

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. MISC. 91-249

BI-LOW FOODS, INC.  
2304 Governors Drive  
Huntsville, AL 35805,

§

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Taxpayer.

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FINAL ORDER

The Revenue Department assessed tobacco tax against Bi-Low Foods, Inc. (Taxpayer) for the period May 7, 1991. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on February 4, 1992. The Taxpayer's representative Mr. Anthony K. Sharifi, was notified of the hearing by certified mail on December 23, 1991 but failed to appear. Assistant counsel Wade Hope appeared for the Department.

FINDINGS OF FACT

The Taxpayer operates a retail grocery store in Huntsville, Alabama. On May 7, 1991, a revenue department agent visited the Taxpayer's business and discovered 54 packs of cigarettes that did not have the required Alabama tobacco tax stamps affixed.

The agent seized the unstamped cigarettes as required law and the Department subsequently entered the assessment in issue against the Taxpayer. The assessment includes tax of \$8.91, interest of \$0.26 and a penalty of \$1,350.00, or the minimum \$25.00 per pack as required by Code of Ala. 1975, §40-25-18.

The Taxpayer admits that he was in possession of the packs of

unstamped cigarettes, but argues that he was unaware that the cigarettes were unstamped and did not intend to evade or violate the tax laws of Alabama.

#### CONCLUSIONS OF LAW

The tobacco tax on cigarettes is paid by the wholesaler or retailer by purchasing stamps and affixing the stamps to each pack of cigarettes, see Code of Ala. 1975, §40-25-4. Any unstamped cigarettes are subject to confiscation, see code of Ala. 1975, §40-25-8, and the taxpayer in possession of the untaxed cigarettes shall be assessed the tax due plus a penalty of between \$25.00 and \$500.00 for each unstamped pack, see Code of Ala. 1975, §40-25-18.

To prevent contraband or untaxed tobacco products from coming into Alabama, Alabama's tobacco tax statutes require that all tobacco products must be stamped by the wholesale or retail dealer as soon as they are brought into the State. The dealer in possession of any tobacco product is deemed responsible for obtaining the proper stamps and the failure to do so subjects the products to confiscation and the dealer to penalty.

In this case, the Taxpayer claims that he was unaware that the cigarettes were unstamped. However, the burden is on the Taxpayer to know that all tobacco products in his possession are properly stamped, and if he discovers that the proper stamps are not affixed, then he is obligated to immediately purchase the stamps before offering the products for sale. Thus, the fact that the

Taxpayer did not know that the cigarettes were unstamped. and did not intend to evade tax is no excuse under the law. The Taxpayer is responsible for the tax and the statutory penalties as provided by §40-25-18.

The Department has discretion to waive any or all of the penalty for good cause. However, I see no evidence in this case that the Department contributed to the Taxpayer's failure to comply with the law, or to otherwise hold that the Department abused its discretion by refusing to waive the penalty.

The above considered, the assessment was properly entered by the Department and should be made final, with applicable interest.

Entered on February 5, 1992.

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BILL THOMPSON  
Chief Administrative Law Judge