

CT 18-02

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
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE and
BOB SMITH,**

TAXPAYERS

No. XXXX-XXXX

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. JOHN DOE and Mr. BOB SMITH, appearing *pro se*; Mr. Seth Schriftman and Ms. Tina Tsatsoulis, Special Assistant Attorneys General, appearing on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter arose because an agent in the Illinois Department of Revenue's (hereinafter "Department") Bureau of Criminal Investigations ("BCI") took custody of XXX cartons of Missouri stamped, but not Illinois stamped, cigarettes from a vehicle in McLean County, Illinois that Mr. DOE was driving and in which Mr. SMITH was a passenger. An evidentiary hearing was held on this matter on December 7, 2016. Mr. DOE and Mr. SMITH testified at the hearing. Mr. Shad Shymansky, Special Agent for BCI and Trooper, Mr. Ryan Albin, testified for the Department. The two issues presented

for hearing were whether the XXX cartons of cigarettes should be subject to confiscation and forfeiture, pursuant to the Illinois Cigarette Tax Act (“CTA” or “the Act”), 35 ILCS 130/1 *et seq.*, and whether a penalty authorized by the Act should be imposed against Mr. DOE and Mr. SMITH. Following a review of the testimony and the evidence, it is recommended that the XXX cartons of cigarettes should be confiscated and forfeited and a penalty imposed against Mr. DOE and Mr. SMITH, as provided by statute. In support thereof, the following “Findings of Fact” and “Conclusions of Law” are made.

Findings of Fact:

1. On MONTH DATE, 2014, Trooper, Ryan Albin, stopped a rented Chevrolet vehicle for speeding on Interstate 55 northbound in SOME County, Illinois. Mr. DOE was driving the vehicle and Mr. SMITH was a passenger in it. A search of the vehicle was conducted which revealed XXX cartons of Missouri stamped cigarettes, which were logged into evidence. Shad Shymansky, BCI Special Agent, is the “Reporting Agent” for the “Investigative Summary Reports” for Mr. SMITH and Mr. DOE, dated MONTH DATE, 2014. Tr. pp. 21-26, 46-50; Dept. Ex. Nos. 1 and 2.
2. On MONTH DATE, 2014, Mr. SMITH and Mr. DOE did not possess valid Illinois cigarette distributor’s licenses or valid Illinois transporter’s licenses. Tr. pp. 26-27, 53.
3. Mr. SMITH and Mr. DOE were read their constitutional rights. Mr. DOE refused to answer questions and requested a lawyer. Mr. SMITH signed a constitutional waiver. Tr. pp. 50-51; Dept. Ex. Nos. 1 and 2.
4. Mr. SMITH and Mr. DOE were indicted for transportation and possession of contraband cigarettes. Tr. p. 27.

5. Mr. DOE signed a "Plea Agreement" dated MONTH DATE, 2015, pleading guilty to possession of unstamped cigarettes, a class four felony, and was sentenced to 180 days imprisonment. Tr. pp. 33-34, 38; Dept. Ex. No. 3.
6. Mr. SMITH signed a "Plea Agreement" dated MONTH DATE, 2015, pleading guilty to "unlawful transportation of unstamped cigarettes" and was sentenced to one year in the Illinois Department of Corrections. Dept. Ex. No. 4.

Conclusions of Law:

Section 18a of the Cigarette Tax Act provides as follows:

After seizing any original packages of cigarettes, ..., as provided in Section 18 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...

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 21 of this Act. 35 ILCS 130/18a.

In the instant case, the Bureau of Criminal Investigation's "Evidence Inventory and Receipt" shows that XXX cartons of "non-Illinois stamped cigarettes" were seized from the car driven by Mr. DOE, in which Mr. SMITH was a passenger. Dept. Ex. Nos. 1 and 2. Mr. DOE signed a "Plea Agreement" which states that he "agrees to forfeit any interest in the cigarettes seized." Dept. Ex. No. 3. Mr. SMITH signed a "Plea Agreement" which states that the cigarettes in this case shall be forfeited to the Illinois Department of Revenue. Dept. Ex. No. 4. The XXX cartons of cigarettes were not tax

stamped and, accordingly, pursuant to the seizure, they should be forfeited and confiscated to the State in accordance with Section 18a of the Act. 35 ILCS 130/18a.

Section 18c of the Cigarette Tax Act states:

With the exception of licensed distributors and transporters, ... 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 in 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...
35 ILCS 130/18c.

Section 18b of the Cigarette Tax Act states:

With the exception of licensed distributors and transporters, ... 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...
35 ILCS 130/18b.

On the day of seizure, MONTH DATE, 2014, Mr. SMITH and Mr. DOE did not possess valid Illinois cigarette distributor's licenses or valid Illinois transporter's licenses. Tr. pp. 26-27, 53. Additionally, the facts of this case do not establish reasonable cause for abatement of the penalties. In fact, Mr. SMITH, a passenger in the vehicle, testified that he "admitted to the officers, to the investigators I knowingly broke the law." Tr. p. 64. "I'm not denying what I did. I can't. It's in writing, and it's the truth." Tr. p. 66. With Mr. SMITH' testimony, it is difficult to see how Mr. DOE, the driver of the vehicle, did not know the cigarettes were being transported illegally in Illinois. I am unable to conclude that there is reasonable cause for abatement of the penalties.

Based on the record before me, I recommend that the XXX cartons (X,XXX packages) of unstamped cigarettes in this matter be confiscated and forfeited in accordance with 35 ILCS 130/18a, and that Mr. SMITH and Mr. DOE each be assessed a penalty in the amount of \$XX,XXX computed as follows: \$XXX for packages XX through XXX at \$10/pack under 35 ILCS 130/18c and \$XX,XXX for packages XXX through XXXX at \$25/pack under 35 ILCS 130/18b.

February 3, 2017

ENTER:

A handwritten signature in cursive script that reads "Kenneth Galvin".

Kenneth J. Galvin
Administrative Law Judge

