

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated July 3, 2007
by the Secretary of Revenue of the
State of North Carolina

against

(Taxpayer), Taxpayer

FINAL DECISION

Docket No. 2007-176

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 29, 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 29, 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 303 grams of marijuana on June 22, 2007, 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 \$1,060.50, penalties totaling \$424.20 and interest in the amount of \$2.09, for a total proposed tax liability of \$1,486.79.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of marijuana 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 July 3, 2007.

- US-2 Letter from Taxpayer, stamped as received by the Division on July 31, 2007, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated August 10, 2007, 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.
- 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. In June 2007, Onslow County Sheriffs Office (OCSO) detectives received information from a Confidential Informant (CI) and through additional anonymous calls that marijuana was being sold from Taxpayer's residence. Based upon this information, detectives applied for and were granted a search warrant for the residence.
2. On June 22, 2007, OCSO detectives executed the search warrant on the residence. After some altercation with individuals in the residence, officers secured the scene and began the search.
3. In the rear bedroom of the residence, detectives located a freshly rolled marijuana cigarette, weighing 2.5 grams, on a table, a broken marijuana pipe, and a water bong. Under a mattress, they located a crack cocaine pipe.
4. In the master bedroom of the residence, detectives searched a wooden cabinet and located two small bags of marijuana. The first contained 20 grams of marijuana. The second contained the burnt ends of marijuana cigarettes. Additional ziplock bags containing marijuana residue were located in the cabinet.

5. Detectives also found in the master bedroom, a methadose wafer, rolling papers, a marijuana pipe, and an index card booklet listing names and prices.
6. A bag containing 8 grams of marijuana was located in the master bedroom closet.
7. Three additional bags of marijuana were located in the same room. Two of the bags contained 115 grams of marijuana each. The third contained only 29 grams of marijuana.
8. After the search, Taxpayer was transported to an interview room at the Onslow County Sheriffs Office. While waiting in the interview room, Taxpayer and a cohort were observed discussing the amount of marijuana found and trying to determine who was the informant to law enforcement. Taxpayer also made comments about withholding some of her information from law enforcement.
9. On July 3, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$1,060.50, penalties totaling \$424.20 and interest in the amount of \$2.09, for a total proposed tax liability of \$1,486.79, based upon Taxpayer's alleged possession of 303 grams of marijuana. Notice of said assessment was sent to Taxpayer at her last known address by U.S. Mail.
10. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
11. The only arguments in support of the objection were contained within Taxpayer's letter. In that letter, Taxpayer argued that she had not been convicted of the drug charges and that she and a cohort were taxed for the same substance.
12. The Division has no objection to amending the assessment in this matter to conform to the quantities listed in the Law Enforcement Investigation Reports (Exhibit US-5). This would result in a tax assessment based on 287 grams of marijuana, which would result in a tax in the amount of \$1,004.50, penalties in the amount of \$401.80, and interest to the date of full and final payment.
13. On June 22, 2007, 287 grams of marijuana were present in the residence while Taxpayer exerted dominion and control over such residence within the State of North Carolina.
14. No tax stamps were purchased for or affixed to the marijuana as required by law.

CONCLUSIONS OF LAW

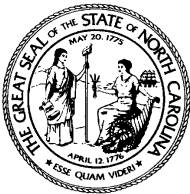
Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. A preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had constructive possession of 287 grams of marijuana on June 22, 2007.
3. Taxpayer's possession of the aforementioned substance in the noted quantity rendered her 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 287 grams of marijuana without having paid the Unauthorized Substances Excise Tax on same in a timely manner consists of \$1,004.50 in excise tax, penalties totaling \$401.80 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$1,004.50, penalties totaling \$401.80 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 287 grams of marijuana, comprised of excise tax in the amount of \$1,004.50 and penalties totaling \$401.80, 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