

**CT 11-01**  
**Tax Type: Cigarette Tax**  
**Issue: Possession of Unstamped Cigarettes**

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

---

---

<b>THE DEPARTMENT OF REVENUE</b>	)	Docket No.
<b>OF THE STATE OF ILLINOIS</b>	)	
v.	)	John E. White,
<b>JOHN DOE</b>	)	Administrative Law Judge

---

---

**RECOMMENDATION FOR DISPOSITION**

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

**Synopsis:** This matter involves the Illinois Department of Revenue's (Department's) claims that, pursuant to applicable provisions of Illinois' Cigarette Tax Act (CTA), 1,809 packages of cigarettes that were recovered from a vehicle driven by John Doe (John Doe) in Illinois on September 14, 2009 should be declared forfeit to the State, and that John Doe should be held liable for statutory penalties for possessing those cigarettes.

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 John Doe be held liable for penalties, as provided by statute.

**Findings of Fact:**

1. During the afternoon hours of September 14, 2009, Illinois State Police (ISP) trooper Cody Goldsboro (Goldsboro) stopped a vehicle John Doe was driving, in Illinois, for a safety

- violation. Hearing Transcript (Tr.) pp. 7-8 (Goldsboro); Department Ex. 1 (copies of Goldsboro's reports), pp. 1, 3 (pages 2 and 4 of Goldsboro's report, dated September 14, 2009).
2. After obtaining John Doe's consent to search the vehicle John Doe was driving, Goldsboro recovered from that vehicle 210 unopened cartons of Newport brand cigarettes, and 1 open carton of Newport brand cigarettes containing 9 packages. Department Ex. 1, pp. 1, 3, 5 (copy of Goldsboro's report dated September 15, 2009).
  3. Of the cigarettes Goldsboro recovered from John Doe's vehicle, 180 cartons and 9 packages of cigarettes had Missouri tax stamps affixed to them, and did not have Illinois tax stamps affixed to them. *Id.*; Department Ex. 2 (copies of reports written by agent Marilee Oglesby (Oglesby), of the Department's Bureau of Criminal Investigation (BCI), and exhibits thereto), pp. 3 (page 2 of Oglesby's Investigative Summary Report, dated December 9, 2009), 11 (copy of Evidence Inventory and Receipt form, detailing quantity and nature of cigarettes received from ISP, dated September 15, 2009); Tr. pp. 7-9 (Goldsboro).
  4. Goldsboro placed John Doe and another occupant of the vehicle, Harry Smith (Smith), into custody. Department Ex. 1, *passim*.
  5. Goldsboro inventoried the 2,109 packages of cigarettes recovered from John Doe's vehicle, as well as other property, and subsequently notified BCI agents of that recovery. Department Ex. 1; Department Ex. 2.
  6. Goldsboro wrote reports to document his arrest and investigation of John Doe and Smith, and his inventory of evidence recovered from the vehicle John Doe was driving. Department Ex. 1, *passim*; Tr. pp. 5-7 (Goldsboro).

7. On September 15, 2009, BCI agent Oglesby took possession of the 2,109 packages of cigarettes that Goldsboro recovered from John Doe' vehicle, and transported those cigarettes to, and secured them within, the custody of the Department's BCI. Department Ex. 2, p. 11; Tr. pp. 13-14 (Goldsboro), 15 (Oglesby).
8. On September 15, 2009, Oglesby interviewed John Doe about the cigarettes recovered from the vehicle he was driving. Department Ex. 2, pp. 3-4.
9. During that interview, John Doe told Oglesby, in summary but not verbatim, that he (John Doe) borrowed the vehicle and drove to Missouri with Smith. Department Ex. 2, pp. 3-4. While in Missouri, Smith purchased cigarettes, intending to resell them in Chicago, Illinois. *Id.*, pp. 3-4, 6. John Doe helped Smith load the cigarettes and other property purchased into the vehicle John Doe was driving, and he then drove that vehicle, Smith, the cigarettes, and the other property back into Illinois toward the Chicago area. *Id.*, pp. 3-4.
10. Oglesby wrote reports to document her receipt of the cigarettes Goldsboro previously recovered from the vehicle driven by John Doe, her interviews with John Doe and Smith, and her investigation of their activities. Department Ex. 2; Tr. pp. 13-15 (Oglesby).
11. After his September 14, 2009 arrest, John Doe pled guilty to a charge of illegally transporting the 1,809 packages of cigarettes at issue here. Department Ex. 1, pp. 1, 3; Department Ex. 2, p. 6; *see also* John Doe' Letter, dated March 23, 2010 (asking to vacate default); Order Vacating Default (for John Doe, individually), dated April 2, 2010.

**Conclusions of Law:**

The issues are whether the 1,809 packages of cigarettes shall be declared forfeit pursuant to § 18a of the CTA, and whether John Doe is liable for penalties for possessing such cigarettes, pursuant to §§ 18b and 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.

The evidence shows that, on September 14, 2009, ISP trooper Goldsboro recovered 1,809 packages of cigarettes from the vehicle John Doe was driving in Illinois, which cigarettes did not have Illinois tax stamps affixed to them. Department Ex. 1; Department Ex. 2, pp. 3, 11. They did not have Illinois tax stamps affixed to them because they were purchased in Missouri, and had Missouri tax stamps affixed to them. Department Ex. 2, pp. 3, 11. Because there is no dispute that the 1,809 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 penalties, § 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 a new

penalty for a person's possession of between 10 to 100 packages of unstamped cigarettes. The newly added 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. Virtually identical penalty provisions are also included within Illinois' complementary Cigarette Use Tax Act (CUTA). 35 ILCS 135/25a-25b.

In addition to authorizing the penalties set forth in §§ 18b-18c, the Illinois General Assembly also created a statutory presumption that any person — other than a licensed distributor — who is found in possession of original packages of cigarettes that do not bear Illinois tax stamps, possesses such cigarettes in violation of the CTA. 35 ILCS 130/13. Here, there has been no claim that John Doe is a licensed distributor of cigarettes. *See* Department Exs. 1-2, *passim*; Tr. pp. 19-22 (John Doe). Thus, the statutory presumption applies, and that presumption is sufficient for me to conclude that John Doe possessed the 1,809 packages of cigarettes in violation of the CTA. 35 ILCS 130/13.

But even if there were no such statutory presumption, the evidence shows that John Doe possessed the cigarettes at issue in violation of the CTA. At hearing, John Doe argued that he should not be penalized since he did not purchase the cigarettes, and only helped Smith put them in the vehicle. Tr. pp. 21-22 (John Doe). But John Doe was not ignorant of what he was doing. John Doe knew that the cigarettes recovered from the vehicle he was driving were purchased in Missouri. Department Ex. 2, pp. 3-4. He knew where the cigarettes were purchased because he

was the person who drove Smith to different stores in Missouri, when and where Smith purchased them. *Id.*; Tr. pp. 21-22 (John Doe). John Doe also admitted that he intended to, and was, transporting the cigarettes from where Smith bought them, in Missouri, to Illinois, knowing that Smith intended to sell them in Illinois for a profit. Department Ex. 2, pp. 3-4.

Further, Department Exhibit 2 reflects that, following his September 14, 2009 arrest, John Doe pled guilty to a charge of illegally transporting the cigarettes that are the basis for the penalties at issue here. Department Ex. 2, p. 6. I also take notice that John Doe' request to vacate an earlier default judgment issued against him includes his statement that he was unable to appear at the initial status conference in this case because he was in state custody for the charge of illegally transporting cigarettes. John Doe' Letter, dated March 23, 2010; Order Vacating Default (for John Doe, individually), dated April 2, 2010. In sum, John Doe' admitted knowledge, intent, and plea in criminal court, fully support a conclusion that he possessed the cigarettes in violation of the CTA. Department Ex. 2, pp. 3-4, 6.

The evidence, therefore, shows that John Doe is liable for the penalty imposed by CTA § 18b. Based on the same facts, I also conclude that John Doe is liable for the penalty imposed by CTA § 18c. As to the latter penalty, the record includes no evidence which shows that John Doe exercised ordinary business care and prudence when attempting to report, as required by either the CTA or the CUTA (35 ILCS 130/2, 3, 9; 35 ILCS 135/2, 12), his possession of the cigarettes he knew were purchased outside Illinois, or to determine the correct tax to pay regarding his possession of those cigarettes.

**Conclusion:**

The evidence shows that the 1,809 packages of cigarettes recovered from the vehicle John Doe was driving in Illinois did not bear Illinois tax stamps as required by the CTA.

Department Exs. 1-2. I recommend that such cigarettes be confiscated and forfeited to the State. 35 ILCS 130/18a. The evidence also shows that John Doe possessed the 1,809 packages of cigarettes in Illinois knowing that they did not bear Illinois tax stamps. *Id.* Therefore, I recommend that John Doe be held liable for the penalties authorized by §§ 18b and 18c of the CTA, in the amount of \$26,635. 35 ILCS 130/18b-18c ((1,709 x 15) + (100 x 10) = 25,635 + 1,000 = 26,635)).

May 6, 2011

John E. White  
Administrative Law Judge