedorov, who was involved with the December 3, 2019 inspection of A & B. At the time of the investigation, he was a criminal investigator who did regulatory and proactive investigations. Investigator Fedorov testified that he has been involved in over 1,000 cigarette possession cases. He explained that the inspection of A & B was random and that 96.7 cartons of “untaxed” cigarettes were inventoried after the investigation. Investigator Fedorov did not explain what he meant by “untaxed.” He did confirm that the December 3, 2019 report of investigation was “true and accurate” and the December 3, 2019 forms EN-651 accurately documented the seizure and inventory of “untaxed” cigarettes at A & B on the same date. Investigator Fedorov testified that petitioner Bithi was not present in the store during the investigation but that he spoke to her on the telephone. He explained that he witnessed Investigator Benigno retrieve the cigarettes from the back of the store and that he counted each pack of cigarettes going inside the evidence bag

with Investigator Benigno and transported them back to the office. He also explained that he had to look at the report to remember the events that took place during the December 3, 2019 inspection of A & B. According to Investigator Fedorov, there were no pictures taken of the seized cigarettes and he believed the cigarettes were destroyed prior to the hearing.

22. Investigator Aurigemma, who was involved with the January 12, 2020 re-inspection of A & B, testified at the hearing. Investigator Aurigemma testified that he has been involved in over 2,000 cigarette possession cases. He explained that once a store is found to have possessed untaxed cigarettes, CID will conduct a re-inspection of the store within one or two months “to see if they’re still engaging in the practice of selling untaxed cigarettes.” On January 12, 2020, he and other investigators re-inspected A & B and seized 1.5 cartons of “untaxed” cigarettes from behind the counter. He testified that petitioner Bithi was not present in the store during the re-inspection. Investigator Aurigemma confirmed that the January 12, 2020 form EN-651 accurately documented the seizure and inventory of “untaxed” cigarettes at A & B on the same date. He explained that he had to look at the report to remember the events that took place during the January 12, 2020 re-inspection of A & B and that he had no personal knowledge of from where the cigarettes were recovered. Investigator Aurigemma testified that he believed the seized cigarettes contained “counterfeit stamps” based on the report of investigation but that he had no personal knowledge of whether or not the stamps were counterfeit. According to Investigator Aurigemma, there were no pictures taken of the seized cigarettes and he believed that they no longer existed.

23. Auditor Zhang also testified at the hearing. Auditor Zhang is a Tax Auditor 1 in CID whose duties include reviewing evidence and documents of an investigation or inspection and determining whether a civil penalty should be imposed. As a result of the December 3, 2019

inspection of A & B, she imposed penalty in the amount of \$55,020.00 on petitioner Bithi for possession of untaxed cigarettes. The penalty was based on possession of 91.7 cartons of cigarettes at \$600.00 per carton because the Tax Law imposes penalty for possession of anything over 5 cartons of untaxed cigarettes. She further testified that she used forms DTF-17, DTF-716 and DTF-719 (*see* finding of fact 13) to determine that petitioner Bithi was the president and responsible person of A & B.

As a result of the January 12, 2020 re-inspection of A & B, Auditor Zhang imposed penalty in the amount of \$10,000.00 on petitioner A & B because it did not have a valid retail dealer certificate of registration for cigarettes and tobacco products on the same date. A & B's certificate of registration was previously suspended as a result of the December 3, 2019 inspection. Auditor Zhang testified that she had no personal knowledge of untaxed cigarettes being seized from A & B and that she relied on the December 3, 2019 and January 12, 2020 forms EN-651.

24. The Division also entered into evidence the affidavit of Kristen L. DeLong, a Taxpayer Services Specialist 4 in the Division's Sales Tax, Cigarette/Tobacco, Vapor Products, and Adult Use Cannabis Registration Unit. The unit processes registration and renewal applications for every retail dealer of cigarettes and tobacco products. Based on her review of the unit's systems and records, she determined that A & B did not have a retail dealer certificate of registration for cigarette and tobacco products on January 12, 2020.

25. At the hearing, petitioners made an oral motion to preclude the Division "from putting forth any evidence because they didn't answer the petition in a timely manner according to the statute, which requires it within 75 days of [] filing of the petition." The undersigned administrative law judge informed the parties that the motion would be addressed in the

determination of all issues in these matters and that the parties could address the issue in their briefs.

CONCLUSIONS OF LAW

A. Addressing petitioners' motion first, section 3000.3 (c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) provides, in relevant part:

“Where the supervising administrative law judge determines that the petition is in proper form, he or she will immediately forward it to the Office of Counsel for preparation of the answer. The time within which the Office of Counsel must answer the petition shall start to run from the date the supervising administrative law judge acknowledges receipt of a petition in proper form.”

The Rules further provide:

“The [O]ffice of [C]ounsel shall serve an answer on the petitioner or the petitioner's representative, if any, within 75 days from the date the supervising administrative law judge acknowledged receipt of a petition in proper form” (20 NYCRR 3000.4 [b] [1]).

Petitioner Bithi's petition was acknowledged by the Division of Tax Appeals as being in proper form on June 17, 2022 and informed the Division that an answer was due on or before August 31, 2022. The Division filed the answer on August 17, 2022. Petitioner A & B's petition was acknowledged by the Division of Tax Appeals as being in proper form on October 19, 2023 and informed the Division that an answer was due on or before January 2, 2024. The Division filed the answer on December 13, 2023. Both answers were filed within 75 days of the Division of Tax Appeals' acknowledgement of the petitions as being in proper form and, thus, are in compliance with the Rules (*see* 20 NYCRR 3000.3 [c]; 3000.4 [b] [1]). Petitioners have raised no statute in contravention of the Rules and, accordingly, petitioners' motion is denied.

B. At the time of the inspections, New York State imposed an excise tax of \$4.35 per pack of 20 cigarettes on “all cigarettes possessed in the state by any person for sale” (Tax Law § 471 [1]). Possession of more than 400 cigarettes in unstamped or unlawfully stamped packages

by any person other than an agent or distributor is presumptive evidence that such cigarettes are subject to the tax and the burden is on the person in possession to prove otherwise (*see* Tax Law § 481 [2] [a]).

C. To discourage the sale of untaxed cigarettes, Tax Law § 481 (1) (b) (i) provides for the imposition of penalty, in relevant part, as follows:

“In addition to any other penalty imposed by this article, the commissioner may (A) impose a penalty of not more than six hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes in unstamped or unlawfully stamped packages in the possession or control of any person . . .”

Petitioners argue that the Division has failed to establish that the stamps on the packages of cigarettes seized at A & B on the inspection dates were counterfeit.

D. In this case, the Division has failed to demonstrate the existence of unstamped or unlawfully stamped cigarettes at A & B on the inspection dates. Forms EN-651, dated December 3, 2019, indicate that all the seized packages except one bore “counterfeit # G2002” and form EN-651, dated January 12, 2020, indicates that the seized packages bore counterfeit stamps of various numbers. The record, however, lacks any explanation as to how the Division’s investigators determined that the stamps were in fact counterfeit. Investigator Fedorov testified generally that the cigarettes seized on December 3, 2019 were “untaxed.” Investigator Aurigemma testified that he believed that the packages of cigarettes seized on January 12, 2020 bore “counterfeit stamps” but that he had no personal knowledge of whether or not the stamps were counterfeit. There were no pictures taken of the seized cigarettes during either inspection and the cigarettes have since been destroyed. Without more, it cannot be determined that the seized cigarettes bore counterfeit stamps.

In *Matter of Vinter* (Tax Appeals Tribunal, September 27, 2001, *dismissed on other grounds* 305 AD2d 738 [3d Dept 2003]), the Tax Appeals Tribunal found as follows:

“Upon approaching petitioner’s business location on April 9, 1997, the investigators noticed certain stamps which appeared to be counterfeit on packages of cigarettes stacked and displayed for sale in a locked booth. The investigators receive extensive training on how to identify counterfeit stamps and also receive bulletins which identify counterfeit stamp numbers. At the time of the inspection, the valid stamps on cigarettes were orange in color and the numbers on the stamps were made by dotted lines. The stamps on the cigarettes in the booth were a brighter orange color and the numbers on the stamps were solid lines.”

Here, there is no basis in the record for the Division’s determination that the seized cigarettes bore counterfeit stamps and, in turn, that the cigarettes were untaxed. Therefore, the penalty imposed on petitioner Bithi for possession or control of untaxed cigarettes on December 3, 2019 is cancelled.

E. While moot in light of conclusion of law D, possession or control of the untaxed cigarettes is a necessary element for the imposition of penalty under Tax Law § 481 (1) (b) (i) (A) and will be addressed herein. With regard to possession or control, the Tax Appeals Tribunal has held as follows:

“It is not necessary that petitioner have actually participated in the purchase of such cigarettes for him to be liable for the penalty imposed. The cigarettes were stored on petitioner’s premises and offered for sale by the business he owned and controlled. Possession or control itself, with or without intent to sell, is sufficient for the imposition of penalty” (*Matter of Vinter*).

In *Matter of Kamal* (Tax Appeals Tribunal, February 11, 2010), the Tribunal found liable “the president and a responsible person” of the corporation that operated the service stations where counterfeit stamped cigarettes were seized. Similarly, the Division imposed penalty on petitioner Bithi based on the fact that she was listed as president and responsible person of A & B on, among other forms, A & B’s application to register for a sales tax certificate of authority. Petitioner Bithi has not credibly disputed that she was the president and the sole responsible person of A & B on the inspection dates. While moot, petitioner Bithi, nevertheless, as president and sole responsible person of A & B, was in possession or control of the seized cigarettes.

F. Tax Law § 480-a (3) provides, in relevant part:

“In addition to any other penalty imposed by this chapter: (a) Any retail dealer who violates the provisions of this section, after due notice and an opportunity for a hearing, for a first violation is liable for a civil fine not less than five thousand dollars but not to exceed twenty-five thousand dollars and for a second violation or subsequent violation within three years following a prior finding of violation is liable for a civil fine not less than ten thousand dollars but not to exceed thirty-five thousand dollars . . .”

The Division imposed penalty on petitioner A & B for possessing 1.5 cartons of cigarettes on January 12, 2020 without a valid certificate of registration. In its brief, the Division argues that this was a violation of Tax Law § 480-a (6), which provides, in relevant part:

“(a) No retail dealer who has its retail dealer registration cancelled, suspended or revoked pursuant to this section . . . shall possess cigarettes or tobacco products in any place of business, cart, stand, truck or other merchandising device in this state beginning on the tenth day after such cancellation, suspension, revocation, or forbiddance and continuing for the duration of the same . . .”

Tax Law § 480-a (6) (c), in turn, provides that unlicensed retail dealers that possess cigarettes or tobacco products are subject to the penalties imposed by Tax Law § 480-a (3).

Subdivision (6) was added to Tax Law § 480-a in 2021 and was effective immediately upon enactment of the law on April 19, 2021 (*see* L 2021, ch 59, part P, §§ 1, 5), after the alleged violation. The legislation, however, provided as follows:

“Any retail dealer who, prior to the effective date of this act, had its retail dealer registration cancelled, suspended, or revoked pursuant to [Tax Law § 480-a] . . . and such cancellation, suspension, revocation, or forbiddance remains in effect as of the effective date of this act, shall be prohibited from possessing cigarettes and tobacco products beginning on the tenth day after the effective date of this act and continuing for as long as such cancellation, suspension, revocation, or forbiddance shall remain in effect . . .” (*id.*, § 4).

The Division initially suspended A & B’s certificate of registration on December 3, 2019 and then suspended it again on January 12, 2020. The Division upheld the second suspension for three years effective January 12, 2020. Therefore, A & B’s certificate of registration was

suspended as of April 19, 2021, the effective date of the legislation, and A & B was prohibited from possessing cigarettes beginning April 29, 2021, ten days after the effective date. It does not appear that, and the Division has not explained how, petitioner A & B was prohibited from possessing cigarettes on January 12, 2020 and, in turn, how A & B violated Tax Law § 480-a (6). Accordingly, the penalty imposed on petitioner A & B for possessing cigarettes in a place of business without a valid certificate of registration on January 12, 2020 must too be cancelled.

G. The petitions of Nasrin Bithi and A & B Food Corp. are granted and the notices of determination, dated April 9, 2021 and April 14, 2021, are cancelled.

DATED: Albany, New York
September 25, 2025

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE