

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated October 23, 2006
by the Secretary of Revenue of the
State of North Carolina

against

(Taxpayer), Taxpayer

FINAL DECISION

Docket No. 2006-318

AN (account 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 February 1, 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 February 1, 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 (address of Taxpayer). Based on Taxpayer's unauthorized possession of 2,016 grams of marijuana on October 11, 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 \$7,056.00, penalties totaling \$2,822.40 and interest in the amount of \$58.15, for a total proposed tax liability of \$9,936.55.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual and/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 October 23, 2006.

- US-2 Letter from Taxpayer, dated November 3, 2006, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated November 28, 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 including laboratory report.
- US-6 Memorandum from Reginald S. Hinton, 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 October 11, 2006, the Craven County Sheriff's Office (CCSO) received an anonymous tip by telephone that marijuana plants were being cultivated upon the premises of Taxpayer's residence at (address of Taxpayer).
2. CCSO investigators along with detectives from the Carteret County Sheriff's Office went to Taxpayer's residence in (city of residence) and spoke with Taxpayer at the front door of the residence. At that time, Taxpayer was advised by a CCSO investigator that the investigator had information that marijuana plants were growing upon Taxpayer's property.
3. Taxpayer denied marijuana was growing upon his property.
4. The investigator recognized the odor of marijuana emanating from within Taxpayer's residence at the open front door of the premises.
5. A subsequent search of the backyard area of the residence revealed a marijuana plant growing in a black flowerpot behind a shop building just to the rear of the residence.

6. A CCSO investigator also detected the odor of marijuana emanating from the front of this shop building.
7. Additional searching by law enforcement personnel revealed a marijuana plant that had been planted in the ground next to a child's playhouse in the backyard of the residence.
8. Signs of additional plantings of marijuana were present in the backyard as well.
9. Numerous plant pots and 5 gallon buckets containing potting soil were observed in the backyard by law enforcement.
10. Burnt marijuana stalks were observed upon a burn pile in the backyard of the residence.
11. CCSO investigators entered Taxpayer's dwelling the same day and continued a search of the premises.
12. In a rear bedroom of the dwelling, they encountered homemade equipment for the cultivation of marijuana.
13. Present with this equipment were 56 marijuana plants growing in various types of plant pots and buckets. Plastic bags and a cardboard box containing marijuana were likewise found within Taxpayer's dwelling during the search.
14. Another marijuana growing operation was located by CCSO officers that same day in a room in the shop behind Taxpayer's main dwelling. Within this room, 18 marijuana plants were found growing in various types of plant pots and buckets. This room had its own ventilation and irrigation system.
15. A video surveillance system was present within the shop for the purpose of remote viewing of the backyard area. An extension cord that powered the exterior camera of the system had been purposely hidden by grass and debris.
16. The marijuana encountered at Taxpayer's residence on October 11, 2006, was seized by CCSO and identified as such through the training and experience of its officers.
17. A CCSO officer transported the marijuana to the main post office in New Bern, North Carolina for weighing.
18. The marijuana was weighed at the post office and determined to weigh 4.801 pounds. An official weigh letter was obtained through the post master confirming this weight.

19. On October 23, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$7,056.00, penalties totaling \$2,822.40 and interest in the amount of \$58.15, for a total proposed tax liability of \$9,936.55, based upon Taxpayer's alleged possession of 2,016 grams of marijuana. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
20. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
21. The only argument in the record in support of the objection to the assessment was contained in the letter requesting a hearing. In that letter, Taxpayer states his intention to challenge the entry by officers onto his property as well as the quantity of the marijuana seized.
22. On October 11, 2006, Taxpayer had possession of 2,016 grams of marijuana present within or upon the premises of Taxpayer's residence in the State of North Carolina while such residence and its contents were under his dominion and control and pursuant to a scheme by him to cultivate and manufacture such marijuana.
23. No tax stamps were purchased for or affixed to the marijuana as required by law.

CONCLUSIONS OF LAW

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

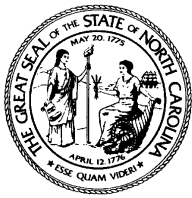
1. A preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had constructive possession of 2,016 grams of marijuana on October 11, 2006.
3. Taxpayer's possession of the aforementioned substance in the noted quantity rendered him a "dealer" as that term 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 2,016 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$7,056.00 in excise tax, penalties totaling \$2,822.40 and interest until date of full and final payment.

6. Taxpayer is liable for excise tax in the amount of \$7,056.00, penalties totaling \$2,822.40 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 2,016 grams of marijuana, comprised of excise tax in the amount of \$7,056.00 and penalties totaling \$2,822.40, 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 15th day of March, 2007.



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