

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated December 5,
2006 by the Secretary of Revenue of
the State of North Carolina

against

(Taxpayer), Taxpayer

FINAL DECISION

Docket No. 2007-16

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 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 147.6 grams of marijuana, 49 dosages of Adderall, 1,582 dosages of Morphine, 235 dosages of Oxycodone, 185 dosages of Modafinil, 3,963 dosages of Methadone, and 229 grams of Oxycodone on December 5, 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 \$163,518.00, penalties totaling \$65,407.20 and interest in the amount of \$989.38, for a total proposed tax liability of \$229,914.58.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of marijuana, Adderall, Morphine, Oxycodone, Modafinil, and Methadone 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 5, 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 December 5, 2006, Moore County Sheriff's Office (MCSO) detectives were in the area of Taxpayer's residence in West End, North Carolina. They were attempting to locate Taxpayer in reference to a federal indictment resulting from an earlier investigation.
2. Taxpayer was observed leaving his residence by a MCSO detective and was subsequently stopped.
3. Taxpayer was taken into custody and searched incident to his arrest. The detective found a silver canister in Taxpayer's right front pocket.
4. Taxpayer stated to the detective that he did not know what was inside.

5. A search of the canister revealed a plastic bag of white, powder substance and a quantity of pills.
6. A consent search of the vehicle yielded an additional quantity of pills and a short straw with residue.
7. Taxpayer further consented to a search of his residence and was transported by MCSO detectives back to that location. Taxpayer was advised of his Miranda Rights and completed a written consent form for the residence.
8. When questioned about additional pills, Taxpayer led the detectives to an outbuilding where he started removing items from the top of a plastic box inside the building. Detectives found the box to contain several prescription bottles and a large quantity of prescription pills.
9. Taxpayer stated the pills were probably stolen. The pills were identified as being items stolen from a breaking and entering at a local pharmacy.
10. MCSO detectives asked Taxpayer to continue their search in the main residence. Taxpayer opened the door and allowed detectives to enter.
11. Inside the residence, Taxpayer led detectives to his bedroom where an additional quantity of pills were located in a dresser drawer.
12. In the bedroom closet, detectives located a quantity of green vegetable material and additional pills.
13. Additional pills were located in the living room floor and on a nightstand.
14. The MCSO detectives, utilizing their training and experience, determined the pills to be 49 dosages of Adderall, 1,582 dosages of Morphine, 235 dosages of Oxycodone, 185 dosages of Modafinil, 3,963 dosages of Methadone, and 229 grams of Oxycodone.
15. A search of a second outbuilding revealed another quantity of green vegetable material. That the officers identified as marijuana through their training and experience.
16. The MCSO detectives weighed the marijuana and found it to be an aggregate of 147.6 grams of marijuana.
17. On December 5, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$163,518.00, penalties totaling \$65,407.20 and interest in the amount of \$989.38, for a total proposed tax liability of \$229,914.58, based upon Taxpayer's alleged possession of 147.6 grams of marijuana, 49 dosages of Adderall, 1,582 dosages of Morphine, 235 dosages of

Oxycodone, 185 dosages of Modafinil, 3,963 dosages of Methadone, and 229 grams of Oxycodone. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.

18. Upon being assessed and in a timely manner, Taxpayer's attorney requested in writing an administrative tax hearing.
19. 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.
20. On August 2, 2007, the North Carolina State Bureau of Investigation (SBI) laboratory issued a report on a portion of the substances at issue in this matter. The report indicates 567 ¼ tablets of Methadone and 1,231 tablets of Morphine. The remaining substances were not submitted to the laboratory.
21. On September 20, 2006, Taxpayer exercised dominion and control over 147.6 grams of marijuana, 49 dosages of Adderall, 1,582 dosages of Morphine, 235 dosages of Oxycodone, 185 dosages of Modafinil, 3,963 dosages of Methadone, and 229 grams of Oxycodone contained within Taxpayer's residence in the State of North Carolina.
22. No tax stamps were purchased for or affixed to the marijuana and prescription pills as required by law.

CONCLUSIONS OF LAW

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

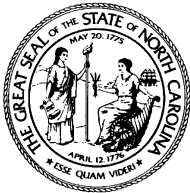
1. A preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had constructive possession of 147.6 grams of marijuana, 49 dosages of Adderall, 1,582 dosages of Morphine, 235 dosages of Oxycodone, 185 dosages of Modafinil, 3,963 dosages of Methadone, and 229 grams of Oxycodone on December 5, 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 147.6 grams of marijuana, 49 dosages of Adderall, 1,582 dosages of Morphine, 235 dosages of Oxycodone, 185 dosages of Modafinil, 3,963 dosages of Methadone, and 229 grams of Oxycodone without having paid the Unauthorized Substances Excise Tax on same in a timely manner consists of \$163,518.00 in excise tax, penalties totaling \$65,407.20 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$163,518.00, penalties totaling \$65,407.20 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 147.6 grams of marijuana, 49 dosages of Adderall, 1,582 dosages of Morphine, 235 dosages of Oxycodone, 185 dosages of Modafinil, 3,963 dosages of Methadone, and 229 grams of Oxycodone, comprised of excise tax in the amount of \$163,518.00 and penalties totaling \$65,407.20, 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