

**CT 10-01**

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

**No.  
Cigarette Confiscation**

v.

**JOHN DOE,  
Taxpayer.**

**Julie-April Montgomery  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

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

**Synopsis**

This matter arose because Illinois Department of Revenue (“Department”) agents, in the Bureau of Criminal Investigations (“BCI”), took custody of 2,550 packs of cigarettes seized from John Doe (“Taxpayer”). The Department thereafter notified Taxpayer that a hearing would be held to determine whether those cigarettes were subject to forfeiture for disposal and Taxpayer was liable for penalties, pursuant the provisions of the Illinois Cigarette Tax Act (“CTA”). 35 ILCS 130/1 *et seq.*

A hearing was held on July 27, 2010. The Department presented documentary and testimonial evidence. Taxpayer presented no evidence. Following a review of the evidence, it is recommended that the cigarettes be forfeit for disposal and Taxpayer held liable for penalties, as provided by statute. In support thereof, the following “Findings of

Fact” and “Conclusions of Law” are made.

**Findings of Fact:**

1. On December 9, 2005 the Anywhere Police Department (“Police”) contacted BCI agents regarding cigarettes discovered by employees at the Anywhere Post Office (“P.O.”). Dept. Ex. No. 1 (“Investigative Summary Report”); Tr. p. 11.
2. Upon arrival at the P.O. BCI agents observed that one of six boxes “was broken...which clearly contained numerous cartons of...cigarettes [and] several cartons in plain view [that] were not sealed and clearly were not affixed with the requisite State of Illinois tax stamps.” Dept. Ex. No 1, p. 3; Tr. pp. 11, 15-16.
3. Taxpayer’s friend (“Associate”) used his sister’s vehicle to give Taxpayer a ride to and from the P.O. Department Ex. No. 1 (“Activity Reports” of Taxpayer and Associate).
4. Taxpayer retrieved the six boxes of cigarettes from the P.O. and loaded them into the vehicle. Dept. Ex. No. 1; Tr. p. 11.
5. Taxpayer and Associate were subsequently stopped by the Police once they exited the P.O.’s property. Dept. Ex. No. 1; Tr. p. 12.
6. Associate verbally consented to a search of the vehicle’s trunk. Dept. Ex. No. 1.
7. Taxpayer gave BCI agents verbal consent to search the boxes picked up from the P.O. Dept. Ex. No. 1.
8. All six boxes were seized. Dept. Ex. No. 1; Tr. p. 12.
9. Inspection revealed “[a]ll of the boxes contained cartons of unstamped ... cigarettes [for] a total of 255 Cartons (2,550 Packs) of unstamped cigarettes.”

Dept. Ex. No. 1 (“Investigative Summary” p. 4; “Contraband Cigarettes or Vending Devices Seizure Report” and “Evidence Inventory and Receipt”); Tr. p. 13.

10. Taxpayer did not have a Cigarette Distributor’s License or Transporter’s Permit.

Dept. Ex. No. 1 (“August 10, 2007 BCI Memorandum”); Tr. p. 9.

**Conclusions of Law:**

The CTA, at the time of the December 9, 2005 discovery and seizure of unstamped Illinois cigarettes from Taxpayer, provided:

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 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...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 (amended 2010).

The evidence the Department presented established that Taxpayer, on December 9, 2005, was in possession of 2,550 packs of cigarettes that had neither Illinois tax stamps nor imprints. Taxpayer did not refute the Department’s evidence. In fact, Taxpayer presented no evidence regarding possession of the cigarettes nor did Taxpayer deny he had possession of unstamped cigarettes on December 9, 2005. Thus, pursuant to seizure it is warranted that the seized cigarettes be declared “confiscated and forfeited to the State...for disposal.” *Id.*

The CTA, at the time of the incident, also provided:

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... a penalty of \$15 for each such package of cigarettes in excess of 100 packages. 35 ILCS 130/18b (amended 2010).

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... 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. 35 ILCS 130/18c (amended 2010).

The evidence presented by the Department established that Taxpayer was in possession of 2,550 packs of unstamped cigarettes, on December 9, 2005, so as to be liable for penalties. Moreover, Taxpayer offered no reason for penalty abatement. Hence, Taxpayer should be assessed penalties in the amount of \$37,750  $((2,450 \times \$15) + (100 \times \$10) = \$36,750 + \$1,000 = \$37,750)$ . 35 ILCS 130/18b-18c (amended 2010).

**Recommendation:**

The 2,550 packs of cigarettes were properly seized and are found forfeit to the State for disposal by the Department. In addition, Taxpayer is liable for penalties of \$37,750.

September 3, 2010

Julie-April Montgomery  
Administrative Law Judge