

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated August 21, 2006
by the Secretary of Revenue of the
State of North Carolina

against

(Taxpayer Name), Taxpayer

FINAL DECISION

Docket No. 2006-264

AN (AN Number)

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 May 17, 2007, in the City of Raleigh, North Carolina. The case had been initially scheduled for hearing on February 22, 2007, but was continued at the request of the Taxpayer, until May 17, 2007, and Taxpayer and his attorney were notified by letter of the May 17, 2007 setting on February 27, 2007. Despite having been notified of the time and place of the hearing, neither Taxpayer nor anyone representing Taxpayer appeared at the hearing. For purposes of N.C.G.S. 105-241.1, the hearing concluded on May 17, 2007.

Pursuant to N.C.G.S. 105-113.111 and N.C.G.S. 105-241.1(a) and (b), a notice of proposed assessment was delivered to Taxpayer by U.S. Mail sent to Taxpayer at Taxpayer's last known address of (Taxpayer address). Based on Taxpayer's unauthorized possession of 5,978.19 of marijuana on August 9, 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 \$20,926.50, penalties totaling \$8,370.60 and interest in the amount of \$172.45, for a total proposed tax liability of \$29,469.55.

ISSUES

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

EVIDENCE

Exhibits from the Division admitted, without objection, 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 August 21, 2006.
- US-2 Letter from Taxpayer's attorney, dated August 25, 2006, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated September 13, 2006, regarding the scheduling of the hearing and additional correspondence dated November 17, 2006.
- 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, including written statement of Taxpayer.
- 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.

No evidence or 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, without objection, the prepared brief of the Division.

FINDINGS OF FACT

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

1. On August 9, 2006, detectives with the New Hanover County Sheriffs Office (NHCSO) and the Carolina Beach Police Department (CBPD) initiated an investigation into a marijuana growing operation at Taxpayer's residence.
2. The investigation was triggered by an anonymous telephone call received by NHCSO reporting that an individual at the residence was growing marijuana. Detectives contacted Taxpayer at his residence and he admitted to growing the marijuana for his personal use.
3. A search of the residence revealed small amounts of marijuana and paraphernalia within the residence.

4. Approximately 206 live marijuana plants were recovered from the backyard of the residence.
5. Subsequent to his arrest, Taxpayer signed an adult Miranda Rights Waiver and provided a voluntary, written statement to the detectives. Taxpayer stated that he has smoked marijuana since 1967 and that he “used to drink and do every drug out there.” Taxpayer stated that he has quit every drug but marijuana and that he was growing it for his own personal use. He admitted that he knew this was illegal.
6. The marijuana plants were identified as such by the detectives present based upon their training and experience. The plants were collected and taken to CBPD Evidence Storage.
7. On the following day, August 10, 2006, the root balls were cut from the plants approximately 1 inch up the stem. The 206 plants were weighed resulting in an aggregate total of 5,978.19 grams.
8. On August 21, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$20,926.50, penalties totaling \$8,370.60 and interest in the amount of \$172.45, for a total proposed tax liability of \$29,469.55, based upon Taxpayer’s alleged possession of 5,978.19 grams of marijuana. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
9. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
10. Taxpayer’s only objection to the assessment is contained within a letter from his attorney. In the letter, the attorney argues that Taxpayer was not a dealer, did not have possession of the substances for which he is taxed, and that the tax is unconstitutional.
11. On August 9, 2006, 5,978.19 grams of marijuana were present at Taxpayer’s residence within the State of North Carolina.
12. Taxpayer was the sole occupant of this residence and had exclusive possession of the 5,978.19 grams of marijuana.
13. No tax stamps were purchased for or affixed to the marijuana as required by law.
14. Page 2 of the “Incident/Investigation Report” (Division Exhibit 1) is at variance with the “Evidence/Stored Property Record” (Division Exhibit 5) due to what appears to be an inadvertent transposition in copying the quantity of marijuana to the former from the latter, and Revenue consents to a reduction in the quantity of marijuana assessed to the lesser quantity of 5,978.19 grams.

CONCLUSIONS OF LAW

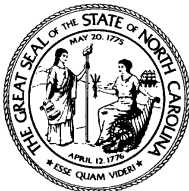
Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. A preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had constructive possession of 5,978.19 grams of marijuana on August 9, 2006.
3. 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 each such quantity.
4. Taxpayer failed to pay Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
5. The appropriate assessment against a dealer who possesses 5,978.19 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$20,926.50 in excise tax, penalties totaling \$8,370.60 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$20,926.50, penalties totaling \$8,370.60 and interest until date of full and final payment.

DECISION

Wherefore an assessment based on possession of 5,978.19 grams of marijuana, comprised of excise tax in the amount of \$20,926.50 and penalties totaling \$8,370.60, 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 8th day of August, 2007.



Eugene Cella
Eugene J. Cella
Assistant Secretary of Revenue