

**IN THE MATTER OF:**

The Proposed Assessment of Unauthorized  
Substance Tax dated December 4, 2006 by  
the Secretary of Revenue of  
the State of North Carolina

**FINAL DECISION**

**Docket No. 2007-15**

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 on October 31, 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 October 31, 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 43 grams of cocaine on September 20, 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 \$2,150.00, penalties totaling \$860.00 and interest in the amount of \$43.85, for a total proposed tax liability of \$3,053.85.

**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 December 4, 2006.

- US-2 Letter from Taxpayer's Attorney, dated January 2, 2007, requesting a hearing and additional correspondence dated June 20, 2007 and September 13, 2007.
- US-3 Letter from the Assistant Secretary, dated January 2, 2007, regarding the scheduling of the hearing and additional correspondence dated March 26, 2007, June 21, 2007, and September 14, 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 including SBI Laboratory report.
- US-6 Memorandum from Reginald S. Hinton, Secretary of Revenue, dated September 26, 2007, 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 September 26, 2007, the Moore County Sheriff's Office (MCSO) and Lee County Sheriff's Office (LCSO) began a joint operation to purchase cocaine utilizing a Confidential Informant (CI). CI contacted his source to arrange the purchase of cocaine.
2. Upon his arrival at the residence, the source informed the CI that he had contacted Taxpayer to bring the cocaine.
3. CI then expressed a concern that he wanted the cocaine in crack form. The source assured CI that, if it was delivered by Taxpayer as powder cocaine, that the source would cook it.
4. The CI then left the residence to meet with detectives while waiting for Taxpayer.
5. Upon the CI's return to the residence, he met again with his source and Taxpayer. The source introduced CI to Taxpayer.

6. Taxpayer's identity was further confirmed by MCSO detectives checking the registration of the vehicle operated by Taxpayer.
7. Taxpayer presented the CI with a plastic bag containing a white, powder substance.
8. The CI assumed this to be cocaine and engaged in a conversation about the cost with Taxpayer. The CI gave money to Taxpayer for the substance and then gave the substance to his source.
9. The source then carried the substance to the kitchen where it was cooked into crack cocaine utilizing a baby food jar.
10. After the substance was cooked, the source gave it back to the CI. The CI took the substance back to the MCSO detective.
11. The MCSO detective, through his training and experience, determined the substance to be crack cocaine. The detective weighed the substance and found it to be 43 grams.
12. Taxpayer was again identified by the CI based upon a photograph.
13. The CI made a final call to Taxpayer to let him know the weight of the substance he was sold was not correct.
14. On January 5, 2007, Taxpayer was interviewed by MCSO detectives. In the interview, he described the transaction with the CI at the source's residence. Taxpayer stated that he was contacted by the source to deliver cocaine. He further stated that he arranged to get the cocaine from another individual at a local restaurant prior to delivering it to the CI. Taxpayer also stated that he delivered the cocaine and then watched as it was cooked.
15. On December 4, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$2,150.00, penalties totaling \$860.00 and interest in the amount of \$43.85, for a total proposed tax liability of \$3,053.85, based upon Taxpayer's alleged possession of 43 grams of cocaine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
16. Upon being assessed and in a timely manner, Taxpayer's attorney requested in writing an administrative tax hearing.
17. The only arguments in support of Taxpayer's objection were contained within the attorney's letter. In the letter, the attorney argues that Taxpayer was not in possession of any controlled substance and that the tax is punitive and unconstitutional.

18. On August 2, 2007, the North Carolina State Bureau of Investigation (SBI) laboratory issued a report indicating the substance at issue in this matter to be 38.6 grams of cocaine.
19. The Division has no objection to amending the assessment to conform to the laboratory report, which would result in a tax in the amount of \$1,950.00, penalties in the amount of \$780.00, and interest to the date of full and final payment.
20. On September 20, 2006, Taxpayer exercised dominion and control over 38.6 grams of cocaine by delivering and selling it to the CI at a residence within the State of North Carolina.
21. No tax stamps were purchased for or affixed to the cocaine as required by law.

### **CONCLUSIONS OF LAW**

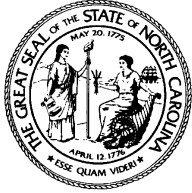
Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. A preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had actual possession of 38.6 grams of cocaine on September 20, 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 the Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
5. The appropriate assessment against a dealer who possesses 38.6 grams of cocaine without having paid the Unauthorized Substances Excise Tax on same in a timely manner consists of \$1,950.00 in excise tax, penalties totaling \$780.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$1,950.00, penalties totaling \$780.00 and interest until date of full and final payment.

**DECISION**

Wherefore, an assessment based on possession of 38.6 grams of cocaine, comprised of excise tax in the amount of \$1,950.00 and penalties totaling \$780.00, 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 10th day of December, 2007.



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