

**CT 17-04**  
**Tax Type: Cigarette Tax**  
**Tax Issue: Possession of Unstamped Cigarettes**

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

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**THE DEPARTMENT OF REVENUE**  
**OF THE STATE OF ILLINOIS**

v.

**JOHN DOES & ABC BUSINESS**

**Possessor of Contraband Cigarettes**

**No. XXXX**

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**RECOMMENDATION FOR DISPOSITION**

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

Synopsis:

The Department of Revenue (“Department”) seized 155 packs of cigarettes and 281 packs of little cigars from the premises of ABC Business (“respondent”). The business is owned by John Doe (“respondent”) and is located in Anywhere, Illinois. The packs did not have Illinois tax stamps affixed to them as mandated by the Cigarette Tax Act (“CTA”) (35 ILCS 130/1 *et seq.*) and the Tobacco Products Tax Act of 1995 (“Tobacco Act”) (35 ILCS 143/10-1 *et seq.*). The Department seeks forfeiture of the cigarettes and little cigars and seeks to impose a civil penalty pursuant to the CTA and the Tobacco Act. During the hearing, the respondents asked that the penalty be waived

because the owner purchased the inventory from the previous owner and was unaware that there were unstamped cigarettes on the premises and was unaware that the little cigars required tax stamps. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On March 4, 2016, a Special Agent for the Department's Criminal Investigation Division seized 155 packs of cigarettes and 281 packs of little cigars at ABC Business in Anywhere, Illinois. (Dept. Ex. #1; Tr. pp. 11-12)
2. John Doe is the owner of ABC Business. (Dept. Ex. #1; Tr. pp. 26-27)
3. The cigarettes and little cigars did not have Illinois tax stamps affixed to them. (Dept. Ex. #1)
4. The Department's agent seized the packs of cigarettes and little cigars. (Dept. Ex. #1)
5. The respondents are not licensed distributors or stamping distributors of cigarettes or little cigars. (Dept. #1)

CONCLUSIONS OF LAW:

Section 13 of the CTA provides as follows:

Whenever any original package of cigarettes is found in the place of business or in the possession of any person who is not a licensed distributor under this Act without proper stamps affixed thereto, or an authorized substitute therefor imprinted thereon, underneath the sealed transparent wrapper of such original package, as required by this Act, the prima facie presumption shall arise that such original package of cigarettes is kept therein or is held by such person in violation of the provisions of this Act. 35 ILCS 130/13.

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 CTA, including sections 18a, 18b, and 18c. Section 10-45 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 of cigarettes and little cigars did not have Illinois tax stamps. Therefore, it must be ordered that the 155 packs of cigarettes and 281 packs of little cigars that were seized from the premises of ABC Business be forfeited to the State.

In addition, sections 18b and 18c of the CTA contain civil penalty provisions, which provide as follows:

Sec. 18b. Possession of 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 contraband cigarettes contained in original packages is liable to pay, to the Department for deposit in the Tax Compliance and Administration Fund, a penalty of \$25 for each such package of cigarettes in excess of 100 packages, unless reasonable cause can be established by the person upon whom the penalty is imposed. This penalty is in addition to the taxes imposed by this Act. 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.

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 130/18b, 18c.

Under section 18c, the penalty for the first 100 packs of the cigarettes and little cigars is \$900.<sup>1</sup> Under section 18b, the penalty for the remaining 55 packs of cigarettes is \$1,375.<sup>2</sup>

The total penalty amount for possession of 155 packs of unstamped cigarettes is \$2,275.

Under section 18b, the penalty for the remaining 181 packs of little cigars is \$4,525.<sup>3</sup>

The total penalty amount for possession of 281 packs of unstamped little cigars is \$5,425.

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<sup>1</sup> There is no penalty for the first 10 packs. The penalty for the remaining 90 packs is \$10 each for a total penalty of \$900 for the first 100 packs.

<sup>2</sup> The penalty for the remaining 55 packs of cigarettes is \$25 each for a total of \$1,375.

<sup>3</sup> The penalty for the remaining 181 packs of little cigars is \$25 each for a total of \$4,525.

The respondents contend that reasonable cause exists to have the penalties abated because all of the inventory was purchased from the previous owner and the respondents were unaware that there were unstamped cigarettes on the premises and were unaware that the little cigars required tax stamps. The respondents' manager who was working at the store at the time of the seizure testified that he started working at the store less than 2 weeks prior to the seizure. When he started working at the store, he noticed some expired cigars on a shelf that was behind the checkout counter. The shelf had a sign that said "NOT FOR SALE (expired items)" above the items. (Respondent's Group Ex. #1) He said that the agents found all of the cigars in that area.

The owner of the store also testified that he had two other managers working at the store prior to the current manager. He said the two previous managers were responsible for ordering cigarettes, and he did not know the place where they were ordering them from. He also said that he fired the two managers because customers were complaining about their behavior, and the customers said that the managers were selling "cheap" cartons of cigarettes. (Tr. pp. 33-34) In addition, the owner said that if the penalties are imposed in this case, he will have to close the business due to financial hardship.

These facts are not sufficient to establish reasonable cause for abating the penalties. 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 (2<sup>nd</sup> 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 cigarettes and little cigars

with the proper Illinois tax stamps on them. Section 10-27(c) of the Tobacco Act provides as follows:

(c) Notwithstanding anything to the contrary in this Act, a retailer unknowingly possessing contraband little cigars obtained from a stamping distributor, distributor, or wholesaler or other person engaged in the business of selling tobacco products or knowingly possessing contraband little cigars obtained from a stamping distributor is not subject to penalties for such purchase or possession if the retailer, within 48 hours after discovering that the little cigars are contraband little cigars, excluding Saturdays, Sundays, and holidays: (i) notifies the Department and the person from whom the little cigars were obtained, orally and in writing, that he or she possesses contraband little cigars; (ii) places the contraband little cigars in one or more containers and seals those containers; and (iii) places on the containers the following or similar language: "Contraband Little Cigars. Not For Sale." All contraband little cigars in the possession of a retailer remain subject to forfeiture under the provisions of this Act. 35 ILCS 143/10-27(c).

The respondents did not follow these procedures in this case, and nothing in the evidence indicates that the respondents took reasonable steps to make sure that there were no contraband products on the premises. In addition, the owner was aware that some of his managers were selling "cheap" cartons of cigarettes, but he did not investigate further to determine whether they were selling contraband cigarettes. These facts do not warrant waiving the penalties.

Recommendation:

For the foregoing reasons, it is recommended that the 155 packs of unstamped cigarettes and the 281 packs of unstamped little cigars that were seized by the Department on March 4, 2016 be confiscated and forfeited to the State of Illinois. In addition, it is recommended that a civil penalty of \$2,275 for the cigarettes and \$5,425 for the little cigars be assessed.

Enter: March 8, 2017

Linda Olivero  
Administrative Law Judge