CT 18-01
Tax Type: Cigarette and Cigarette Use Tax
Tax Issue: Possession of Unstamped Cigarettes

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

THE DEPARTMENT OF REVENUE	)	Docket Nos.	XXXX-XXXX (M. JONES)
OF THE STATE OF ILLINOIS	)		XXXX-XXXX (J. JONES)
v.	)		
BOB X. JONES &	)		
JOE X. JONES ,	)	John E. White,	
Respondents	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: BOB X. JONES and JOE X. JONES appeared *pro se;* Michael Coveny, Special Assistant Attorney General, appeared on behalf of the Illinois Department of Revenue;

Synopsis: This matter involves a hearing the Illinois Department of Revenue (Department) was required to hold, pursuant to § 25 of Illinois' Cigarette Use Tax Act (CUTA), 35 ILCS 135/25, after XXX cartons of cigarettes, with each carton containing ten original packages of cigarettes, were seized from a vehicle driven, in Illinois, by JOE X. JONES (JOE), and in which BOB N. JONES (BOB) was the front seat passenger. The issues are whether the seized cigarettes should be declared forfeit to the State, and whether BOB and/or JOE (collectively, Respondents) should be found liable for statutory penalties, for possessing those cigarettes.

The matters were consolidated for a single hearing, which was held at the Department's Office of Administrative Hearings in Chicago. I have considered the evidence and arguments presented at hearing, and I am including in this recommendation

findings of fact and conclusions of law. I recommend that the Director declare the cigarettes to be forfeit to the State, and that Respondents each be found liable for penalties authorized by §§ 25a and 25b of the CUTA.

Findings of Fact:

1. On MONTH DATE, YEAR, Illinois State Police (ISP) trooper Dustin Weiss (Weiss) stopped a grey Ford Taurus (the Vehicle), for speeding while being driven north bound on Interstate 55, in Illinois. Department Ex 1 (copy of Investigative Summary Report (Report) written by Department Criminal Investigation Division special agent Douglas Glanert (Glanert), dated MONTH DATE, YEAR, and identifying BOB as the subject of the report), p. 2; Department Ex 3 (copy of Report written by Glanert, dated MONTH DATE, YEAR, and identifying JOE as the subject of the report), p. 2. Weiss stopped the Vehicle at approximately 10:47 p.m. Department Exs. 1, 3 (p. 2 of each Report).
2. JOE was driving the Vehicle when Weiss stopped it, and BOB was the front seat passenger. Department Exs. 1, 3 (p. 2 of each Report).
3. During the course of the traffic stop, Weiss recovered from the Vehicle XXX cartons — X,XXX packages — of cigarettes which did not have Illinois tax stamps affixed to them. Department Exs. 1, 3 (p. 2 of each Report). Instead, the cigarette packages had Missouri, and the City of St. Louis, tax stamps affixed to them. Department Exs. 1, 3 (p. 2 of each Report).
4. After recovering the X,XXX packages of cigarettes from the Vehicle, Weiss arrested Respondents. Department Exs. 1, 3 (p. 2 of each Report).

5. After arresting Respondents, Weiss arranged to have them transported to the Sangamon County Jail, in Illinois. Department Exs. 1, 3 (pp. 2-3 of each Report).
6. After Respondents were transported to the Sangamon County Jail, Department CID agent Glanert was notified of their arrest, and the charges filed against them. Department Exs. 1, 3 (p. 3 of each Report).
7. At approximately 4:48 a.m. on MONTH DATE, YEAR, Glanert interviewed JOE at the Sangamon County Jail. Department Ex. 1, pp. 3-5. During the interview, Glanert advised JOE of his constitutional rights, and JOE agreed to speak with Glanert regarding the cigarettes recovered from the Vehicle. *Id*., pp. 3-4.
8. In summary and not verbatim, JOE told Glanert that he and BOB, who is JOE's cousin, had agreed to go to Missouri to buy cigarettes, and to then transport and sell them in Chicago, to make money. Department Ex. 1, p. 4. JOE said that he and BOB evenly split the cost of the cigarettes they bought in Missouri, and that he planned to take half of the cigarettes bought in Missouri as his own, and to sell them in Chicago. *Id*.
9. On MONTH DATE, YEAR, CID agent Glanert took possession of the X,XXX packages of cigarettes that Weiss recovered from the Vehicle, and transported those cigarettes to, and secured them within, the custody of the Department's CID. Department Exs. 1, 3 (p. 7 of each Report).
10. Following a stipulated bench trial held on MONTH DATE, YEAR, Respondents were found guilty of the class 3 felonies of Unlawful Transportation of Unstamped Cigarettes and Unlawful Possession of Unstamped Cigarettes, with the latter charge

being merged into the former, for sentencing purposes. Department Ex. 2, pp. 1-3, 8; Department Ex. 4, p. 2.

11. Following their convictions, Respondents each successfully completed a term of 24 months of conditional discharge. Department Exs. 2, 4.

Conclusions of Law:

The first issue is whether the X,XXX packages of cigarettes seized from the Vehicle should be declared forfeit, pursuant to § 25 of the CUTA, and made subject to disposal by the Department. 35 ILCS 135/25; 35 ILCS 135/27. Section 25 of the CUTA provides:

> After seizing any original packages of cigarettes, … as provided in Section 24 of this Act, the Department shall hold a hearing and shall determine whether such original packages of cigarettes, at the time of their seizure by the Department, were contraband cigarettes …. The Department shall give not less than 7 days' notice of the time and place of such hearing to the owner of such property if he is known, and also to the person in whose possession the property so taken was found, if such person is known and if such person in possession is not the owner of said property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of the time and place of such hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing is to be held.
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> If, as the result of such hearing, the Department shall determine that the original packages of cigarettes seized were at the time of seizure contraband cigarettes, …, the Department shall enter an order declaring such original packages of cigarettes … confiscated and forfeited to the State, and to be held by the Department for disposal by it as provided in Section 27 of this Act. The Department shall give notice of such order to the owner of such property if he is known, and also to the person in whose possession the property so taken was found, if such person is known and if such person in possession is not the owner of said property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of such order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing was held.

35 ILCS 135/25.

Section 1 of the CUTA defines "contraband cigarettes", in part, as follows:

> "Contraband cigarettes" means:
> (a) cigarettes that do not bear a required tax stamp under this Act;
> ***
> (h) cigarettes that are improperly tax stamped, including cigarettes that bear a tax stamp of another state or taxing jurisdiction;
> ***

35 ILCS 135/1.

The evidence shows that, on MONTH DATE, YEAR, ISP trooper Weiss recovered X,XXX packages of cigarettes from the Vehicle JOE was driving in Illinois, which cigarettes did not have Illinois tax stamps affixed to them. Department Ex. 1; Department Ex. 2, pp. 3, 11. The cigarettes had Missouri tax stamps affixed to them, and not Illinois tax stamps, because Respondents purchased them, at retail, in Missouri. Department Ex. 2, pp. 4, 11. Because there is no dispute that the X,XXX packages of cigarettes seized from the Vehicle on MONTH DATE, YEAR, "were not tax stamped … in accordance with [the CUTA]", I conclude that the cigarettes were contraband cigarettes, as defined by § 1(a) and (h) of the CUTA, and should be declared forfeit to the State, for disposal by the Department. *Id.*, pp. 3-4; 35 ILCS 135/1(a), (h); 35 ILCS 135/25; 35 ILCS 135/27.

The second issue is whether Respondents are liable for penalties set forth within §§ 25a and 25b of the CUTA. Section 25a of the CUTA provides:

> Possession of more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors or transporters, as defined in Section 9c of the Cigarette Tax 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 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 $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. 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 135/25a. Section 25b of the CUTA provides:

> Sec. 25b. Possession of not less than 10 and not more than 100 original packages not tax stamped or improperly tax stamped; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of the Cigarette Tax Act, possessing unstamped 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 $20 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. Any person who purchases and possesses a total of 9 or fewer original packages of unstamped cigarettes per month is exempt from the penalties of this Section. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

35 ILCS 135/25b.

In addition to authorizing the penalties set forth in §§ 25a-25b, the Illinois General Assembly also created a statutory presumption that any person ─ other than a licensed distributor, secondary distributor, or transporter ─ who is found in possession of original packages of cigarettes that do not bear Illinois tax stamps, possesses such cigarettes in violation of the CUTA. 35 ILCS 135/8. Here, there has been no claim that either JOE or BOB was a licensed distributor of cigarettes. *See* Hearing Transcript, *passim*. In addition, the Report reflects that the Department had searched its registration records, and determined that, on MONTH DATE, YEAR, neither JOE nor BOB was licensed with the

Department as a distributor, secondary distributor, or transporter of cigarettes. Department Exs. 1, 3 (p. 6 of each Report). Thus, the statutory presumption applies, and that presumption is sufficient for me to conclude that JOE and BOB possessed the X,XXX packages of cigarettes in violation of the CUTA. *Id.*; 35 ILCS 135/8.

Further, the evidence admitted at hearing shows that JOE and BOB were each found guilty of illegally transporting the contraband cigarettes which form the basis for the penalties at issue here. Department Ex. 2, pp. 1, 3; Department Ex. 4, p. 6. Illinois law permits the admission of a person's criminal conviction in a civil case where the acts underlying the conviction are relevant to the facts at issue in the civil matter. Thornton v. Paul, 74 Ill. 2d 132, 151, 384 N.E.2d 335, 343 (1979) ("We think the preferred rule is that stated by the Appellate Court for the Second District in Smith v. Andrews (1964), 54 Ill. App. 2d 51, 203 N.E.2d 160, which held proof of a conviction to be admissible in a civil case as prima facie evidence. We are not concerned here with the effect of a guilty plea. This approach preserves the opportunity to rebut the factual basis of the conviction insofar as those facts are applicable to the civil proceeding."), *overruled by* American Family Ins. Co. v. Savickas, 193 Ill. 2d 378, 384-87, 739 N.E.2d 445, 449-51 (2000) (overruling portion of Thornton v. Paul, *infra*, and holding that, in some cases, a person's criminal conviction can act to estop contrary claims regarding acts underlying conviction). In this case, moreover, the evidence shows that the court found Respondents guilty based on the stipulated record that Respondents and the State submitted to the circuit court judge. Department Ex. 2, pp. 2, 8; Department Ex. 4, p. 2.

In sum, the evidence shows that on MONTH DATE, YEAR, JOE and BOB knowingly and jointly possessed a total of X,XXX original packages of cigarettes which

did not have Illinois tax stamps affixed to them, as required by § 3 of the CUTA. Department Exs. 2, 4; 35 ILCS 135/3. The evidence further shows that each Respondent considered himself to be the owner of half of the cigarettes seized. Department Exs. 1, 3 (p. 4 of each Report); 35 ILCS 135/25. The evidence, therefore, supports the Department's request that each Respondent should be found personally liable for the penalties imposed by CUTA §§ 25a and 25b, for their respective ownership and possession of X,XXX packages of contraband cigarettes. Department Exs. 1, 3 (pp. 4, 8 of each Report). Based on the evidence, the Department's request, and the CUTA, I conclude that JOE and BOB should each be found liable for penalties in the amount of $XX,XXX.XX. Department Exs. 1, 3 (pp. 4, 8 of each Report); Department Exs. 2, 4; 35 ILCS 135/25a-25b ((XX x 20) + (X,XXX x 25) = X,XXX + XX,XXX = XX,XXX.XX).

Conclusion:

I recommend that contraband cigarettes seized from the Vehicle be declared forfeit to the State, for use or disposal by the Department, pursuant to CUTA §§ 25 and 27. 35 ILCS 135/25; 35 ILCS 135/27. I further recommend that Respondents each be found liable for penalties in the amount of $XX,XXX.XX, pursuant to CUTA §§ 25a and 25b. 35 ILCS 135/25a-25b.

September 18, 2017
Date

John E. White, Administrative Law Judge