

CT 17-02
Tax Type: Cigarette Tax
Tax Issue: Possession of Unstamped Cigarettes

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE, JIM DOE, & ABC BUSINESS

Possessors of Contraband Little Cigars

No. XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, and Jim Doe, *pro se*, for ABC Business

Synopsis:

The Department of Revenue (“Department”) seized 78 packs of little cigars from the premises of ABC Business (“respondent”). The business is owned by John Doe (“respondent”) and Jim Doe (“respondent”) and is located in Illinois. The packages did not have Illinois tax stamps affixed to them as mandated by the Tobacco Products Tax Act of 1995 (“Tobacco Act”) (35 ILCS 143/10-1 *et seq.*). The Department seeks forfeiture of the little cigars and seeks to impose a civil penalty pursuant to the Tobacco Act. During the hearing, the respondents asked that the penalty be waived because the owners were unaware that the unstamped little cigars were on the premises of the

business when they purchased the business just 10 days earlier. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On January 25, 2016, a Special Agent for the Department's Criminal Investigation Division found 78 packs of unstamped little cigars at ABC Business in Anywhere, Illinois. (Dept. Ex. #1; Tr. p. 7)
2. John Doe and Jim Doe own ABC Business. (Dept. Ex. #1)
3. The little cigars did not have Illinois tax stamps affixed to them. (Dept. Ex. #1)
4. The Department's agent seized the packs of little cigars. (Dept. Ex. #1)
5. The respondents are not licensed distributors or stamping distributors of little cigars. (Dept. #1)

CONCLUSIONS OF LAW:

Section 10-27 of the Tobacco Act provides, in part, as follows:

Retailers; purchase and possession of little cigars.

(a) Retailers are prohibited from possessing unstamped packages of little cigars containing 20 or 25 little cigars at locations where retailers make sales of little cigars to consumers or users. Retailers that are also stamping distributors are prohibited from possessing unstamped little cigars at locations where those retailers make sales of packages of little cigars containing 20 or 25 little cigars to consumers or users. Retailers that are not stamping distributors shall purchase stamped packages of little cigars containing 20 or 25 little cigars for resale only from stamping distributors, distributors, or wholesalers. Retailers who are not stamping distributors may not purchase or possess unstamped packages of little cigars containing 20 or 25 little cigars. A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department. (35 ILCS 143/10-27(a)).

Section 10-45 of the Tobacco Act incorporates by reference various provisions of the Cigarette Tax Act (“CTA”) (35 ILCS 130/1 *et seq.*), including sections 18a, 18b, and 18c. Section 10-45 also includes the following: “References in the incorporated Sections to sales of cigarettes mean sales of little cigars in packages of 20 or 25 little cigars.” (35 ILCS 143/10-45)

Section 18a of the CTA states that if it is determined after a hearing that the original packages seized were not tax stamped at the time of seizure, then an order must be entered declaring the original packages confiscated and forfeited to the State. 35 ILCS 130/18a. The respondents in the present case did not dispute the fact that the packages did not have Illinois tax stamps. Therefore, it must be ordered that the 78 packs of little cigars that were seized from the premises of ABC Business be forfeited to the State.

In addition, section 18c of the CTA contains a civil penalty provision, which provides as follows:

Sec. 18c. Possession of not less than 10 and not more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of this Act, possessing unstamped original packages of cigarettes, and licensed distributors possessing original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction, anyone possessing not less than 10 and not more than 100 packages of contraband cigarettes contained in original packages is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$10 for each such package of cigarettes, unless reasonable cause can be established by the person upon whom the penalty is imposed. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section. 35 ILCS 130/18c.

Under section 18c, the penalty for the 78 packs is \$680.¹ The Department is seeking to have the penalty imposed against ABC Business.

The respondents contend that reasonable cause exists to have the penalty abated because they purchased the business on January 15, 2016 and did not have time to review the inventory before the Department's agent arrived on January 25, 2016. At the time that they purchased the business, the respondents were moving from Anywhere to Anywhere and were busy taking care of other things. The previous owner was not helpful with the transition after the purchase, and the respondents let the previous owner's employee continue to work at the store while the respondents were taking care of other matters. For these reasons, the respondents ask that the penalty be waived.

These facts, unfortunately, are not sufficient to establish reasonable cause for abating the penalty. A taxpayer is presumed to know the Illinois tax law, and therefore is responsible for any failure to be apprised of all applicable legal obligations under the law. See Department of Revenue v. Thomas J. Anderson, 131 Ill. App. 3d 486, 488 (2nd Dist. 1986) ("The defendant is presumed to know the law or, in this case, changes in the law[.]"). Under the law, retailers are responsible for selling tobacco products with the proper Illinois tax stamps on them. Nothing in the evidence indicates that the respondents took reasonable steps to make sure that there were no contraband little cigars on the premises of the business when it was purchased. These facts do not warrant waiving the penalty.

¹ There is no penalty for the first 10 packs. The penalty for the remaining 68 packs is \$10 each for a total penalty of \$680.

Recommendation:

For the foregoing reasons, it is recommended that the 78 packs of little cigars that were seized by the Department on January 25, 2016 be confiscated and forfeited to the State of Illinois. In addition, it is recommended that a civil penalty of \$680 be assessed against ABC Business.

Linda Olivero
Administrative Law Judge

Enter: February 21, 2017