

**IN THE MATTER OF:**

The Proposed Assessment of Unauthorized  
Substance Tax dated September 25, 2006  
by the Secretary of Revenue of the State of  
North Carolina

**FINAL DECISION**

**Docket No. 2006-307**

against

**AN (AN Number)**

(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 by written communication at Taxpayer's request. Taxpayer was represented by (Taxpayer Attorney), Attorney at Law. For purposes of N.C.G.S. 105-241.1, the hearing concluded on June 15, 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 70 grams of cocaine, 847 dosage units of MDMA, 82 dosage units of OxyContin (oxycodone), and 199 dosage units of oxycodone on September 21, 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 \$13,550.00, penalties totaling \$5,420.00 and interest in the amount of \$90.89, for a total proposed tax liability of \$19,060.89.

**ISSUES**

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of cocaine, MDMA, and oxycodone 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 September 25, 2006.

- US-2 Letter from Taxpayer's attorney, dated October 11, 2006, requesting a hearing. Additional correspondence dated March 28, 2007, regarding rescheduling of the hearing.
- US-3 Letter from the Assistant Secretary, dated November 6, 2006, regarding the scheduling of the hearing. Other correspondence dated January 3, 2007, and March 30, 2007, regarding rescheduling of the hearing.
- US-4 Forms BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," which name Taxpayer as the possessor of the controlled substances.
- 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 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 September 21, 2006, Wake County Alcohol Beverage Control (WCABC) agents received information from a confidential and reliable informant (CI) that a quantity of MDMA (ecstasy), cocaine and prescription pills were going to be delivered to the parking lot of a local department store located in Fuquay-Varina, North Carolina.
2. WCABC agents in conjunction with deputies from the Wake County Sheriff's Office (WCSO) conducted surveillance at that location in consequence of the CI's tip. Based upon tip information supplied to the agents and deputies, a target vehicle and its driver were the focus of the surveillance.
3. The target vehicle was observed that same day as it arrived with two occupants at the location and within the time frame indicated by the CI.
4. The WCABC agents and WCSO deputies then observed what appeared to be a drug transaction occurring after the target vehicle parked in the parking lot under surveillance.

5. They observed a male walk over to the target vehicle as the driver and passenger of the target vehicle exited their vehicle. The passenger of the target vehicle was later determined to be Taxpayer. Upon exiting the target vehicle, Taxpayer was observed by the agents and deputies to lift the hood of the target vehicle and retrieve a dark bag from the engine compartment.
6. The agents and deputies further observed Taxpayer retrieve a small item from the dark bag and hand it to the male approaching the target vehicle. Taxpayer was then observed to reenter the target vehicle with the dark bag and its remaining contents.
7. After the suspected drug transaction took place, the target vehicle changed parking locations within the parking lot under surveillance. Soon thereafter, WCSO deputies and WCABC agents blocked the target vehicle with their vehicles.
8. The driver of the target vehicle and Taxpayer were detained while WCABC agents conducted a search of the target vehicle. The agents found a dark colored bag under the driver's seat of the target vehicle. This bag was found to contain 847 ecstasy (MDMA) pills, 70 grams of cocaine, 119 oxycodone pills, 82 OxyContin (oxycodone) pills, and 50 Percocet (oxycodone) pills.
9. Taxpayer was found to possess within his pocket a small white container containing several prescription pills. \$1,405 in currency was found upon the driver of the target vehicle.
10. The cocaine was weighed by the agents and field-tested by them at WCABC offices with positive results. The various pills were identified by the agents using the Physicians' Desk Reference.
11. Taxpayer and the driver were arrested and taken to WCABC offices and interviewed. Both voluntarily agreed to such interview and were advised of their rights. Each signed a waiver of rights form.
12. In his interview by WCABC, Taxpayer advised that he had known the driver of the target vehicle since high school and was aware that the driver had been selling drugs for about 1 year.
13. Taxpayer further admitted that he had been purchasing prescription pills from the driver of the target vehicle for several months in regards to back pain.
14. Taxpayer further advised in his interview that he knew that the driver had been selling ecstasy (MDMA) pills for about 6 months and had gotten "really big" into it recently. Taxpayer further advised that he had accompanied the driver on two previous occasions when the driver was selling ecstasy (MDMA) pills and that the current occasion was the third time he had so accompanied the driver.

15. While being interviewed, Taxpayer specifically stated that he had purchased the prescription pills found in his pocket from the driver for the sum of \$20.
16. Taxpayer further advised that he was indeed accompanying the driver of the target vehicle for the purpose of making drug deliveries in Harnett County and Wake County, North Carolina.
17. Taxpayer further stated that it was his intent that day to sell some of the prescription pills in his possession to a gentleman at the department store parking lot where Taxpayer was apprehended.
18. Taxpayer further indicated that he was aware of the ecstasy (MDMA) contained in the dark in color bag found by WCABC within the target vehicle.
19. During his interview, the driver of the target vehicle confirmed that Taxpayer had accompanied him in the target vehicle that day in Harnett and Wake counties while the drugs in question were present within the target vehicle.
20. The driver further stated that the dark bag in question contained ecstasy (MDMA), cocaine, and prescription pills belonging to Taxpayer.
21. The driver further stated that Taxpayer owed him money for the prescription pills in the bag because the driver had fronted the pills to Taxpayer.
22. The driver further explained that Taxpayer and he were on their way that day to various locations to make deliveries of drugs.
23. Both Taxpayer and the driver were convicted in Wake County, North Carolina of criminal charges stemming from the drugs found in the target vehicle on September 21, 2006.
24. On September 25, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$13,550.00, penalties totaling \$5,420.00 and interest in the amount of \$90.89, for a total proposed tax liability of \$19,060.89, based upon Taxpayer's possession of 70 grams of cocaine, 847 dosage units of MDMA, 82 dosage units of OxyContin (oxycodone), and 199 dosage units of oxycodone. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
25. The Division has no objection to amending the assessment in this matter to conform to the quantity of oxycodone as reported in the Law Enforcement Investigation Report (Exhibit US-5), to wit: 251 aggregate dosage units. This revised quantity of oxycodone would result in an excise tax of \$12,950.00, penalties of \$5,180.00, and interest until date of full and final payment.

26. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
27. The hearing was conducted by written communication at Taxpayer's request through his attorney.
28. No argument or evidence in support of the objection to the assessment was submitted into the record of hearing.
29. On September 21, 2006, within the State of North Carolina, 847 ecstasy (MDMA) pills, 70 grams of cocaine, 119 oxycodone pills, 82 OxyContin (oxycodone) pills, and 50 Percocet (oxycodone) pills were present upon Taxpayer's person and were also present within a motor vehicle during such time as this motor vehicle was under Taxpayer's non-exclusive dominion and control.
30. No tax stamps were purchased for or affixed to the cocaine, MDMA, and oxycodone 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 and also constructive possession of 847 ecstasy (MDMA) pills, 70 grams of cocaine, 119 oxycodone pills, 82 OxyContin (oxycodone) pills, and 50 Percocet (oxycodone) pills on September 21, 2006, within the State of North Carolina.
3. Taxpayer's possession of the aforementioned substances 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 same.
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 847 ecstasy (MDMA) pills, 70 grams of cocaine, 119 oxycodone pills, 82 OxyContin (oxycodone) pills, and 50 Percocet (oxycodone) pills without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$12,950.00 in excise tax, penalties totaling \$5,180.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$12,950.00, penalties totaling \$5,180.00 and interest until date of full and final payment.

**DECISION**

Wherefore an assessment based on possession of 847 ecstasy (MDMA) pills, 70 grams of cocaine, 119 oxycodone pills, 82 OxyContin (oxycodone) pills, and 50 Percocet (oxycodone) pills, comprised of excise tax in the amount of \$12,950.00 and penalties totaling \$5,180.00, 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 12th day of September, 2007.



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