

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

against

(Taxpayer), Taxpayer

FINAL DECISION

Docket No. 2007-3

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 September 20, 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 September 20, 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 86.7 grams of marijuana on November 17, 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 \$304.50, penalties totaling \$121.80 and interest in the amount of \$2.83, for a total proposed tax liability of \$429.13.

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 December 4, 2006.

- US-2 Letter from Taxpayer's attorney, stamped as received by the Division on January 4, 2007, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated January 10, 2007, regarding the scheduling of the hearing and additional correspondence dated March 26, 2007 and June 21, 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.
- US-6 Memorandum from Reginald S. Hinton, Secretary of Revenue, dated July 2, 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 November 17, 2006, New Hanover County Sheriffs Office (NHCSO) detectives responded to Taxpayer's residence in reference to a complaint of an individual selling and using drugs at the location. Upon their arrival, detectives knocked on the door and announced their identity.
2. Taxpayer opened the door, and the detectives identified themselves. Detectives then requested to speak with Taxpayer in her residence.
3. Taxpayer granted the detectives entry to the residence. During this transaction, detectives noticed the smell of burning marijuana coming from the residence.
4. Once inside the residence, detectives requested the male individual also present at the residence to join them in the living room. Detectives then confronted Taxpayer about the smell of burning marijuana and asked if she would give them any illegal substances present in the residence.

5. Taxpayer complied and first led a detective to the kitchen. On the kitchen table, detectives found a shoe box lid containing marijuana, a small plastic ziplock bag, and two empty cigar boxes.
6. Taxpayer then led a detective to her bedroom where she retrieved a handbag from next to her bed. Taxpayer then removed from the handbag a clear, plastic sandwich bag of marijuana and two small, black ziplock bags of marijuana, which were turned over to the detective.
7. The marijuana was determined to be such based upon the training and experience of the officers present. It was also found to be an aggregate of 86.7 grams.
8. Taxpayer granted consent for a further search of the residence, but no additional controlled substances were found.
9. When questioned about the marijuana, Taxpayer stated that it was given to her for her birthday. She admitted to smoking marijuana, but denied selling it.
10. On December 4, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$304.50, penalties totaling \$121.80 and interest in the amount of \$2.83, for a total proposed tax liability of \$429.13, based upon Taxpayer's possession of 86.7 grams of marijuana. Notice of said assessment was sent to Taxpayer at her last known address by U.S. Mail.
11. Upon being assessed and in a timely manner, Taxpayer's attorney requested in writing an administrative tax hearing.
12. On November 17, 2006, 86.7 grams of marijuana were present in the residence, which Taxpayer exerted dominion and control over within the State of North Carolina.
13. 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:

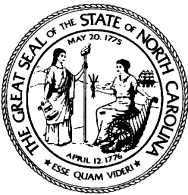
1. A preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had constructive possession of 86.7 grams of cocaine on November 17, 2006.

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 86.7 grams of marijuana without having paid the Unauthorized Substances Excise Tax on same in a timely manner consists of \$304.50 in excise tax, penalties totaling \$121.80 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$304.50, penalties totaling \$121.80 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 86.7 grams of marijuana, comprised of excise tax in the amount of \$304.50 and penalties totaling \$121.80, 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 7th day of December, 2007.



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