

CT 03-1
Tax Type: Cigarette 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,

TAXPAYER

NO. CG-0000-0000-0-00

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Francis Ostian appearing for John Doe; Mr. Shepard Smith, appearing on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter arose as follows: The Cook County State's Attorney filed felony charges (No. 99-5-0771) against John Doe (hereinafter "taxpayer") for unlawful possession of 338 packages of unstamped cigarettes and unlawful transportation thereof. On September 28, 2000, the case was dismissed in the Cook County Circuit Court with the Judge finding that Issa had not been mirandized and that his vehicle had been illegally searched. On April 25, 2001, the Illinois Department of Revenue (hereinafter the

“Department”) took possession of the unstamped cigarettes from the Orland Park Police Department.

An evidentiary hearing was held on this matter on October 9, 2002. Taxpayer appeared by and through his attorney. Michael Hoff, Special Agent for the Illinois Bureau of Criminal Investigation, testified for the Department. The two issues presented for hearing were whether the 338 packages 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 the taxpayer. Following a review of the testimony and the evidence, it is recommended that the cigarettes should be confiscated and forfeited, but that no penalty should be imposed against the taxpayer. In support thereof, the following “Findings of Fact” and “Conclusions of Law” are made.

Findings of Fact:

1. As of May 8, 2001, the Department of Revenue’s cigarette registration files did not show that John Doe has been issued a Cigarette Distributor’s License or Transporter Permit. Tr. p. 7; Dept. Ex. No. 2.
2. When the cigarettes were seized by the Orland Park Police Department on July 1, 1999, no agent of the Illinois Bureau of Criminal Investigation was present. Tr. pp. 21-22; Dept. Ex. No. 1.
3. Agent Hoff went to the Orland Park Police Department on July 1, 1999, after the taxpayer was arrested. Agent Hoff attempted to question the taxpayer, but the taxpayer refused to talk to him. The arresting officer showed Agent Hoff the

cigarettes when he was at the Orland Park Police Department. Tr. pp. 24-25; Dept. Ex. No. 1.

4. On April 25, 2001, Agent James Lippner of the Illinois Bureau of Criminal Investigation took possession of the cigarettes from the Orland Park Police Department. Agent Lippner showed the cigarettes to Agent Hoff who inventoried them and wrote and signed the inventory report. Tr. pp. 23-26; 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 not tax stamped or tax imprinted ... 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 ... as required by this Act, ... , 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 338 packages of "non-Illinois stamped cigarettes" were picked up from the Orland Park Police Department by Agent James Lippner. These cigarettes were subsequently received and signed for by Agent Michael Hoff, as "Evidence Custodian." Dept. Ex. No. 4. The 338 packages were not tax stamped and they should be forfeited and confiscated to the State in accordance with Section 18a of the Act. 35 ILCS 130/18a..

Section 18b of the Cigarette Tax Act states:

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.

John Doe was not a licensed distributor of cigarettes so he does not come within the exception delineated in the statute. Dept. Ex. No. 2. Section 18b assesses a penalty on “anyone possessing cigarettes” which are not tax stamped. 35 ILCS 130/18b. No representative of the Orland Park Police Department appeared to testify at the evidentiary hearing. The evidence that was admitted at the hearing failed to establish actual possession of the 338 packages of cigarettes by the taxpayer, and this possession is necessary for an assessment of the penalty in Section 18b.

Based on the record before me, I recommend that the 338 packages of unstamped cigarettes in this matter be confiscated and forfeited in accordance with 35 ILCS 130/18a, and that no penalty as provided in 35 ILCS 130/18b be assessed against the taxpayer.

December 20, 2002

Kenneth J. Galvin
Administrative Law Judge