

CT 01-1

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)	Docket No.	00 0000-0000-0-00
OF THE STATE OF ILLINOIS)	IBT No.	0000-0000
v.)		
JOHN DOE d/b/a)	John E. White	
ABC DISTRIBUTING)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter arose after the Department seized 304 packages of cigarettes from John Doe d/b/a ABC Distributing (“ABC”), a business located at 123 Alphabet Lane, Anywhere, Illinois, August 23, 2000. The Department thereafter notified ABC that a hearing would be held to determine whether those cigarettes were subject to forfeiture pursuant to § 18a of the Cigarette Tax Act (“CTA”), and whether it was liable for a penalty pursuant to § 18b of the CTA.

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 ABC be assessed a penalty in the amount of \$15 for each package over 100.

Findings of Fact:

1. On August 23, 2000, employees of the Department's Bureau of Criminal Investigation conducted an inspection of ABC, which is a licensed cigarette distributor, at 123 Alphabet Lane, Anywhere, Illinois. Department Ex. 1, pp. 9-10 (respectively, a Contraband Cigarettes or Vending Devices Seizure Report (form RC-35), and an Evidence Inventory and Receipt form).
2. There, the agents observed and seized 304 packages of cigarettes bearing labels or manufacturers' statements that the cigarettes were "for export only". Department Ex. 1, p. 10.
3. Those 304 cigarette packages also bore Illinois tax stamps. *Id.*, pp. 4, 9.

Conclusions of Law:

Section 3-10 of the CTA provides, in part:

3-10 Cigarette enforcement.

(a) Prohibitions. It is unlawful for any person:

(1) to sell or distribute in this State; to acquire, hold, own, possess, or transport, for sale or distribution in this State; or to import, or cause to be imported into this State for sale or distribution in this State:

(A) any cigarettes the package of which:

(i) bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

* * *

(c) Administrative sanctions.

* * *

(2) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this State in violation of this Section shall be deemed contraband under this Act and are subject to seizure and forfeiture as provided in this Act, and all such cigarettes seized and forfeited shall be destroyed. Such

cigarettes shall be deemed contraband whether the violation of this Section is knowing or otherwise.

35 ILCS 130/3-10.

Section 18a and 18b provide for the seizure, confiscation and forfeiture of cigarettes possessed in violation of the CTA's provisions. 35 ILCS 130/18a-18b. Here, the evidence shows that the cigarettes seized from ABC's business had Illinois tax stamps affixed to them and that they were marked as being "for export only". Department Ex. 1, pp. 9-10. Since ABC possessed the cigarettes in violation of § 3-10 of the CTA, they should be confiscated and forfeited to the State, pursuant to § 18a. 35 ILCS 130/18a. For the same reason, ABC is also liable for a penalty in the amount of \$3,060, pursuant to § 18b. 35 ILCS 130/18b ($\$15 \times 204 = 3,060$).

Conclusion:

I recommend that the Director confiscate the 304 packages of cigarettes, and that they be forfeited to the State. 35 ILCS 130/18a. I also recommend that the Director assess a § 18b penalty against ABC in the amount of \$3,060. 35 ILCS 130/18b.

1/24/01
Date

Administrative Law Judge