

CT 18-06

Tax Type: Cigarette and Cigarette Use 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.

STEVE SMITH

Possessor of Contraband Cigarettes

No. XXXX-XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; STEVE SMITH, *pro se*

Synopsis:

On December 23, 2015, STEVE SMITH (“respondent”) was in a traffic accident on Interstate 55 in Illinois. As a result of the accident, numerous packages of cigarettes were strewn over the road. The cigarettes came from the respondent’s vehicle. Some cigarettes remained inside the respondent’s vehicle. The packages did not have Illinois tax stamps affixed to them as mandated by the Cigarette Use Tax Act (“Act”) (35 ILCS 135/1 *et seq.*). The Department of Revenue (“Department”) seized the cigarettes, which totaled [] packs. The Department seeks forfeiture of the cigarettes, and it also seeks to impose a civil penalty pursuant to the Act. An evidentiary hearing was held during which

the respondent admitted that the cigarettes were his, and he did not dispute the fact that they did not have Illinois tax stamps affixed to them. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On December 23, 2015, the respondent was in a traffic accident on Interstate 55 in Illinois. As a result of the accident, numerous packages of cigarettes were strewn over the road. The cigarettes came from the respondent's vehicle. Some cigarettes remained inside the respondent's vehicle. (Recording¹)
2. There were a total of 1,070 packs of cigarettes that were found either on the road or in the respondent's vehicle. (Dept. Ex. #1, pp. 31-32; Recording)
3. The packs did not have Illinois tax stamps affixed to them. (Dept. Ex. #1; Recording)
4. The respondent is not a licensed distributor or transporter of cigarettes. (Dept. Ex. #1, p. 36)

CONCLUSIONS OF LAW:

Section 2 of the Act imposes a tax upon the privilege of using cigarettes in Illinois. 35 ILCS 135/2. "Use" means the exercise by any person of any right or power over cigarettes incident to the ownership or possession thereof. 35 ILCS 135/1. Payment of the tax is evidenced by a stamp affixed to each package. 35 ILCS 135/3. Only distributors licensed under the Act and transporters (as defined in section 9c of Cigarette Tax Act) may possess unstamped original packages of cigarettes. 35 ILCS 135/3. Any

¹ The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

duly authorized employee of the Department may seize any original packages of contraband cigarettes. 35 ILCS 135/24.

Section 25 of the Act states that if, after a hearing, it is determined 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 135/25. The respondent 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 1,070 packages seized be forfeited to the State.

In addition, sections 25a and 25b of the Act contain civil penalty provisions, which provide as follows:

Sec. 25a. 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.

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 135/25a, 25b.

Under section 25b, the penalty for the first 100 packs is \$1,820.² Under section 25a, the penalty for the remaining 970 packs is \$24,250.³ The total penalty amount for possession of 1,070 packs of unstamped cigarettes is \$26,070.

The respondent admitted that the cigarettes that were found in and around the vehicle were his, and he has not disputed the number of packages that the Department confiscated. During his testimony, the respondent claimed that the Department's report indicates that he was selling cigarettes "at his location," but the report does not make any reference at all to the respondent selling cigarettes. The respondent also testified that he was not given the report at the time of the accident and was not arrested at that time. Nearly a year later, on November 30, 2016, the respondent was pulled over, and he said that he then found out for the first time that there was a warrant for his arrest for unlawful possession of contraband cigarettes. On April 19, 2017, the respondent entered a plea of guilty to the misdemeanor charge of unlawful possession of more than 100 but less than 251 packages of contraband cigarettes in Illinois on December 23, 2015. (Dept. Ex. #2) In addition, the respondent provided photographs showing the scene of the accident. The photos show a semi-truck smashed into the back of the respondent's vehicle. The respondent said that the photos show that the accident was not his fault.

² There is no penalty for the first 9 packs. The penalty for the remaining 91 packs is \$20 each for a total penalty of \$1,820 for the first 100 packs.

³ The penalty for the 970 packs is \$25 each for a total of \$24,250.

The testimony and documents presented by the respondent are not sufficient to establish reasonable cause for abating the penalty. The testimony alleges that the respondent was not selling cigarettes, was not aware of the arrest warrant, and was not at fault for the accident. These allegations do not explain why the penalty for possessing contraband cigarettes should not be imposed. Without a specific reason for waiving the penalty, the penalty must be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the 1,070 packages of unstamped cigarettes be confiscated and forfeited to the State of Illinois pursuant to 35 ILCS 135/25. In addition, a penalty of \$26,070 should be imposed pursuant to 35 ILCS 135/25a, 25b.

Linda Olivero
Administrative Law Judge

Enter: March 8, 2018