

CT 19-01

TAX TYPE: CIGARETTE, CIGARETTE USE, AND TOBACCO TAXES

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

Respondent

No. [REDACTED]

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

On June 30, 2016, the Illinois State Police stopped a vehicle driven by John Doe (“respondent”) on Interstate 70 in Illinois. As a result of the stop, [REDACTED] packages of cigarettes were found in his 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. 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 did not dispute the fact that the cigarettes were found in his vehicle, and he did not dispute

the fact that they did not have Illinois tax stamps affixed to them. The respondent testified that the vehicle was not his vehicle, and he did not purchase the cigarettes. He also testified that he was only driving the vehicle because someone paid him a couple hundred dollars to drive it from St. Louis to a suburb in Chicago. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On June 30, 2016, the Illinois State Police stopped a vehicle driven by the respondent on Interstate 70 in Illinois. As a result of the stop, [REDACTED] packages of cigarettes were found in his vehicle. (Recording; Dept. Ex. #1)
2. The packages did not have Illinois tax stamps affixed to them. (Recording; Dept. Ex. #1)
3. The respondent is not a licensed distributor or transporter of cigarettes. (Dept. Ex. #1)
4. On July 5, 2017, the respondent signed a Guilty Plea Agreement in the U.S. District Court for the Eastern District of Missouri wherein he pled guilty to the charge of Conspiracy to Traffic in Contraband Cigarettes relating to the [REDACTED] packages of cigarettes at issue in this case. (Dept. Ex. #2)

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 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 [REDACTED] 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 \$1,820.¹ Under section 25a, the penalty for the remaining [REDACTED] packs is \$[REDACTED].² The total penalty amount for possession of [REDACTED] packages of unstamped cigarettes is \$[REDACTED].

The respondent did not dispute the fact that the cigarettes were found in his vehicle, and he has not disputed the number of packages that the Department confiscated. The respondent testified that the vehicle was not his vehicle, and he did not purchase the cigarettes. He also testified that he was only driving the vehicle because someone paid him a couple hundred dollars to drive it from St. Louis to a suburb in Chicago.

The penalties imposed under the Act are based on “possession” of contraband cigarettes, not ownership. Under Illinois law, “[p]ossession may be established by evidence of actual physical possession or constructive possession.” People v. Alexander, 202 Ill. App. 3d, 20, 24 (3rd Dist. 1990). “Constructive possession” requires a showing that the respondent controlled the premises upon which the contraband is found. *Id.*

In this case, the respondent controlled the vehicle in which the contraband cigarettes were found and had constructive possession of the cigarettes. All of the packages of cigarettes did not have Illinois tax stamps affixed to them. Although the penalty is substantial, the penalty is set by statute, and the respondent has not provided

¹ 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.

² The penalty for the [REDACTED] packs is \$25 each for a total of \$[REDACTED].

any reasons for abating it. The evidence requires a finding that the respondent is liable for the penalty.

Recommendation:

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

Linda Olivero
Administrative Law Judge

Enter: February 28, 2019