

CT 05-1
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

Respondent

No. 0000-0000-0-00
Cigarette Confiscation

Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Gary Stutland, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to the seizure on February 10, 2000 by the Illinois Department of Revenue (hereinafter the "Department") of 259 packages of cigarettes from the premises of the ABC Club (hereinafter the "Club"), a social club/tavern in Chicago. These cigarette packages did not have Illinois cigarette tax stamps affixed to them as mandated by the Cigarette Tax Act, 35 ILCS 130/1 *et seq.* (hereinafter the "Act"). In these proceedings, the Department seeks, *inter alia*, to impose a civil penalty against John Doe (hereinafter "John Doe"), as the owner of the Club. John Doe appeared at the hearing *pro se*. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the

Department, and in support thereof, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. On February 10, 2000, an agent for the Department, James Lippner (hereinafter “Lippner”), found 259 packages of cigarettes on the premises of ABC Club, a social club/tavern, located in Somewhere, Illinois. Department Gr. Ex. 1 (ABC Club Illinois Business Taxpayer Application For Registration as a tavern with IBT number 0000-0000, RC-35 Seizure Report, Evidence Inventory and Receipt, Tr. *passim*) These packages of cigarettes did not have affixed to them Illinois cigarette stamps as mandated by the Cigarette Tax Act; Id.
2. At that time and at that place, Lippner seized and confiscated those 259 cigarette packages; Id.
3. The Department received a telephone call from an agent for the Illinois Liquor Commission, Melvin Cannon, Jr., advising that unstamped cigarettes were found at the Club, and Lippner responded to that telephone call; Tr. pp. 34-6
4. Lippner was allowed onto the premises of the Club by John Doe, the owner of the Club.¹ Tr. pp. 24, 37, 69 John Doe allowed Lippner to examine the premises of the Club, including the downstairs storage areas. Tr. pp. 42-4, 60

¹ The Club was operated from 1998 as a corporate entity, having filed Article of Incorporation with the Illinois Secretary of State, with John Doe as the registered agent, one of its directors and its president. Department Gr. Ex. No. 1 (Articles of Incorporation), Secretary of State certificate of incorporation However, as of October 1, 1999, the Illinois Secretary of State issued a Certificate of Dissolution of Domestic Corporation to ABC Club, Inc., based upon the corporation’s failure to file an annual report. Department Gr. Ex. No. 1 (Certificate of Dissolution of Domestic Corporation)

5. The cigarettes at issue were found by Lippner on a shelf beneath the Club's front window, adjacent to the front door. Tr. p. 16
6. John Doe was found guilty of possession of unstamped cigarettes, a class four felony, following a bench trial, on September 5, 2002. Department Gr. Ex. No. 1 (Illinois Department of Revenue Case Activity Report; Court Activity Report)
7. Neither John Doe nor the Club was licensed by the Department as a cigarette distributor or transporter. Department Gr. Ex. 1 (Memorandum from Linda Brewer, Manager of Department's Registration & Returns Processing Section)

Conclusions of Law:

In this matter, the Department seeks not only the forfeiture of the 259 non-Illinois stamped packages of cigarettes confiscated from the premises of the Club, but also wishes to assess a civil penalty against John Doe for the possession of these improperly stamped cigarettes.

The Cigarette Tax Act provides as follows:

§13. Whenever any original package of cigarettes is found in the place of business or in the possession of any person who is not a licensed distributor under this Act without proper stamps affixed thereto, or an authorized substitute thereon, underneath the sealed transparent wrapper of such original package, as required by this Act, the prima facie presumption shall arise that such original package of cigarettes is kept therein or is held by such person in violation of the provisions of this Act.
35 ILCS 130/13

What is clear and uncontested in this matter is that 259 packages of cigarettes that failed to have the necessary Illinois tax stamps affixed to them were found on the premises of the Club. It matters not that they were originally found in the Club's storage

area by the agent of the Liquor Commission, who in turn, brought them to the main floor of the business. There is no evidence of any kind that John Doe was unaware that these cigarette packages were on the business premises. Nor is there any evidence of record that the area where these cigarettes were located was other than an area controlled and used by the business. John Doe never denied, nor did he present any evidence to otherwise refute a finding that these cigarettes were on the Club's premises, or that he, as the business owner, did not have control over the space where the cigarettes were found.

It also is of no legal consequence that John Doe denies telling Lippner that he, himself, bought these cigarettes (see Lippner testimony Tr. pp. 25-6), because the statute does not require that the person or business held responsible pursuant to this statute for a civil penalty be the same as the entity that actually purchased the unstamped cigarettes. The statute clearly provides that improperly stamped cigarette packages found "in the place of business or in the possession of any person who is not a licensed distributor" establishes a "prima facie presumption" that such cigarettes are there in violation of the Act. 35 **ILCS** 130/13

Similarly, it is not relevant that the cigarette packages at issue were found in the basement area of the bar and not behind the bar. Tr. pp. 62-3 Nor is it relevant that Lippner did not see anyone in the tavern smoking. Id. Again, for purposes of this confiscation and civil penalty, it is only necessary that the unstamped cigarettes were found on the business premises, in this case, a tavern, or in the possession of a person, in this case, John Doe, who is not a licensed distributor. 35 **ILCS** 130/13 It is also not required by this civil penalty provision that there be evidence presented by the Department of an intent by the business or person to sell the complained of packages.

Id.; compare 35 ILCS 130/24 (class 4 felony applicable upon showing of intent to sell or offer for sale unstamped cigarette package)

On the issue of the civil penalties sought herein, the Act states:

§ 18b. 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; see also 130/18a for forfeiture of seized cigarettes

The cigarette packages found by Lippner at the Club were admitted into evidence at the hearing. Tr. pp. 16-22 They were original packages of Marlboro, Newport and Camel cigarettes. Id. It is noted that there was nothing presented to suggest that John Doe did not cooperate with Lippner during Lippner's inspection of the Club. John Doe gave him entry without question and allowed Lippner access to wherever he wished to go. In this civil matter, however, the law does not provide for any relief from the forfeiture and civil penalty provisions because the business or person cooperated with the Department's agent. As a result, based upon the facts of this matter as established by the evidence presented, as well as the clear mandates of the pertinent sections of the Act, the Department's requests that the seized cigarette packages be forfeited to the State, and that a civil penalty be assessed against John Doe, are appropriate.

Wherefore, for the reasons stated above, it is recommended that the 259 packages of cigarettes confiscated by the Department from ABC Club on February 10, 2000 be forfeited to the State of Illinois and, further, that a civil penalty of \$2385.00 (259 – 100 x \$15.00) be assessed against Anthony A. John Doe.

Date: 3/10/2005

Mimi Brin
Administrative Law Judge