

Cite as 10 WTD 426 (1990).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 91-072
. . .)	Registration No. . . .
)	Assessment No. . . .
)	

[1] WAC 458-20-186 -- RCW 82.24.120 -- CIGARETTE STAMPS --PENALTY. Penalty for failure to affix cigarette stamps as required by RCW 82.24.120 sustained on Oregon stamped cigarettes found in a Washington business. Some of the packs were on racks for sale and the taxpayer provided no evidence, other than personal testimony, that the majority of the cigarettes were stored for the purposes of being returned to the suppliers.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

NATURE OF ACTION:

The taxpayer protests the assessment of tax and penalty for failure to affix the Washington State Cigarette Tax Stamps.

FACTS AND ISSUES:

Roys, Sr. A.L.J.--The taxpayer is a retail food store. The assessment at issue resulted from a routine inspection of Washington retailers by two of the Department's Revenue Officers. They visited thirty-eight retailers to insure that cigarette licenses were current and that cigarettes being offered for sale had the proper Washington cigarette tax stamps affixed.

During the inspection of the taxpayer's premises, the officers noted that about half of the packs of cigarettes displayed in racks for sale had visible Washington State cigarette stamps.

The others either were reversed so that the stamp did not show or had a small price sticker obscuring the stamp. In addition, . . . full cartons of Oregon-stamped cigarettes were found stored under a desk.

The Revenue Officers stated that they explained the violation and the seizure and assessment procedure to the taxpayer's president and vice-president. They seized and inventoried [the] packs of cigarettes.

The assessment includes the cigarette tax, interest, penalty, and sales tax. The total amount assessed was \$. . . \$. . . of that amount was for the penalty.

The taxpayer protested the assessment. The taxpayer stated the purchase was the result of the mistake of a person not employed by the taxpayer. A friend of one of the owners of the business went to a couple of the taxpayer's suppliers located in Oregon to obtain various supplies. The friend purchased the Oregon stamped cigarettes. According to the taxpayer, the friend was not fully cognizant of the rules requiring the purchase of Washington stamped cigarettes as opposed to Oregon stamped cigarettes.

The taxpayer stated that the majority of the cigarettes were still in the carton and located in a spare cash register lane for the specific purpose of being returned to suppliers in order that Washington stamped cigarettes could be obtained. The taxpayer did not dispute the fact that some of the Oregon stamped cigarettes were on its racks, but stated they were put onto the racks "as a result of laziness and inadvertence, as opposed to any intent to violate the law."

The taxpayer noted that the difference in price between a carton of Washington stamped cigarettes and a carton of Oregon stamped cigarettes is minimal, approximately 15 cents a carton. There was no monetary incentive for the taxpayer to intentionally violate the law.

The taxpayer contends the violation was an isolated incident and that the maximum penalty is not necessary to accomplish deterrence and punishment. The taxpayer also stated it is not in a position to pay the penalty imposed without extreme hardship.

DISCUSSION:

RCW 82.24.120, effective January 1, 1991, imposes penalties and interest for failure to affix the stamps required by Chapter 82.24. That statute provides for the assessment of the tax due, a penalty, and interest. The penalty for failure to affix the stamps as required is "equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars." In other words, the minimum penalty is \$250. That amount would be assessed for the failure to affix stamps to one to twenty-five packs.

In the present case, [approximately 350] packages of cigarettes were found with Oregon stamps. A penalty of ten dollars per package was assessed. Although a penalty of [about \$3,500] may seem harsh, the legislature was aware of the fact that the penalty could be costly when they enacted RCW 82.24.120.

The taxpayer contends the maximum penalty is not warranted. The Department does have discretion to reduce the penalty for "good reason." RCW 82.24.120 provides:

The department, for good reason shown, may remit all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate of one percent for each thirty days or portion thereof. The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

We do not agree that taxpayer has shown "good reason" to reduce the statutorily imposed penalty. Some of the Oregon stamped packs of cigarettes were on the taxpayer's racks for sale and had a small price sticker obscuring the stamp. We find this evidence is prima facie evidence of intent to violate Chapter 82.24 as provided by RCW 82.24.120. Furthermore, some of the cartons stored under the desk were opened and the cartons were not marked for return. We are unwilling to reduce the penalty assessment based on the taxpayer's bare assertion of intent to return the cigarettes or because the imposition of the penalty imposes a financial hardship on the taxpayer.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 22nd day of March 1991.