

**IN THE CIRCUIT COURT OF THE  
FOURTH JUDICIAL CIRCUIT, IN  
AND FOR DUVAL COUNTY, FLORIDA**

**NEW IMAGE GLOBAL INC.,**

**Plaintiff,**

**v.**

**Case No.**

**STATE OF FLORIDA, DEPARTMENT  
OF BUSINESS & PROFESSIONAL REGULATION,**

**Defendant.**

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**COMPLAINT**

Plaintiff, New Image Global Inc. ("New Image" or "Plaintiff"), pursuant to Chapter 86 and Sections 72.011 and 210.55, Florida Statutes, sues Defendant, the State of Florida, Department of Business & Professional Regulation ("Department" or "DBPR"), and alleges:

**PARTIES**

1. Plaintiff is a foreign corporation authorized to do business in this State, with its principal place in this State in Jacksonville, Duval County, Florida. For purposes of this proceeding, Plaintiff's address is that of the undersigned counsel.

2. The Department is an agency of the State of Florida with the responsibility for the administration and enforcement of Florida's state tax laws on tobacco products, more particularly as set forth in Chapter 210, Florida Statutes. The Department's address for the purpose of this proceeding is the General Counsel's Office, 1940 North Monroe Street, Tallahassee, FL 32399.

### **VENUE AND JURISDICTION**

3. On or about November 1, 2010, the Department issued a proposed Assessment to Plaintiff. The proposed Assessment was based upon an audit of Plaintiff for the period of November 1, 2009 through July 31, 2010. In the proposed Assessment, the Department claimed that Plaintiff owed tax, penalty and interest of \$1,082,494.32. The Department claimed that Plaintiff should have paid excise tax and surcharge on alleged "tobacco products" it received in and shipped from its Jacksonville, Florida warehouse.

4. On or about December 15, 2010, Plaintiff timely filed a protest of the assessment. See Exhibit A attached hereto.

5. On or about December 26, 2012, the Department issued a "revised" proposed Assessment, reducing the original proposed Assessment to \$1064.20, but continuing to assert that the products Plaintiff received and shipped were subject to the excise tax and surcharge for "tobacco products" as defined in Section 210.25(11), Florida Statutes. See Exhibit B attached hereto.

6. On or about February 12, 2013, Plaintiff timely protested the revised Assessment ("Assessment"), continuing to assert that the products it received and shipped were not subject to the tax or the surcharge. See Exhibit C attached hereto.

7. On April 19, 2013, the Department issued its decision to uphold the revised Assessment. See Exhibit D attached hereto.

8. Plaintiff has complied with all conditions precedent to filing this complaint and the complaint is timely filed.

9. By this complaint, the Plaintiff challenges all of the remaining Assessment, including all tax and interest reflected therein.

10. The Court has jurisdiction of this action pursuant to Sections 68.01, 72.011(1) and 86.011, Florida Statutes, and Article V, Section 20(c)(3), Florida Constitution. Venue is proper in Duval County, Florida, pursuant to Section 72.011(4), Florida Statutes.

11. Pursuant to Section 72.011, Florida Statutes, attached is a bond waiver from the Department. See Exhibit E.

12. Plaintiff is in need of a declaration of its rights and duties under Chapter 210, Florida Statutes, and seeks a judicial declaration thereof. Without such a declaration, Plaintiff will be forced to pay tax and interest to the State of Florida when it believes no tax was ever due. The Plaintiff will also be unsure of its rights and responsibilities to remit tax in to the future as it distributes its products in the State of Florida.

### **FACTS**

13. During all times pertinent to this action, Plaintiff was authorized to do business in Florida.

14. Plaintiff currently has a warehouse in the Jacksonville, Florida area where it received, sold and then shipped “cigar wraps” to other wholesalers and retailers, some within the State of Florida and some outside of the State.

15. Although not necessary to receive, sell and ship the cigar wraps, Plaintiff did obtain a wholesale tobacco products license from the Department in November, 2009.

16. The cigar wraps that Plaintiff received, sold and shipped are homogenized cigar overwraps used for custom cigar rolling to be filled with the customer’s choice of loose tobacco. The wrap consists of just over 40% cigar tobacco with a balance of diverse ingredients such as wood pulp and war gum.

17. Cigars, themselves, are not subject to a tobacco tax in the State of Florida. Efforts at adding such a tax to the law failed in 2009 and cigars remain excluded from any Florida tobacco tax.

18. The cigar wraps that Plaintiff received, sold and shipped, are component parts of a “cigar.”

19. The cigar wraps that Plaintiff received, sold and shipped are not: “loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobacco; shorts; refuse scraps; clippings, cuttings and sweepings of tobacco, or other kinds and forms of tobacco prepared in such a manner as to be suitable for chewing.”

20. Because the cigar wraps that Plaintiff received and shipped did not meet the statutory definition of taxable “tobacco products,” nor were they otherwise subject to the excise tax or surcharge under any other statutory provision, Plaintiff did not remit excise tax or surcharge on the cigar wraps.

21. Contrary to its own statute and the Florida Constitution, the Department improperly and illegally, through the Assessment, imposed the excise tax and surcharge on the products Plaintiff received and shipped.

#### LAW AND STATUTES

22. Article VII, Section 1(a) of the Florida Constitution, states that “No tax shall be levied except in pursuance of law.”

23. In Florida, it is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government, and that all ambiguities or doubts are to be resolved in favor of the taxpayer.

24. Chapter 210, Part II, Florida Statutes, imposes an excise tax and a surcharge upon “tobacco products” pursuant to Sections 210.30 and 210.276, Florida Statutes.

25. Tobacco products” are defined in Section 210. 25(11) as follows:

“Tobacco products” means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

26. Contrary to the Department’s assertion in its decision dated April 19, 2013, the cigar wraps Plaintiff received, sold and shipped were clearly not: “loose tobacco suitable for smoking as well as short and refuse scraps.”

27. Because the products Plaintiff received, sold and shipped did not fall within the categories of taxable “tobacco products,” as set forth in Section 210.25(11), Florida Statutes, they are not subject to either the excise tax or the surcharge as set forth in the Department’s Assessment.

### **COUNT I**

28. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 27 and further alleges:

29. As set forth above, Chapter 210, Part II, Florida Statutes, imposes an excise tax and surcharge on “tobacco products,” as defined in Section 210.25(11), that are distributed in Florida.

30. The Department assessed Plaintiff the excise tax and surcharge asserting that the products Plaintiff received, sold and shipped were “loose tobacco suitable for smoking as well as shorts and refuse scraps.”

31. Not only were the products Plaintiff received, sold and shipped in this State not “loose tobacco suitable for smoking as well as shorts and refuse scraps” they also do not fall within any of the other categories of taxable “tobacco products” set forth in Section 210.25(11), Florida Statutes, nor were they otherwise subject to the excise tax or surcharge under any other statutory provision.

32. Thus, Plaintiff did not owe excise tax or surcharge on the products it received, sold and shipped in Florida.

33. Therefore, the Assessment is invalid, illegal and must be withdrawn in its entirety.

## **COUNT II**

34. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 33 and further alleges:

35. Alternatively, the cigar wraps that Plaintiff received, sold and shipped in this State, were component parts of “cigars.” and should be treated, for tax purposes, as “cigars.”

36. Because cigars are expressly excluded from the definition of “tobacco products” per Section 210.25(11), Florida Statutes, and are not otherwise subject to the excise tax or surcharge levied Chapter 210, Florida Statutes, the cigar wraps that Plaintiff received, sold and shipped in Florida were not subject to the excise tax or surcharge.

37. Thus, Plaintiff did not owe excise tax or surcharge on the products it received, sold and shipped in Florida.

38. Therefore, the Assessment is invalid, illegal and must be withdrawn in its entirety.

## **COUNT III**

39. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 38 and further alleges:

40. As set forth above, Article VII, Section 1(a) of the Florida Constitution, states that “No tax shall be levied except in pursuance of law.”

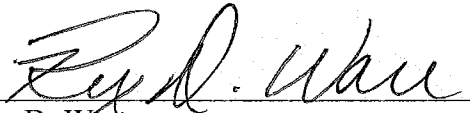
41. Because the products Plaintiff received, sold and shipped in Florida did not meet the definition of taxable “tobacco products” as set forth in the subject statute, nor were they otherwise subject to the excise tax or surcharge under any other statutory provision, the Department’s Assessment of excise tax and surcharge constitutes levying a tax beyond the scope of the law and violates Article V, Section 1(a) of the Florida Constitution.

42. Therefore, the Assessment is illegal, invalid and unconstitutional and must be withdrawn in its entirety.

WHEREFORE, Plaintiff respectfully requests the Court grant the following relief;

- A. Enter a Judgment that the Department’s action in issuing the Assessment is illegal, invalid and otherwise unenforceable.
- B. Enter a Judgment directing the Department to withdraw the Assessment in its entirety;
- C. Award the Plaintiff its costs; and
- D. Provide such other and further relief as the Court deems appropriate.

Respectfully submitted,



Rex D. Ware  
Florida Bar No. 439169  
Fowler White Boggs P.A.  
101 N. Monroe St., Suite 1090  
Tallahassee, FL 32301  
(850)681-0411 (Ph.)/(850)681-6036 (Fax)  
[rex.ware@fowlerwhite.com](mailto:rex.ware@fowlerwhite.com)

Attorneys for Plaintiff



December 15, 2010

VIA HAND DELIVERY

Department of Business and Professional Regulation  
Division of Alcoholic Beverage and Tobacco  
State of Florida  
Office of General Counsel  
1940 North Monroe Street, Suite 40  
Tallahassee, Florida 32399-2202

ATTN: Thomas J. Morton

Re: New Image Global, Inc.  
License No. 26-00376  
Protest of Proposed Assessment and Bond Requirement

Proposed Assessment:

Tax:	\$934,594.41
Interest	\$54,440.41
Penalty	\$93,459.45

Dear Mr. Morton:

I represent New Image Global, Inc. ("New Image") in its dealings with the Florida Division of Alcoholic beverages and Tobacco ("DABT" or "agency"). Please accept this as New Image's protest letter of the proposed assessment issued by DABT on November 1, 2010. This protest is timely filed. For the reasons set forth below, New Image objects to the assessment in toto and demands that it be withdrawn accordingly.

Facts

New Image Global, Inc. is a foreign corporation authorized to do business in Florida. It currently has a warehouse in the Jacksonville, Florida area where it receives and ships "cigar wraps" to other wholesalers and retailers, some within the State of Florida and some outside of the State. Although it in no way has ever admitted that it was required to obtain a license from the State, it did, in fact, obtain a wholesale tobacco products license from your agency in November, 2009.

FOWLER WHITE BOGGS P.A.

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101 N. MONROE STREET, SUITE 1090 • TALLAHASSEE, FL 32301 • P.O. BOX 11240 • TALLAHASSEE, FL  
TELEPHONE (850) 681-0411 • FAX (850) 681-6036 • www.fowlerwhite.com

EXHIBIT

A



Thomas J. Morton  
Department of Business and Professional Regulation  
Division of Alcoholic Beverage and Tobacco  
Office of General Counsel  
December 15, 2010  
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Cigar wraps are homogenized cigar overwraps used for custom cigar rolling to be filled with the customer's choice of loose tobacco. The wrap consists of just over 40% cigar tobacco with a balance of diverse ingredients such as wood pulp and war gum.

DABT personnel have visited the warehouse on more than one occasion and in response to a demand, New Image voluntarily produced various records to DABT. As a result, DABT issued the proposed assessment which is now in dispute.

New Image understands that DABT has determined that the cigar wraps that New Image holds in its warehouse are other "Tobacco Products" within the definition contained in Section 210.25(11), Florida Statutes, and are thus subject to tax. New Image disputes this determination and definitively states that its cigar wraps are not other "Tobacco Products" within the taxing jurisdiction of this State.

#### Law and Argument

As DABT knows, cigars are not subject to a tobacco tax in the State of Florida. Efforts at adding such a tax to the law failed in 2009 and cigars remain excluded from the tax. Initially, because of their intended use as an outer wrap to enable the consumer to produce their own cigars by inserting the loose tobacco into the wrap, New Image believes their product could easily be classified as a "cigar" not subject to any surcharge or tax such as that imposed on cigarettes and true other "tobacco products." Cigar wraps are essentially a component part of a cigar. If the cigar is not taxable, the wrap should not be taxable either.

More importantly, however, New Image asserts, contrary to the position of DABT, that its products do not fall within the definition of Section 210.25(11), Florida Statutes. That section states:

"Tobacco products" means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

From the clear language of this section, cigar wraps are none of the products specifically identified in the definition. A cigar wrap is not:

Loose tobacco suitable for smoking;

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Snuff;

Snuff Flour;

Cavendish;

Plug and Twist tobacco;

Fine cuts and other chewing tobacco;

Shorts;

Refuse Scraps;

Clippings;

Cuttings and Sweepings of Tobacco; nor

Other kinds and forms of tobacco prepared in such a manner as to be suitable for chewing.

Because they are not specifically identified nor fall within any category described in the definition of "tobacco products" in the statute controlling the issue, cigar wraps are not subject to the tax DABT proposes to impose. (Similarly, there is no provision of the Florida Administrative Code that would somehow capture cigar wraps within the taxing statute.

As DABT is well aware, taxing statutes – those identifying specific products, services or transactions as subject to tax in Florida – are strictly construed against the taxing authority. Florida case law is replete with decisions reinforcing this maxim:

It is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government, and that all ambiguities or doubts are to be resolved in favor of the taxpayer. This salutary principle is found in the reason that the duty to pay taxes, while necessary to the business of the sovereign, is still a duty of pure statutory creation and taxes may be collected only within the clear definite boundaries recited by statute, State ex rel. Seaboard Air Line R. Co. v. Gay (1948) 160 Fla. 445, 35 So.2d 403; 51 Am.Jur. Taxation Section 650.

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Maas Brothers v. Dicknison, 195 So.2d 193, 198 (Fla. 1967).

Based on this foundation of Florida law, because cigar wraps are not specifically identified as taxable and do not fit within any of the products or categories in Section 210.25(11), they are not subject to the surcharge and tax DABT asserts through its assessment and the assessment must be withdrawn in its entirety.

Supporting this conclusion is the history of the federal imposition of tax on cigar wraps. Prior to 2009, the federal government was unable to tax cigar wraps because they did not fall within any definition within the federal statutes governing the taxation of tobacco products. In 2009, Congress amended 26 USC Section 5702(o), to specifically include, within the term of "roll-your-own tobacco" the phrase "tobacco which...is suitable for use...by...consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof." Thus, the federal government then had authority to impose its taxes on cigar wraps such as those distributed by New Image at its Jacksonville warehouse. Likewise, other states have made specific amendment to their statutes to include cigar wraps within the purview of their "tobacco taxing" statutes or the cigar wraps are subject to tax because cigars themselves, unlike in Florida, are subject to tax.

However, the Florida Legislature has not seen fit to tax cigars nor to amend Section 210.25(11), Florida Statutes, in a like manner to include cigar wraps and thus, cigar wraps, in Florida, remain outside of the types of products subject to the surcharge and tax on tobacco products. DABT cannot simply impose its own unsupported interpretation of Florida law to now attempt to tax cigar wraps. An agency of the State has no such power. DABT must wait on the Florida Legislature to amend the Florida statute to encompass cigar wraps, if it ever sees fit to do so.

Alternatively, even if subject to the surcharge and tax, New Image is concerned that DABT may be attempting to impose the surcharge and tax on New Image in instances where the customers of New Image have already paid a like surcharge and tax. Section 210.30(3), Florida Statutes, states:

Any tobacco product with respect to which a tax has once been imposed under this part shall not again be subject to tax under this part.

(Section 210.276, Florida Statutes, has a similar provision relative to the surcharge)

New Image has information that some of its customers, other wholesalers or distributors, in fact, for administrative convenience and the fact that they deal in otherwise taxable products, pay the surcharge and tax on cigar wraps. As such, DABT's proposed

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assessment against New Image for the same products is, by definition invalid and overstated and must be adjusted accordingly. Otherwise, contrary to the plain statutory language, double taxation will have occurred.

Conclusion

The cigar wraps that New Image distributes from its warehouse in Jacksonville, Florida, do not fall within the definition of any product that is subject to the surcharge and tax that DABT attempts to impose through the proposed assessment at issue. Therefore, the assessment is invalid and illegal and must be withdrawn in its entirety.

Furthermore, because the request by DABT to New Image to increase its bond amount was based on the invalid interpretation that New Image's products were taxable when they are not, the request for such increase must be accordingly withdrawn and cancelled.

To the extent the Department the has offered, New Image would like to take advantage of the informal protest hearing process without waiving its right to pursue circuit court or formal administrative proceedings to challenge the final assessment as set forth in Section 72.011, Florida Statutes. Finally, we would request that DABT produce its audit work papers prior to any meeting or hearing so that we may review them in detail to determine if there are any other issues that need to be addressed.

Sincerely,



Rex D. Ware

Enclosure

cc: Lantz Alexander  
New Image Global Inc.

43036805v1

FOWLER, WHITE BOGGS P.A.

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Florida Department of  
**Business &  
Professional  
Regulation**

Office of the General Counsel  
Michael Ross, Chief Attorney  
Alcoholic Beverages and Tobacco  
1940 North Monroe Street, Suite 42  
Tallahassee, FL 32399-2202  
Phone: 850.488.0062  
Fax: 850.488.5074

Charlie Liem  
Secretary

Charlie Crist  
Governor

November 1, 2010

New Image Global, Inc.  
c/o Rex Ware, Esq.  
Fowler, White, Boggs, P.A.  
101 N. Monroe Street, Suite 1090  
Tallahassee, Florida 32301

Re: Other Tobacco Product Audit  
License Number: 26-00376

Dear Licensee:

We have completed a periodic audit of your Monthly Reports covering the period November 1, 2009 through July 31, 2010. The findings indicated there is a liability in the amount of \$1,082,494.32. Please refer to the attached adjustment sheets for further detail.


You may protest the proposed assessment pursuant to Section 210.55(3), Florida Statutes by filing a protest within 60 days of the date of this letter. Upon receipt of a timely protest, the Division will schedule a protest hearing. You will be notified of the time and place for the protest hearing. Following the hearing, the Division will issue a final assessment for the amount found to be due as a result of the protest hearing. The protest shall be filed at the following address:

Office of the General Counsel  
ATTN: Thomas J. Morton  
1940 North Monroe Street, Suite 40  
Tallahassee, Florida 32399-2202

If you fail to file a protest within 60 days, the Division will issue a final assessment.

Please feel to contact me should you have any questions or concerns.

Sincerely,

  
Thomas J. Morton  
(850) 922-2406

Attachment(s)

Name: New Image Global Inc  
Audit Period: November 01, 2009 Through July 31, 2010  
License #: 2600376

Details of Audit Adjustments

Excise Tax Rate = 25%  
Surcharge Rate = 60%

09/01/10

Audit Type: Other Tobacco Products

Date	Invoice Number	Supplier	Type	Reported Amount	Audited Amount	Adjustment	Excise Tax	Surcharge	Net By Month	Collection Allowance	Net Excise + Surcharge	Interest Rate	Interest Amount	Total Due
11/20/09	Nov Purchase	Purchases	Purchases	101,553.00	101,553.00	\$101,553.00	\$25,388.25	\$60,931.80				8.71%		
11/20/09	Nov Out of State Sales	Out-of-State Sales	Out-of-State Sales	39,774.00	39,774.00	(\$9,943.50)	(\$23,864.40)		\$52,512.15			8.71%	4,575.03	\$57,087.18
12/31/09	Dec Purchase	Purchases	Purchases	1,055,192.00	1,055,192.00	\$1,055,192.00	\$263,298.00	\$633,115.20				7.65%		
12/31/09	Dec Out of State Sales	Out-of-State Sales	Out-of-State Sales	627,740.70	627,740.70	(\$156,935.18)	(\$376,644.42)		\$371,833.50			7.65%	28,483.47	\$400,317.07
01/31/10	Jan Purchase	Purchases	Purchases	425,044.00	425,044.00	\$425,044.00	\$106,261.00	\$255,026.40				6.67%		
01/31/10	Jan Out of State Sales	Out-of-State Sales	Out-of-State Sales	504,195.40	504,195.40	(\$126,046.55)	(\$302,517.24)		\$197.85			6.67%		\$-57,080.81
02/29/10	Feb Purchase	Purchases	Purchases	638,594.00	638,594.00	\$638,594.00	\$159,646.00	\$333,150.40				5.60%		
02/29/10	Feb Out of State Sales	Out-of-State Sales	Out-of-State Sales	555,480.10	555,480.10	(\$148,870.03)	(\$357,288.06)		\$38,658.31			5.60%	2,051.75	\$38,659.06
03/31/10	March Purchase	Purchases	Purchases	1,082,296.03	1,082,296.03	\$1,082,296.03	\$270,574.02	\$649,377.55				4.97%		
03/31/10	March Out of State Sales	Out-of-State Sales	Out-of-State Sales	981,785.30	981,785.30	(\$220,445.33)	(\$552,071.19)		\$170,434.16			4.97%	7,958.71	\$178,392.87
04/30/10	April Purchase	Purchases	Purchases	1,378,895.00	1,378,895.00	\$1,378,895.00	\$344,674.00	\$827,217.60				3.75%		
04/30/10	April Out of State Sales	Out-of-State Sales	Out-of-State Sales	1,059,273.35	1,059,273.35	(\$267,218.84)	(\$654,564.02)		\$263,009.24			3.75%	9,857.44	\$272,866.68
05/31/10	May Purchase	Purchases	Purchases	873,304.00	873,304.00	\$873,304.00	\$218,326.00	\$523,982.40				2.73%		
05/31/10	May Out of State Sales	Out-of-State Sales	Out-of-State Sales	912,591.20	912,591.20	(\$228,147.80)	(\$547,554.72)		\$33,394.12			2.73%		\$-53,295.90
06/30/10	June Purchase	Purchases	Purchases	474,740.00	474,740.00	\$474,740.00	\$118,685.00	\$338,844.00				1.89%		
06/30/10	June Out of State Sales	Out-of-State Sales	Out-of-State Sales	556,222.70	556,222.70	(\$139,055.69)	(\$333,793.62)		\$69,280.30			1.89%		\$-59,058.59
07/31/10	July Purchase	Purchases	Purchases	418,971.20	418,971.20	\$418,971.20	\$104,742.80	\$251,382.72				0.72%		
07/31/10	July Out of State Sales	Out-of-State Sales	Out-of-State Sales	172,382.60	172,382.60	(\$43,095.65)	(\$103,428.55)		\$209,600.31			0.72%	1,516.01	\$211,116.32
TOTALS				\$11,817,825.34	\$11,817,825.34	\$274,733.71	\$659,360.95	\$934,094.65	\$493.80	\$934,594.45			\$54,440.41	\$989,034.86

Page 1 [Total Adjustments to Purchases = \$6,458,380.28] [Total Adjustment to Deductions = \$5,359,445.36]

**State of Florida**  
**Department of Business and Professional Regulation**  
**Division of Alcoholic Beverages and Tobacco**

**Bond Analysis**

License Number: 2600376  
 Name: New Image Global Inc

Audit Period  
 November 01, 2009 Through July 31, 2010

Month	Excise Tax	Surcharge	Adjustments	Adjusted Monthly Tax
November-09	\$0.00	\$0.00	\$52,512.15	\$52,512.15
December-09	0.00	0.00	371,833.60	371,833.60
January-10	0.00	0.00	-67,278.69	-67,278.69
February-10	0.00	0.00	36,638.31	36,638.31
March-10	0.00	0.00	170,434.16	170,434.16
April-10	0.00	0.00	263,009.24	263,009.24
May-10	0.00	0.00	-33,394.12	-33,394.12
June-10	0.00	0.00	-69,260.30	-69,260.30
July-10	0.00	0.00	209,600.31	209,600.31
	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00

Highest monthly purchase: \$371,833.60

Current Bond Amount: \$2,000.00

The Bond is less than the highest monthly liability. The bond should be increased.

210.40 License fees; surety bond; application for each place of business.--Each application for a distributor's license shall be accompanied by a fee of \$25. The application shall also be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties, and accrued interest which may be due the state. The bond shall be in the sum of \$1,000 and in a form prescribed by the division. Whenever it is the opinion of the division that the bond given by a licensee is inadequate in amount to fully protect the state, the division shall require an additional bond in such amount as is deemed sufficient.

Charlie Liem, Secretary

Charlie Crist, Governor

October 18, 2010

License No: 2600376  
New Image Global Inc  
1672 Railroad Street  
Corona, CA 92880

**Re: Bond No. 72BSBFL2872**

**Amount: \$ 2,000.00 Issued by: Hartford Fire Insurance Company**

Dear Licensee:

We have completed your Other Tobacco Product audit for the period November 01, 2009 through July 31, 2010, and found that the highest monthly liability exceeded amount of your surety bond (see attached). This indicates that an increase in your surety bond is necessary for adequate coverage.

We request that you increase in your surety bond in compliance with Section 210.40, F.S. and Rule 61A-10.082, F.A.C.

Our suggestion is to increase the amount of coverage to a minimum of \$ 371,833.60 (if you anticipate a greater increase in business, please increase accordingly).

Please furnish a new bond or rider by November 27, 2010. This should be submitted directly to the Jacksonville District Auditing Office at the following address:

Division of Alcoholic Beverages and Tobacco  
7960 Arlington Expressway, Suite 601  
Jacksonville, Florida 32211-7470

If you have any questions please contact auditor Jerry Jones or me at 904.727.5554.

Sincerely,

Peggy Perez  
Tax Audit Supervisor





Department Of Business and Professional Regulation  
Division Of Alcoholic Beverages and Tobacco

Other Tobacco Product Dealer  
Audit Report

October 18, 2010  
District 3, Jacksonville

**Director:** Nicholas Monday  
Division of Alcoholic Beverages and Tobacco  
1940 North Monroe St.  
Tallahassee, Florida 32399-1020

**Attention:** Marie Fraher, Chief, Bureau of Auditing

I submit this Periodic audit for the following Other Tobacco Products Dealer, for the audit period beginning November 01, 2009 and ending July 31, 2010. This audit began on September 01, 2010.

**Name:** New Image Global Inc  
**Address:** 1672 Railroad Street  
**City:** Corona, CA 92880

**License Number:** 2600376 TWD Audit File Key 1186092

**Bond Number:** 72BSBFL2872 **Bond Amount :** \$2,000.00  
**Bond Company:** Hartford Fire Insurance Company

The tax liability for the period is \$ 1,082,494.32

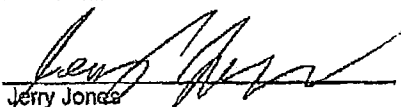
This audit was performed in accordance with the attached audit program.

**Auditors Comments and Recommendations:**

Licensee, per attached correspondence, does not believe their tobacco products are taxable, therefore, have not paid tax on any months of the audit period. The licensee has stated, per attached correspondence, that they have been in business here in Florida since 2006, however, the licensee did not obtain a license until November 23, 2009. The audit period begins Nov 23, 2009. Records were requested via Enf, Agent Anno. Records are conflicting with inventory logs issued by licensee as well. This audit will be submitted to licensee however, licensee states, again in correspondence attached, that the audit will go to some legal action as they have their lawyers ready to go to work on this. Shipping documents were not attached to all packing lists and shipping documents were not supplied for all transfers to CA. Bond will need to be increased, analysis attached. Licensee will be told via email

Reviewed and Approved by:

Peggy Perez  
Tax Audit Supervisor

  
Jerry Jones  
Auditor In Charge of Audit  
Hrs. 120.00

State of Florida  
Department of Business and Professional Regulation  
Division of Alcoholic Beverages and Tobacco

Auditor's Summary Sheet

License Number: 2600376

Name: New Image Global Inc  
1672 Railroad Street  
Corona, CA 92880

Audit Period

November 01, 2009 through July 31, 2010

Reported

Total Taxable Purchases \$0.00

Less: Sales to Gov't Stores \$0.00

Sales Out-of-State 0.00

Returns to Factory 0.00

Products Destroyed 0.00

Certificate of Credit-Excise Tax

Total Deductions

Net Taxable Purchases

\$0.00

Tax and Surcharge Computation

	Excise Tax	Surcharge
Excise tax (\$0.00 X .25) Surcharge (\$0.00 X .60)	\$0.00	\$0.00
Less: Collection Allowance	0.00	
Certificate of Credit	0.00	\$0.00
Taxes Due from Monthly Reports	(\$0.00)	
Less: Taxes Remitted	\$0.00	0.00
Monthly Report Overpayment	(\$0.00)	(\$0.00)

Adjustments

Taxable Purchases (See the Details of Adjustments for details) \$6,458,380.28

Less: Total Deductions (See the Details of Adjustments for details) 5,369,445.36

## \$1,088,934.92

	Excise Tax	Surcharge
##	\$274,733.71	\$659,360.95
Collection Allowance Disallowed (Details of Adjustments)	499.80	
Total (Added Into Audit Liability Due)	<u>275,233.51</u>	<u>\$659,360.95</u>

Additional Liability Adjustments

Interest on Adjustments (Details of Adjustments) \$54,440.41

Interest on Late Monthly Reports

Late Penalty Due (Reports) + 934,594.46 (Adjustments) x 10% = \$93,459.45

Monthly Report Overpayment (See Tax and Surcharge Computation above.) (0.00)

Audit Liability Due \$1,082,494.32

Ken Lawson, Secretary

Rick Scott, Governor

December 26, 2012

New Image Global, Inc.  
c/o Rex Ware, Esq.  
Fowler, White, Boggs, P.A.  
101 N. Monroe Street, Suite 1090  
Tallahassee, Florida 32301

Re: Revised Other Tobacco Product Audit  
License Number 26-00376

Dear Licensee:

We have completed a revised audit for the period November 23, 2009 through July 31, 2010. The original audit has been revised to reflect the excise taxes and surcharges that were paid by your customers after purchasing your products. The revised findings indicate there is a remaining liability in the amount of \$1064.20 for the remaining products sold during this audit period. Please refer to the attached adjustment sheets for further detail.

If you agree with the revised audit assessment, please pay \$1064.20 within 60 days of the date of this revised audit assessment.

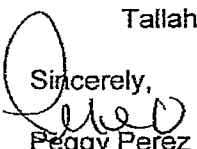
If you disagree with the revised audit assessment, you may file an informal written protest pursuant to Section 210.55(3), Florida Statutes within 60 days of the date of this letter. If no protest is filed within the 60 day period, the revised audit assessment will become a FINAL ASSESSMENT.

If you request an administrative hearing or judicial proceeding, you must file your request no later than 60 days from the date the revised audit assessment becomes a FINAL ASSESSMENT. You must file the petition for an administrative hearing with the Department of Business and Professional Regulation. For judicial proceedings, you must file a complaint with the appropriate Clerk of the Court.

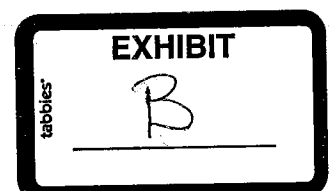
Please refer questions and correspondence to:

Office of the General Counsel  
1940 North Monroe Street, Suite 40  
Tallahassee, Florida 32399-2202

Sincerely,

  
Peggy Perez  
Tax Audit Supervisor  
(904)723-5810

LICENSE EFFICIENTLY. REGULATE FAIRLY.  
[WWW.MYFLORIDALICENSE.COM](http://WWW.MYFLORIDALICENSE.COM)



Name: New Image Global Inc  
Audit Period: November 23, 2009 Through July 31, 2010

020104 740

Other Tobacco Products

[illegible]



1672 Railroad  
Corona, CA 92880  
(951) 371-8344

newimage

TRUE  
BLUNT

# PACKING LIST

Invoice Number: 0049026-IN  
Invoice Date: 1/21/2010  
Order Number: 0016399  
Order Date: 1/19/2010  
Salesperson: PEGG  
Customer Number: DMIM

Sold To:  
DM Imports, Ltd.  
718 Adams Street  
Suite # A  
Carmel, IN 46032

Ship To:  
Sam's Club # 6363  
6373 Youngerman Circle  
Jacksonville, FL 32244

Phone #: 317-575-9743

FAX #: 317-575-1770-DM

TRACKING NUMBERS:

Confirm David Myers

Customer P.O.	Ship VIA	State	F.O.B.	Terms		
6363649527	UPS GROUND	IN		Net 30 Days		
Item No.	DESCRIPTION	Unit	Ordered	Shipped	Back Ordered	
302	50 CT/2 PK. EZ WET MANGO BOX SAMP		50.00	50.00	0.00	
PLEASE INDICATE PO# ON UPS REFERENCE LABEL. PLEASE DELIVER: ASAP						

105

3N53F1 JAN 21, 2010 ACT WT 25.0 LBS #PK 1  
SERVICE GND COM BILL WT 34.0 LBS  
TRACKING# 123N53F10348857553 ALL CURRENCY USD  
REF 1:6363649527  
REF 2:49026

HANDLING CHARGE 0.00 FRT: SHP  
SHIPMENT PUB RATE CHARGES: SVC 10.99 USD  
DV 0.00 COD 0.00 RS 0.00  
DC 0.00 DC 0.00 SD 0.00  
AM 0.00 PR 0.00 SP 0.00  
TOT PUB CHG 10.99 PUB+HANDLING 10.99

Reported = 0  
Audited = 72.00

~~144.00~~  
72.00

05/19/2010 10:01

9513718345

ROYAL BLUNTS INC

PAGE 10/10



1672 Railroad  
Corona, CA 92880  
(951) 371-8344

newimage

Page: 1



## PACKING LIST

Invoice Number: 0050775-JN  
Invoice Date: 5/19/2010  
Order Number: 0015836  
Order Date: 9/14/2009  
Salesperson: NICH  
Customer Number: COLONIA

Sold To:  
Colonial Grocers  
4001 East Lake Avenue  
Tampa, FL 33610

Ship To:  
Colonial Grocers  
4001 East Lake Avenue  
Tampa, FL 33610

Phone #: (813) 621-8880

FAX #: (813) 621-8890

TRACKING NUMBERS:

Confirm

Customer P.O.	Ship VIA	State	F.O.B.	Terms		
330292	UPS GROUND	FL		Net 30 Days		
Item No.	DESCRIPTION	Unit	Ordered	Shipped	Back Ordered	
213	SOUR APPLE RB DOUBLE UP BOX		100.00	100.00	0.00	
218	STRAWBERRY RB DOUBLE UBOX		100.00	100.00	0.00	

3W53F1 MAY 19, 2010 ACT WT 70.0 LBS #PK 2  
SERVICE GND COM BILL WT 74.0 LBS  
TRACKING# 123W53F10347220232  
REF 1:330292 ALL CURRENCY USD  
REF 2:50775

HANDLING CHARGE 0.00  
SHIPMENT PUB RATE CHARGES:  
DV 0.00  
DC 0.00  
AH 0.00  
TOT PUB CHG 27.98  
FRT: SHP  
SVC 27.98 USD  
RS 0.00  
SD 0.00  
SP 0.00  
PUB+HANDLING 27.98

Reported = 0  
Audit = 472.00

205

472

01/04/2010 15:40 9513718345

ROYAL BLUNTS INC

PAGE 20/36

Page: 1



1672 Railroad  
Corona, CA 92880  
(951) 371-8344

newimage

TRUE  
BLUNT

### PACKING LIST

Invoice Number: 0048798-IN  
Invoice Date: 1/6/2010  
Order Number: 0015836  
Order Date: 9/14/2009  
Salesperson: NICH  
Customer Number: COLONIA

Sold To:  
Colonial Grocers  
4001 East Lake Avenue  
Tampa, FL 33610

Ship To:  
Colonial Grocers  
4001 East Lake Avenue  
Tampa, FL 33610

Not Reported  
#3900600

Phone #: (813) 621-8880

FAX #: (813) 621-8890

TRACKING NUMBERS:

Confirm					
Customer P.O.	Ship VIA	State	F.O.B.	Terms	
330292	UPS GROUND	FL		Net 30 Days	
Item No.	DESCRIPTION	Unit	Ordered	Shipped	Back Ordered
212	BLUEBERRY RB DOUBLE UP BOX		100.00	100.00	0.00
214	WATERMELON RB DOUBLE BOX UP		100.00	100.00	0.00
213	SOUR APPLE RB DOUBLE UP BOX		100.00	0.00	100.00
210	WET MANGO RB DOUBLE UP BOX		100.00	100.00	0.00
218	STRAWBERRY RB DOUBLE UBOX		100.00	0.00	100.00

3053F1 JAN 5, 2010 ACT WT 105.0 LBS HPK 3  
SERVICE GND COM BILL WT 111.0 LBS  
TRACKING# 1Z3W53F10348081711 ALL CURRENCY USD  
REF 1:48798  
REF 2:1583H

HANDLING CHARGE 0.00 FRT: SHP  
SHIPMENT PUB RATE CHARGES: SVC 41.76 USD  
DV 0.00 COD 0.00 RS 0.00  
DC 0.00 DG 0.00 SD 0.00  
AH 0.00 PR 0.00 SP 0.00  
TOT PUB CHG 41.76 PUB+HANDLING 41.76

3CS  
165 LBS

Reported  
Audit = 708.00

4,179.96

708.00



newimage  
GLOBAL INC.

### WHOLESALE COST

Product Line	Pouches Per Box	Boxes per Case	Cost Per Box	Cost Per Case
EZ Roll Cigar Wrap	.06 <sup>each</sup> 25	100	1.44	144.00
Double Up Cigar Wrap	.10 25	100	2.36	236.00
True Blunt Cigar Wrap	.06 25	50	1.44	72.00
TB Classic Cigar Wrap	.06 25	100	1.44	144.00
2XXL Cigar Wrap	.13 25	50	3.24	162.00



newimage



February 12, 2013

VIA HAND DELIVERY

Department of Business and Professional Regulation  
Division of Alcoholic Beverage and Tobacco  
State of Florida  
Office of General Counsel  
1940 North Monroe Street, Suite 40  
Tallahassee, Florida 32399-2202

Re: New Image Global, Inc.  
License No. 26-00376  
Amended Protest of Proposed Assessment

Proposed Assessment:

Tax: \$1064.20

Dear Sir/Madam:

This firm represents New Image Global, Inc. ("New Image") in its dealings with the Florida Division of Alcoholic Beverages and Tobacco ("DABT" or "agency"). Please accept this as New Image's protest letter of the proposed revised assessment issued by DABT on December 26, 2012. This protest is timely filed. For the reasons set forth below, New Image objects to the assessment in toto and demands that it be withdrawn accordingly.

Facts

New Image Global, Inc. is a foreign corporation authorized to do business in Florida. It currently has a warehouse in the Jacksonville, Florida area where it receives and ships "cigar wraps" to other wholesalers and retailers, some within the State of Florida and some outside of the State. Although it in no way has ever admitted that it was required to obtain a license from the State, it did, in fact, obtain a wholesale tobacco products license from your agency in November, 2009.

Cigar wraps are homogenized cigar overwraps used for custom cigar rolling to be filled with the customer's choice of loose tobacco. The wrap consists of just over 40% cigar tobacco with a balance of diverse ingredients such as wood pulp and war gum.

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OFFICE OF  
THE GENERAL COUNSEL  
2013 FEB 12 P 12:13

EXHIBIT

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DABT personnel have visited the warehouse on more than one occasion and in response to a demand, New Image voluntarily produced various records to DABT. As a result, DABT issued a proposed assessment which has now been "revised." It is the revised assessment that New Image now challenges.

New Image understands that DABT has determined that the cigar wraps that New Image holds in its warehouse are other "Tobacco Products" within the definition contained in Section 210.25(11), Florida Statutes, and are thus subject to tax. New Image disputes this determination and definitively states that its cigar wraps are not other "Tobacco Products" within the taxing jurisdiction of this State.

#### Law and Argument

As DABT knows, cigars are not subject to a tobacco tax in the State of Florida. Efforts at adding such a tax to the law failed in 2009 and cigars remain excluded from the tax. Initially, because of their intended use as an outer wrap to enable the consumer to produce their own cigars by inserting the loose tobacco into the wrap, New Image believes their product could easily be classified as a "cigar" not subject to any surcharge or tax such as that imposed on cigarettes and true other "tobacco products." Cigar wraps are essentially a component part of a cigar. If the cigar is not taxable, the wrap should not be taxable either.

More importantly, however, New Image asserts, contrary to the position of DABT, that its products do not fall within the definition of Section 210.25(11), Florida Statutes. That section states:

"Tobacco products" means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

From the clear language of this section, cigar wraps are none of the products specifically identified in the definition. A cigar wrap is not:

Loose tobacco suitable for smoking;

Snuff;

Snuff Flour;

Cavendish;

Plug and Twist tobacco;

Fine cuts and other chewing tobacco;

Shorts;

Refuse Scraps;

Clippings;

Cuttings and Sweepings of Tobacco; nor

Other kinds and forms of tobacco prepared in such a manner as to be suitable for chewing.

Because they are not specifically identified nor fall within any category described in the definition of "tobacco products" in the statute controlling the issue, cigar wraps are not subject to the tax DABT proposes to impose. (Similarly, there is no provision of the Florida Administrative Code that would somehow capture cigar wraps within the taxing statute.)

As DABT is well aware, taxing statutes – those identifying specific products, services or transactions as subject to tax in Florida – are strictly construed against the taxing authority. Florida case law is replete with decisions reinforcing this maxim:

It is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government, and that all ambiguities or doubts are to be resolved in favor of the taxpayer. This salutary principle is found in the reason that the duty to pay taxes, while necessary to the business of the sovereign, is still a duty of pure statutory creation and taxes may be collected only within the clear definite boundaries recited by statute, State ex rel. Seaboard Air Line R. Co. v. Gay (1948) 160 Fla. 445, 35 So.2d 403; 51 Am.Jur. Taxation Section 650. Maas Brothers v. Dicknison, 195 So.2d 193, 198 (Fla. 1967).

Based on this foundation of Florida law, because cigar wraps are not specifically identified as taxable and do not fit within any of the products or categories in Section 210.25(11), they are not subject to the surcharge and tax DABT asserts through its assessment and the assessment must be withdrawn in its entirety.

Department of Business and Professional Regulation  
Division of Alcoholic Beverage and Tobacco  
Office of General Counsel  
February 12, 2013  
Page 4

Supporting this conclusion is the history of the federal imposition of tax on cigar wraps. Prior to 2009, the federal government was unable to tax cigar wraps because they did not fall within any definition within the federal statutes governing the taxation of tobacco products. In 2009, Congress amended 26 USC Section 5702(o), to specifically include, within the term of "roll-your-own tobacco" the phrase "tobacco which...is suitable for use...by...consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof." Thus, the federal government then had authority to impose its taxes on cigar wraps such as those distributed by New Image at its Jacksonville warehouse. Likewise, other states have made specific amendment to their statutes to include cigar wraps within the purview of their "tobacco taxing" statutes or the cigar wraps are subject to tax because cigars themselves, unlike in Florida, are subject to tax.

However, the Florida Legislature has not seen fit to tax cigars nor to amend Section 210.25(11), Florida Statutes, in a like manner to include cigar wraps and thus, cigar wraps, in Florida, remain outside of the types of products subject to the surcharge and tax on tobacco products. DABT cannot simply impose its own unsupported interpretation of Florida law to now attempt to tax cigar wraps. An agency of the State has no such power. DABT must wait on the Florida Legislature to amend the Florida statute to encompass cigar wraps, if it ever sees fit to do so.

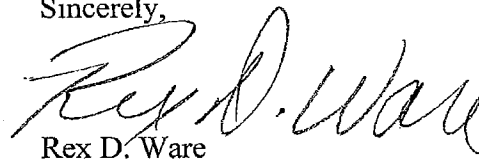
#### Conclusion

The cigar wraps that New Image distributes from its warehouse in Jacksonville, Florida, do not fall within the definition of any product that is subject to the surcharge and tax that DABT attempts to impose through the proposed revised assessment at issue. Therefore, the revised assessment is invalid and illegal and must be withdrawn in its entirety.

New Image would like to take advantage of the informal protest hearing process without waiving its right to pursue circuit court or formal administrative proceedings to challenge the final revised assessment as set forth in Section 72.011, Florida Statutes. In addition to the records you may have already produced from the audit file, New Image hereby requests that you produce any and all documents not previously produced, including e-mails and internal documents of the agency, relating in any way to this revised audit or New Image.

We appreciate your anticipated cooperation.

Sincerely,

  
Rex D. Ware

Enclosure

**FOWLER WHITE BOGGS P.A.**

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Department of Business and Professional Regulation  
Division of Alcoholic Beverage and Tobacco  
Office of General Counsel  
February 12, 2013  
Page 5

cc: Lanz Alexander  
New Image Global Inc.

45256113v1

**Ken Lawson, Secretary**

**Rick Scott, Governor**

April 19, 2013

New Image Global, Inc.  
c/o Rex Ware, Esq.  
Fowler, White, Boggs, P.A.  
101 N. Monroe Street, Suite 1090  
Tallahassee, Florida 32301

Re: Revised Other Tobacco Product Audit  
License Number 26-00376

Dear Licensee:

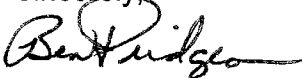
We have received your timely filed Amended Protest of Proposed Assessment. Your argument that tobacco wraps are not other tobacco products subject to tax pursuant to Section 210.25 (11), Florida Statutes has been reviewed. The Department's position has been and remains that tobacco wraps are subject to tax as other tobacco products because the product fits the definition of other tobacco products as follows: loose tobacco suitable for smoking as well as shorts and refuse scraps. Furthermore, the product is not exempt from the definition of other tobacco products as are cigarettes and cigars. The Amended Audit Assessment dated December 26, 2012 represents our Final Assessment for the audit period November 23, 2009 through July 31, 2010.

If you would like to request an administrative hearing or judicial proceeding, you must file your request no later than 60 days from the date of this letter. You must file the petition for an administrative hearing with the Department of Business and Professional Regulation. For judicial proceedings, you must file a complaint with the appropriate Clerk of the Court.

Please refer questions and correspondence to:

Office of the General Counsel  
1940 North Monroe Street, Suite 40  
Tallahassee, Florida 32399-2202

Sincerely,



Ben Pridgeon  
Revenue Program Administrator  
(850)717-1137



May 29, 2013

VIA E-MAIL DELIVERY

Michael Martinez  
Deputy General Counsel  
Florida Department of Business & Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399

Re: New Image Global, Inc. v. DBPR/DABT  
"Tobacco Products" Assessment/Lawsuit to be filed  
Decision Date by Agency: April 19, 2013  
Bond Waiver

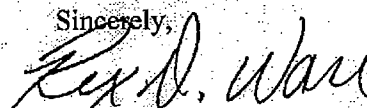
Dear Michael:

I am writing to memorialize our recent conversation wherein you represented that the agency would waive the bond requirement set forth in Section 72.011(3), Florida Statutes, regarding the lawsuit my client, New Image Global, Inc. intends to file regarding the recent Amended Assessment for "Tobacco Products" as upheld by the agency on April 19, 2013.

My client anticipates that the Complaint will be filed in circuit court on or about June 10, 2013. As such, could you please confirm by the appropriate signature below that the Secretary or his designee agrees to waive the bond requirement for the purpose of complying with the statutory provision and return a copy of this letter to me as soon as possible.

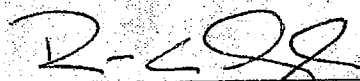
Thank you for your continued cooperation.

Sincerely,



Rex D. Ware

The Florida Department of Business & Professional Regulation, through its Secretary or his designee's signature below, hereby agrees that the agency has waived the bond requirement set forth in Section 72.011(3), Florida Statutes, as regards the Complaint to be filed by New Image Global challenging the agency's decision of April 19, 2013 referenced above.



Secretary/Secretary's Designee  
Florida Department of Business & Professional Regulation

Dated: 6/3/13

FOWLER WHITE BOGGS P.A.

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