

CT 16-04
Tax Type: Cigarette 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 DBA ABC Business,
Taxpayers

No. XXXX
Account ID XXXX
CIGARETTE CONFISCATION

Ted Sherrod
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

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

SYNOPSIS:

On June 8, 2015, Christopher Lightle, a Department of Revenue (“Department”) agent seized 152 packs of little cigars from the premises of *ABC Business, Inc.*, a business owned by *John Doe* located in *Anyplace*, Illinois. The packages did not have Illinois tax stamps affixed to them as mandated by the Tobacco Products Tax Act of 1995, 35 **ILCS** 143/10-1 *et seq.* (“Tobacco Act”). The Department seeks forfeiture of the little cigars and seeks to impose civil penalties pursuant to the Tobacco Act. A hearing on this matter was conducted on March 31, 2016. During the hearing, the taxpayers, *John Doe* and *ABC Business, Inc.*, asked that the penalties be abated because the owner was unaware that it was illegal to sell unstamped little cigars and did not know that some of the products in his store’s inventory constituted little cigars

requiring tax stamps. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On January 8, 2016, Christopher Lightle, a Special Agent for the Department's Criminal Investigation Division found 152 packs of unstamped little cigars at *ABC Business, Inc.*, a retailer of tobacco products located in *Anyplace*, Illinois. Department Exhibit ("Ex.") 1.
2. *ABC Business, Inc.* is owned by *John Doe* ("*John Doe*") who is a resident of Illinois. *Id.*
3. The little cigars discovered by the Department's agent did not have Illinois tax stamps affixed to them. *Id.* The Department has seized the packs of unstamped little cigars discovered by the Department's agent. *Id.*
4. Neither *ABC Business, Inc.* nor *John Doe* are licensed distributors or stamping distributors of little cigars. *Id.*

CONCLUSIONS OF LAW:

Section 10-27 of the Tobacco Act provides, in part, as follows:

Retailers; purchase and possession of little cigars.

(a) Retailers are prohibited from possessing unstamped packages of little cigars containing 20 or 25 little cigars at locations where retailers make sales of little cigars to consumers or users. Retailers that are also stamping distributors are prohibited from possessing unstamped little cigars at locations where those retailers make sales of packages of little cigars containing 20 or 25 little cigars to consumers or users. Retailers that are not stamping distributors shall purchase stamped packages of little cigars containing 20 or 25 little cigars for resale only from stamping distributors, distributors, or wholesalers. Retailers who are not stamping distributors may not purchase or possess unstamped packages of little cigars containing 20 or 25 little cigars. A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department.

35 ILCS 143/10-27(a)

Section 10-45 of the Tobacco Act incorporates by reference various provisions of the Cigarette Tax Act (“CTA”) (35 ILCS 130/1 *et seq.*), including sections 18a, 18b, and 18c. Section 10-45 includes the following: “References in the incorporated Sections to sales of cigarettes mean sales of little cigars in packages of 20 or 25 little cigars.” 35 ILCS 143/10-45.

Section 18a of the CTA states that if it is determined, after a hearing 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 130/18a. The taxpayers 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 152 packs of little cigars from the premises of *ABC Business, Inc.* that were seized be forfeited to the State.

In addition, sections 18b and 18c of the CTA contain civil penalty provisions, which provide as follows:

Sec. 18b. Possession of more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of this 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 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. This penalty is in addition to the taxes imposed by this Act. 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. 18c. Possession of not less than 10 and not more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of this 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 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 \$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. The provisions of the Uniform Penalty and Interest Act do not apply to this Section. 35 ILCS 130/18b, 18c.

Under section 18c, the penalty applicable to *ABC Business*, Inc. for the first 100 packs of little cigars is \$900.¹ Under section 18b, the penalty for the remaining 52 packs is \$1,300 (52 packs at \$25 each for a total of \$1,300). The total penalty amount for possession of 152 packs of unstamped little cigars is \$2,200.

John Doe, the owner of *ABC Business*, Inc., seeks abatement of the penalties enumerated above. During the hearing on this matter, he stated that no one informed him that the sale of unstamped little cigars was banned or advised him regarding how to distinguish between little cigars and cigars that are not subject to the penalties at issue. Transcript of Hearing March 31, 2016, pp. 24-30.

Unfortunately, the grounds for relief relied upon by *John Doe* are not sufficient to establish reasonable cause for reducing or abating the penalties at issue. A taxpayer is presumed to know the Illinois tax law, and therefore is responsible for any failure to be apprised of all applicable legal obligations under the law. See Department of Revenue v. Thomas J. Anderson, 131 Ill. App. 3d 486, 488 (2d Dist. 1986) (“The defendant is presumed to know the law or, in this case, changes in the law[.]”). By law, retailers are responsible for selling tobacco products with the proper Illinois tax stamps on them. Nothing in the evidence indicates that *John Doe* took reasonable steps to determine the legal requirements banning contraband little cigars on the premises of Illinois retail businesses. Accordingly, I find the facts and circumstances

¹ There is no penalty for the first 10 packs. The penalty for the remaining 90 packs is \$10 each for a total penalty of \$900 for the first 100 packs. 35 ILCS 130/18c

enumerated are insufficient to warrant the abatement of penalties *John Doe* seeks and that *ABC Business, Inc.* is therefore liable for such penalties.

With respect to *John Doe* personally, the Tobacco Act prohibits only retailers and wholesalers from possessing unstamped packages of little cigars. See 35 ILCS 143/10-27(a); 35 ILCS 143/10-28. The Department has not presented evidence that *John Doe* individually acted as a retailer or wholesaler. The penalties, therefore, are not imposed on him personally.

Conclusion:

For the foregoing reasons, it is recommended that the 152 packs of little cigars that were seized by the Department be confiscated and forfeited to the State of Illinois, that a civil penalty of \$2,200 be assessed against *ABC Business, Inc.* and that this matter be concluded without the imposition of any penalty on *John Doe*.

Enter: April 20, 2016

**Ted Sherrod
Administrative Law Judge**