

**IN THE MATTER OF:**

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

**FINAL DECISION**

**Docket No. 2006-285**

against

**AN (AN Number)**

(Taxpayer Name), 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 May 23, 2007, in the City of Raleigh, North Carolina. 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 23, 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 56.6 grams of cocaine on December 19, 2005, 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 \$2,850.00, penalties totaling \$1,140.00 and interest in the amount of \$138.89, for a total proposed tax liability of \$4,128.89.

**ISSUES**

Two questions are at issue: (1) Did Taxpayer have actual or constructive 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, 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 3, 2006.

- US-2 Letter from Taxpayer's Attorney, dated September 21, 2006, requesting a hearing, and additional correspondence dated September 28, 2006, and October 3, 2006.
- US-3 Letter from the Assistant Secretary, dated October 6, 2006, regarding the scheduling of the hearing, and additional correspondence dated November 27, 2006, and February 28, 2007.
- 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.

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 December 19, 2005, a confidential informant (CI) working undercover for the Reidsville Police Department (RPD) purchased 56.6 grams of "crack" cocaine within the City of Reidsville, North Carolina. The cocaine was purchased from a dealer working in concert with others, including Taxpayer, to supply the cocaine to the CI.
2. Prior to the purchase, the CI was contacted by the dealer and an associate of the dealer in reference to purchasing two ounces of "crack" cocaine. The dealer's associate told the CI at that time that the price for this quantity of "crack" cocaine would be \$1,400 to \$1,500. The CI then informed the dealer's associate that he would pay \$1,400 for the discussed quantity of cocaine. The CI later contacted a detective with RPD to report this discussion and the anticipated drug transaction.
3. The CI met with officers of RPD at a designated meeting location in advance of the cocaine purchase from the above-referenced dealer. The CI departed the designated meeting location in the CI's vehicle and drove to Harden Street in

Reidsville, North Carolina. Surveillance of the CI was conducted by the North Carolina State Bureau of Investigation (SBI) and RPD.

4. Upon arriving at (Redacted) Street, the CI observed the dealer and his associate standing outside on (Redacted) Street in front of Taxpayer's residence. The dealer then approached the CI's vehicle, whereupon the CI stated to the dealer that he wanted to buy two ounces of "crack" cocaine. The dealer then requested that the CI wait.
5. The dealer then walked back over to where his associate was standing and the two of them started talking for a minute or two. The dealer then returned to the CI's vehicle and informed the CI that it would be a minute or two before the transaction could be consummated. The dealer then requested that the CI wait in the CI's driveway.
6. The CI then drove a short distance to (Redacted Address) and stood in the front yard of that residence. From this vantage point, the CI could continue to observe Taxpayer's residence as well as the nearby residence of the dealer's associate.
7. While the CI was waiting at (Redacted Address), the CI observed Taxpayer leave his residence on (Redacted) Street in a green Pontiac Bonneville automobile and proceed to the nearby residence of the dealer's associate. The dealer then walked to the CI's location on (Redacted Address) and informed the CI that it would be just a few more minutes and that someone had gone to retrieve the cocaine.
8. The CI then asked the dealer which person was retrieving the cocaine in as much as the CI was then observing the dealer's associate standing down the street. The dealer answered that Taxpayer was retrieving the cocaine.
9. Taxpayer was then observed to exit the house of the dealer's associate and travel back toward Taxpayer's residence and shout for the dealer. In response, the dealer walked to the Taxpayer's location while the CI got back into his vehicle and waited. The CI then, from some distance, observed Taxpayer give the dealer what the CI presumed was "crack" cocaine.
10. The dealer returned from his exchange with Taxpayer and got into the front passenger's seat of CI's vehicle. The dealer then handed the CI the presumed "crack" cocaine. Together, they weighed such substance on scales present.
11. The substance was determined to weigh 56.6 grams. The CI then paid the dealer \$1,400 for the substance. The dealer then exited the CI's vehicle and returned on foot to Taxpayer's location.
12. The CI then departed (Redacted) Street and returned to the designated meeting location to debrief RPD and SBI officers.

13. The purported “crack” cocaine was retained by RPD and determined to be 56.6 grams of cocaine by RPD officers.
14. On August 3, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$2,850.00, penalties totaling \$1,140.00 and interest in the amount of \$138.89, for a total proposed tax liability of \$4,128.89, based upon Taxpayer’s alleged possession of 56.6 grams of cocaine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
15. Taxpayer admits in affidavit that Taxpayer was also served with Notice of said assessment on September 6, 2006 by a NCDOR Enforcement Agent.
16. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
17. The only arguments in the record in support of the objection to the assessment were contained in the letters requesting a hearing. In those letters, Taxpayer argued that he was not notified of the assessment prior to seizure of two of his vehicles. Taxpayer’s attorney also stated that Taxpayer was never charged with, or had seized from him, the substances at issue in this matter.
18. On December 19, 2005, 56.6 grams of cocaine were possessed by Taxpayer and delivered to another individual involved in a drug deal with a CI.
19. 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. A proposed assessment of the Secretary of Revenue is presumed to be correct. Because the Secretary of Revenue has produced evidence of Taxpayer’s liability under the Unauthorized Substances Tax so as to give rise to this presumption, which stands un rebutted, the assessment of unauthorized substances tax made against Taxpayer is concluded to be correct.
3. Without authorization, Taxpayer had actual possession 56.6 grams of cocaine on December 19, 2005.
4. Taxpayer’s possession of the aforementioned substance in the noted quantities 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.

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 56.6 grams of cocaine without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$2,850.00 in excise tax, penalties totaling \$1,140.00 and interest until date of full and final payment.
7. Taxpayer is liable for excise tax in the amount of \$2,850.00, penalties totaling \$1,140.00 and interest until date of full and final payment.

### DECISION

Wherefore, an assessment based on possession of 56.6 grams of cocaine, comprised of excise tax in the amount of \$2,850.00 and penalties totaling \$1,140.00, 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 17th day of August, 2007.



*Eugene J. Cella*  
Eugene J. Cella  
Assistant Secretary of Revenue