

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated March 9, 2006
by the Secretary of Revenue of the State of
North Carolina

FINAL DECISION

Docket No. 2006-115

against

AN (AN number)

(name of Taxpayer), Taxpayer

Upon Taxpayer's timely written request for an administrative tax hearing, and pursuant to N.C.G.S. 105-260.1, this matter came before the Assistant Secretary of Revenue, Eugene J. Cella, who conducted a hearing on December 14, 2006, in the City of Raleigh, North Carolina. Taxpayer appeared *pro se* at the hearing. For purposes of N.C.G.S. 105-241.1, the hearing concluded on January 13, 2007.

Pursuant to N.C.G.S. 105-113.111 and N.C.G.S. 105-241.1(a)&(b), a notice of proposed assessment was delivered to Taxpayer by U.S. Mail sent to Taxpayer at Taxpayer's last known address of (address of taxpayer). Based on Taxpayer's admission to unauthorized possession of 364 grams of cocaine during the seven week period prior to March 7, 2006, to which no tax stamps were affixed, the notice from the Unauthorized Substances Tax Division ("the Division") proposed an assessment comprised of excise tax in the amount of \$18,200.00, penalties totaling \$7,280.00 and interest in the amount of \$111.62, for a total proposed tax liability of \$25,591.62.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual possession of cocaine without proper tax stamps affixed, and (2) Is Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

Exhibits from the Division admitted into the record prior to its closing in support of the assessment were as follows:

- US-1 Form BD-10, "Notice of Unauthorized Substance Tax Assessment," dated March 9, 2006.
- US-2 Letter from Taxpayer, dated March 24, 2006, requesting a hearing.

- US-3 Letter from the Assistant Secretary, dated April 6, 2006, regarding the scheduling of the hearing.
- US-4 Form BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," which names Taxpayer as the possessor of the controlled substance.
- US-5 Law Enforcement Investigation Report.
- US-6 Memorandum from E. Norris Tolson, Secretary of Revenue, dated May 16, 2001, delegating to Eugene J. Cella, Assistant Secretary of Revenue, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes.
- US-7 North Carolina State Bureau of Investigation (SBI) Laboratory Report dated May 31, 2006.

No exhibits were entered into the record in support of the objection to the assessment.

In addition to the exhibits submitted by the Division, the Assistant Secretary entered into the record of the hearing both the prepared brief of the Division and the transcript of the proceeding.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. On March 7, 2006, officers with the Moore County Sheriff's Office (MCSO) executed a narcotics search warrant for Taxpayer's residence. During the search of the residence, 29 grams of cocaine were found in a refrigerator in an upstairs bedroom used by Taxpayer.
2. Also found in this bedroom were 2 MDMA ("ecstasy") pills, digital scales, \$2,050 in currency, a drug transaction ledger and other assorted drug paraphernalia. Taxpayer's vehicle was also searched. A semi-automatic, assault-style rifle and a large amount of ammunition were found within the vehicle.
3. Taxpayer was arrested and transported to the Moore County Jail. While in custody, Taxpayer was Mirandized and then interviewed about the drugs found in his possession.
4. On March 8, 2006, pursuant to this interview, Taxpayer gave a written statement in which he admitted to buying cocaine. In his written statement, Taxpayer admitted that he purchased 1 ounce (28.35 grams) of cocaine from a local source on the

afternoon of March 7, 2006, prior to the search of his residence. It was determined by MCSO that this admission was in reference to the 29 grams of cocaine found in the search of Taxpayer's residence.

5. Taxpayer further admitted in his statement that he had known his local source of cocaine within North Carolina for only 7 weeks prior. During this period of seven weeks, Taxpayer admitted in his statement that he had made other purchases of cocaine within North Carolina from this same supplier.
6. Taxpayer specifically admitted in his statement that these other purchases included 4 purchases of 1 ounce each during one week, 1 purchase of 1 ounce on another week, at least 2 purchases of 1 ounce each during another two weeks and not less than 2 purchases of 1 ounce each on each of three other weeks.
7. In total, Taxpayer admitted to not less than 13 ounces (368.55 grams) of cocaine purchased by him, in addition to the cocaine purchased on March 7, 2006, which was found in the search of the residence.
8. The 29 grams of cocaine located in the search of Taxpayer's residence is the subject of a separate tax assessment against Taxpayer, and is not included in the quantity assessed in this matter.
9. MCSO used a conversion formula for ounces to grams that is more conservative than that used by the Department. In consequence, MCSO reported the 13 ounces admitted to by Taxpayer as being 364 grams of cocaine. The assessment in this matter was based upon that quantity.
10. On March 9, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$18,200.00, penalties totaling \$7,280.00 and interest in the amount of \$111.62, for a total proposed tax liability of \$25,591.62, based upon Taxpayer's possession of 364 grams of cocaine as admitted to in Taxpayer's written statement. Notice of said assessment was sent to Taxpayer by U.S. Mail.
11. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
12. At hearing, Taxpayer testified that his written admission was the product of coercion by MCSO personnel. Taxpayer further testified that his written admission statement was composed by MCSO personnel and signed by Taxpayer after approximately 22 hours without sleep. Taxpayer also testified that he signed the written admission to prevent continuation of an extended interview by MCSO personnel.

13. During the seven-week period immediately preceding March 7, 2006, Taxpayer possessed upon his person within the State of North Carolina an aggregate of 364 grams of cocaine pursuant to his receipt of such quantity of cocaine in multiple hand-to-hand sale transactions of individually taxable amounts of cocaine.
14. No tax stamps were purchased for or affixed to the cocaine as required by law.

CONCLUSIONS OF LAW

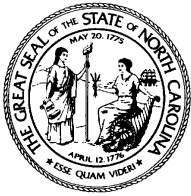
Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. A preponderance of the evidence supports the foregoing findings of fact.
2. Taxpayer had actual possession of 364 aggregate grams of cocaine in individually taxable quantities during the seven-week period immediately preceding March 7, 2006.
3. Taxpayer has brought forward no credible evidence that the amount of cocaine he admitted possessing was inaccurate or that his admission was the product of coercion.
4. Taxpayer's possession of the aforementioned substance in the noted quantity rendered him a "dealer" as that term is defined in N.C.G.S. 105-113.106(3), and in turn subjected Taxpayer to timely payment of Unauthorized Substances Excise Tax within 48 hours after taking possession of same.
5. Taxpayer failed to pay Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
6. The appropriate assessment against a dealer who possesses 364 grams of cocaine without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$18,200.00 in excise tax, penalties totaling \$7,280.00 and interest until date of full and final payment.
7. Taxpayer is liable for excise tax in the amount of \$18,200.00, penalties totaling \$7,280.00 and interest until date of full and final payment.

DECISION

Wherefore an assessment based on possession of 364 grams of cocaine, comprised of excise tax in the amount of \$18,200.00 and penalties totaling \$7,280.00, is deemed to be proper under the law and the facts, it is sustained and declared to be final and immediately due and collectible, together with such interest as allowed by law.

This the 4th day of April, 2007.



Eugene J. Cella

Eugene J. Cella
Assistant Secretary of Revenue