

**CT 09-1**  
**Tax Type: Cigarette Tax**  
**Issue: Possession of Unstamped Cigarettes**

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

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<b>THE DEPARTMENT OF REVENUE</b>	)	Docket No. 0000-0000-0-00
<b>OF THE STATE OF ILLINOIS</b>	)	
v.	)	
<b>JOHN DOE, d/b/a</b>	)	John E. White,
<b>ABC, Inc.</b>	)	Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Gary Stutland, Special Assistant Attorney General, appeared on behalf of the Illinois Department of Revenue; John Doe appeared *pro se*.

**Synopsis:** This matter arose after agents of the Illinois Department of Revenue's (Department's) Bureau of Criminal Investigations (BCI) took custody of 670 packages of cigarettes seized from the business address of ABC, Inc. (ABC). The Department thereafter notified John Doe (Doe) that a hearing would be held to determine whether those cigarettes were subject to forfeiture, and whether Doe was liable for penalties, pursuant to applicable provisions of Illinois' Cigarette Tax Act (CTA).

A hearing 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 order the cigarettes forfeit, and that Doe be held liable for penalties, as provided by statute.

**Findings of Fact:**

1. On June 7, 2006, and pursuant to the execution of a search warrant, BCI agents seized 670 packages of cigarettes from ABC's business address. Department Ex. 1, pp. 1, 3-4 (copies of, respectively: the Evidence Inventory Report prepared

regarding the June 7, 2006 seizure of cigarettes from ABC's business address; a BCI Activity Report, dated February 7, 2007; and ABC's completed application for renewal of its business license from the Village of Anywhere, Illinois, bearing Doe's signature).

2. The seized cigarettes did not have Illinois tax stamps affixed to them. Department Ex. 1, pp. 1, 3-4.
3. At the time of the seizure, John Doe was ABC's vice-president and secretary. Department Ex. 1, pp. 3-4.
4. Neither Doe nor ABC had a cigarette distributor's license or transporter's permit issued to them by Illinois. Department Ex. 1, p. 2 (copy of certificate from employee of the Department's records division).

**Conclusions of Law:**

The issues are whether the 670 packages of unstamped cigarettes shall be declared forfeit pursuant to § 18a of the CTA, and whether Doe is liable for penalties for possessing those cigarettes pursuant to §§ 18b and/or 18c of the CTA. Section 18a of the CTA provides, in part:

After seizing any original packages of cigarettes, or cigarette vending devices, 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 not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with this Act, ....

If, as the result of such hearing, the Department shall determine that the original packages of cigarettes seized were at the time of seizure not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act, ... the Department shall enter an order declaring such original packages of cigarettes or such cigarette vending devices 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.

Here, the evidence shows that, on June 7, 2006, 670 packages of cigarettes were seized from ABC's business address. Department Ex. 1, pp. 1, 3-4. When they were seized, they did not have Illinois tax stamps affixed to them, as required by the CTA. *Id.*; 35 ILCS 130/3. At hearing, Doe testified that the seized cigarettes had valid Indiana stamps affixed to them. Hearing Transcript (Tr.), p. 10. While that is correct, the evidence also shows that neither Doe nor ABC were authorized to possess such cigarettes in Illinois. Department Ex. 1, p. 2; 35 ILCS 130/4, 9c.

On this point, the evidence reflects that neither Doe nor ABC was a licensed distributor of cigarettes. Department Ex. 1, p. 2. Section 13 of the CTA provides, in pertinent part:

Whenever any original package of cigarettes is found in the place of business ... 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. Here, the cigarettes were seized from ABC's place of business, and neither Doe nor ABC is a cigarette distributor licensed by Illinois. Thus, the evidence supports the statutory presumption created by CTA § 13 — that ABC and/or Doe possessed the unstamped cigarettes in violation of the CTA. 35 ILCS 130/13. Because there is no dispute that the 670 packages of cigarettes “were not tax stamped ... in accordance with [the CTA]”, I conclude that the cigarettes should be confiscated and forfeited to the State. 35 ILCS 130/18a.

As to the assessment of a penalty, § 18b of the CTA provides:

With the exception of licensed distributors, anyone possessing cigarettes contained in original packages which

are not tax stamped as required by this Act, or which are improperly tax stamped, shall be liable to pay, to the Department for deposit in the State Treasury, a penalty of \$15 for each such package of cigarettes in excess of 100 packages. Such penalty may be recovered by the Department in a civil action.

35 **ILCS** 130/18b. Effective 2002, the Illinois legislature amended the CTA and added another penalty to be imposed for a person's possession of between 10 to 100 packages of unstamped cigarettes. That section provides:

With the exception of licensed distributors, anyone possessing not less than 10 and not more than 100 packages of cigarettes contained in original packages that are not tax stamped as required by this Act, or that are improperly tax stamped, 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.

35 **ILCS** 130/18c.

The evidence supports a conclusion that Doe is liable for the penalties imposed by CTA §§ 18b and 18c. Doe testified that he knew that the cigarettes were affixed with Indiana, not Illinois, tax stamps. Tr. p. 10. Further, Doe was ABC's vice-president and secretary. Department Ex. 1, pp. 3-4. Doe offered no evidence to rebut the Department's determination that Doe was doing business as ABC. Finally, Doe offered no evidence to show that the § 18c penalty should be abated because he exercised ordinary business care and prudence when possessing such cigarettes in Illinois. 35 **ILCS** 130/18c.

**Conclusion:**

I conclude that the cigarettes seized should be confiscated and forfeit to the State. 35 **ILCS** 130/18a. I also conclude that Doe is liable for penalties authorized by §§ 18b and 18c, in the amount of \$9,550. 35 **ILCS** 130/18b-18c ((570 x 15) + (100 x 10) = 8,550 + 1,000 = 9,550)).

April 20, 2009  
Date

John E. White, Administrative Law Judge