

**CT 15-01**  
**Tax Type: Cigarette Tax**  
**Tax Issue: Possession of Unstamped Cigarettes**

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

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC BUSINESS, INC.**

**Taxpayer**

**No. XXXX**

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**RECOMMENDATION FOR DISPOSITION**

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

Synopsis:

The Department of Revenue (“Department”) seized 151 packs of little cigars from the premises of ABC BUSINESS, Inc. (“taxpayer”), located in Anywhere, Illinois. The taxpayer’s owner was not present at the time of the seizure, but his brother, Robert Doe, was present. The packages were unstamped and did not have Illinois tax stamps affixed to them as mandated by the Tobacco Products Tax Act of 1995 (“Tobacco Act”) (35 ILCS 143/10-1 *et seq.*). The Department seeks forfeiture of the little cigars, and it also seeks to impose a civil penalty pursuant to the Tobacco Act. An evidentiary hearing was held during which the owner, John Doe, appeared, and asked that the penalty be abated for reasonable cause. He stated that the previous owner purchased the little cigars, and he was not aware that they were in his store. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

#### FINDINGS OF FACT:

1. On September 3, 2014, a Special Agent for the Department's Bureau of Criminal Investigation found 151 packs of unstamped little cigars at the taxpayer's business. (Dept. Ex. #1)
2. The little cigars did not have Illinois stamps affixed to them. (Dept. Ex. #1)
3. The brother of the taxpayer's owner was present during the inspection. The owner was not present. (Dept. Ex. #1; Tr. pp. 7-8)
4. The Department's agent seized the 151 packs of little cigars. (Dept. Ex. #1)
5. The taxpayer is not a licensed distributor or stamping distributor of little cigars. (Dept. #1; Tr. p. 8)

#### 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 owner 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 151 packages 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 for the first 100 packs is \$XXXX.<sup>1</sup> Under section 18b, the penalty for the remaining 51 packs is \$XXXX.<sup>2</sup> The total penalty amount for possession of 151 packs of unstamped little cigars is \$XXXX.

The owner of the taxpayer has asked that the penalties be abated due to reasonable cause. He argues that when he purchased the business in July of 2012, he was not aware that the little cigars were on the premises of the business. He testified that he has four other businesses and he purchases all of his cigarettes from a distributor in Anywhere. He said he has never purchased or tried to sell unstamped tobacco products. He said that he does not purchase cigarettes outside of Illinois, and he does not have a record of doing anything illegal.

These facts do not establish reasonable cause for abating the penalties. The evidence presented does not show that the taxpayer's owner took reasonable steps to prevent this incident from occurring. The owner testified that he purchased the business in July of 2012, and over two years had passed when the Department's Special Agent found the little cigars on September 3, 2014. The owner is responsible for insuring that the tobacco products sold at his stores have Illinois tax stamps on them. Ordinary business care would have been to check the inventory when he first purchased the business to make sure that the tobacco products sold at his business were properly stamped. The penalties must, therefore, be upheld.

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<sup>1</sup> There is no penalty for the first 10 packs. The penalty for the remaining 90 packs is \$XXXX each for a total penalty of \$XXXX for the first 100 packs.

<sup>2</sup> The penalty for the 51 packs is \$XXXX each for a total of \$XXXX.

Recommendation:

For the foregoing reasons, it is recommended that the 151 packs of little cigars that were seized by the Department on September 3, 2014 be confiscated and forfeited to the State of Illinois. In addition, it is recommended that a civil penalty of \$XXXX be assessed.

Enter: August 12, 2015

Linda Olivero  
Administrative Law Judge