

ST 95-9
Tax Type: SALES TAX
Issue: Possession of Unstamped Cigarettes

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
)
) Docket No. XXXXX
 v.)
)
 XXXXX,)
) Alfred M. Walter
) Administrative Law Judge
 Taxpayer)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, Attorney at Law, 200 N. LaSalle Street, Chicago, Illinois 60601 for XXXXX.

SYNOPSIS: This matter came on for hearing pursuant to the Department's Notice to the respondent taxpayer that a hearing had been set for the purpose of determining whether the taxpayer had possessed packages of unstamped cigarettes in violation of the provisions of 35 ILCS 130/1 et seq., known as the Cigarette Tax Act.

FINDINGS OF FACT: The testimony of Special Agent Gary Krol of the Illinois Department of Revenue, Bureau of Criminal Investigations, and the Department's Group Exhibit 1 established the following facts:

1. On the evening of March 22, 1994, Agent Krol, along with Agents Kinsella and Winfield conducted a cigarette inspection at XXXXX located at XXXXX in Chicago, Illinois. In the store premises they met XXXXX who identified himself as the manager of the store. Tr. p. 5.

2. On a counter behind the facing counter, and in display sales racks the agents found 379 packages of cigarettes which bore no Illinois cigarette tax stamps. Tr. p. 5.

3. XXXXX stated that when he went to shelve the cigarettes, he noticed that they were not properly stamped, but decided to sell them until they were all gone. Tr. p. 6.

4. XXXXX was placed under arrest for possession of unstamped cigarettes with intent to sell. Tr. p. 6.

5. Department's Group Exhibit identified XXXXX in a computer print-out as a vice president of XXXXX, Inc. Dept. Grp. Ex. No. 1.

6. The respondent taxpayer offered no evidence to rebut the Department's prima facie case, and the hearing was concluded. Tr. p. 25.

CONCLUSIONS OF LAW AND RECOMMENDATIONS: On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the charges in question. Accordingly, by such failure, the determination by the Department that XXXXX is subject to the penalties provided in the Cigarette Tax Act must stand as a matter of law. In support thereof, the following recommendations are made.

Based on the foregoing facts, I recommend that the 379 packages of unstamped cigarettes seized by the Department be confiscated and forfeited to the State of Illinois, and that a penalty of \$15.00 per package of cigarettes, for every package in excess of 100 packages, be levied against this taxpayer, which translates to a penalty of \$4,185.00.

Alfred M. Walter
Administrative Law Judge