

**CT 04-1**  
**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**

v.

**JOHN DOE**

Respondent

Administrative Law Judge

No. 0000-0000-0-00  
Cigarette Confiscation

Mimi Brin

Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

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

**Synopsis:**

On March 22, 2002, Illinois Department of Revenue (hereinafter referred to as the “Department”) special agents, James J. Lippner (hereinafter referred to as “Lippner”) and Michael Hoff (hereinafter referred to as “Hoff”), entered the premises of a retail food business, ABC Food Mart, located at 0000 West Anywhere Street in Anywhere (hereinafter referred to as the “Business”) for purposes of conducting a cigarette compliance inspection. John Doe (hereinafter referred to as “Doe”) was present on the premises at that time, along with another employee. The agents found and confiscated 83 cigarette packages which did not carry Illinois tax stamps (hereinafter referred to as the

“cigarettes” or the “packages”) as required by the Cigarette Tax Act, 35 ILCS 130/1 *et seq.* (hereinafter referred to as the “Act”)

The Department, in this action, seeks not only an order of forfeiture of the cigarettes confiscated, but also seeks to impose a statutorily provided monetary penalty on Doe for being in possession of them. At hearing, Doe, appearing *pro se*,<sup>1</sup> did not discuss the matter of the forfeiture and confiscation, but defended against the imposition on him of any monetary penalty. He argued, *inter alia*, that he was only an employee in the store and questioned why there was no action brought against the business or the other employee who was in the store at the time. Tr. pp. 7, 20, 29-30, 34, 36, 38, 39 Hoff testified on behalf of the Department. Following the submission of all evidence and a review of the record, it is recommended that the cigarettes confiscated by the Department on March 22, 2002 be forfeited for disposition pursuant to statute, and further, that Doe be assessed a penalty of \$10.00 for each package of cigarettes confiscated. In support of this recommendation, the following findings of fact and conclusions of law are made:

**Findings of Fact:**

1. On March 22, 2003, Special Agents, James J. Lippner and Michael Hoff, of the Illinois Department of Revenue, entered a retail food business, ABC Food Mart, located at 0000 West Anywhere Street in the City of Anywhere, for purposes of conducting a cigarette compliance inspection. Tr. p. 12
2. At that time, Doe was in the store with another store employee. Tr. pp. 12-13 Doe allowed the agents to conduct their inspection. Tr. pp. 12-13

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<sup>1</sup> Doe had been advised prior to and at the hearing that he was entitled to be represented by an attorney. He chose to proceed *pro se*. Tr. pp. 8-9

3. During their inspection, Hoff and Lippner discovered, in the area of the cashier's counter, a total of 83 packages of cigarettes carrying Indiana stamps rather than Illinois stamps. Tr. pp. 13-14; Department Gr. Ex. No. 1 (Evidence Inventory and Receipt; Contraband Cigarettes or Vending Devices Seizure Report)
4. These cigarettes were confiscated by the agents at that time. Tr. pp. 14-15; Department Gr. Ex. No. 1 (Evidence Inventory and Receipt; Contraband Cigarettes or Vending Devices Seizure Report)
5. During the agent's inspection, Doe stated that he was an employee and that he was responsible for ordering inventory, including cigarettes. Tr. pp. 16, 21
6. Neither the business nor Doe was or is a licensed "distributor" as provided for by the Act. Tr. pp. 16-17, 36; Department Gr. Ex. No. 1 (Memoranda from Brock Reynolds, Manager, Registration & Returns Processing Section Miscellaneous Taxes Division, Illinois Department of Revenue)

**Conclusions of Law:**

The Department seeks not only an order for the forfeiture of the cigarettes it confiscated at the store during the agents' visit, but also seeks an order imposing on Doe the civil penalty provided by section 18c of the Cigarette Tax Act. 35 ILCS 130/1 *et seq.*

That provision states:

§18c. Possession of not less than 10 and not more than 100 original packages not tax stamped or improperly tax stamped; penalty. 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, 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.

35 ILCS 130/18c

There is no evidence of record that Doe had any ownership interest in the business. There is no argument made that he was more than an employee of the business. The evidence of record is that neither the business nor Doe was a licensed distributor under the Act at the pertinent time. The evidence of record is that Doe, although an employee, had significant responsibilities regarding the business, including the responsibility of ordering the cigarette inventory. Tr. pp. 16, 21

Doe does refute, however, that he purchased the cigarettes with the Indiana stamps. Tr. *passim* Unfortunately, his testimony on this point is not credible. Agent Hoff testified that, when questioned at the time of the inspection, Doe stated to him that he was the one who purchased the cigarettes at issue from “a gentleman on March 16<sup>th</sup>” (Tr. p. 16) and that “they had in fact been sold to customers at retail.” Id.

It is noted that Doe does not deny knowing of these Indiana stamped cigarettes. Rather, he now says that “somebody”, and he does not know who, bought them from an “African-American guy” who came into the store on March 16. Tr. pp. 19, 34 His vagueness at the hearing causes his testimony to be incredible in that he also states for the record that “I was working there, I was in control because he [the owner] trust me. He is from—we come from same country. He all the time out because he trust me for my honesty or anyway, I don’t know how he was thinking.” Tr. p. 39 I must conclude that an employee who is given such control by an owner, and who is aware of the improperly

stamped cigarettes, would know with more certainty of the circumstances surrounding the presence of these cigarettes at the business and would know if they were being sold. I, therefore, find agent Hoff's testimony to be the more credible, and conclude therefrom that it was Doe, himself, that caused these cigarettes to be on the premises for purposes of retail sale.

Doe further argues that he cannot be held liable for these cigarettes because he did not own the business. As cited, supra, section 18c of the Act imposes a civil penalty upon "anyone possessing" unstamped cigarettes packages. Thus, the statute does not confine liability to the owner of the improperly stamped packages.

In interpreting the charge of unlawful possession, certain legal premises are well settled. The facts must show knowledge of the presence of the substance and that it was in the defendant's control. People v. Embry, 20 Ill.2d 331 (1960) The knowledge required may be ascertained by evidence of acts, declarations or conduct from which it may fairly be inferred that the accused knew of the contraband at the place it was found. People v. Agyei, 232 Ill. App.3d 546, 556 (1<sup>st</sup> Dist. 1992) (citing People v. Griffin, 194 Ill. App.3d 286 (1990)) Pursuant to the case law, title to the illegal material need not be in the one guilty of unlawful possession. Id. at 556

Doe also argues that the Department should also pursue the other employee who was there at the time of the inspection. Agent Hoff testified that as a result of his conversation with Doe at the business, he determined that it was Doe, and not the other employee, who purchased the cigarettes and allowed them to be sold there. Tr. p. 22 There is simply no requirement that the Department make a claim for civil liability against each person found on the premises where contraband cigarettes are present. The

issue at hearing was whether Doe is liable for such a penalty. Whether someone else might also be liable does not detract from a determination on this specific issue.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the 83 cigarette packages confiscated on March 22, 2002 by the Department from the premises of the retail food business, ABC Food Mart, located at 0000 West Anywhere Street in Anywhere, are forfeited to the State of Illinois and, further, that John Doe is liable to the State of Illinois for a penalty of \$10.00 per package of cigarettes so confiscated, that is, \$830, pursuant to section 18c of the Cigarette Tax Act.

Date: 10/19/2004

Mimi Brin  
Administrative Law Judge