

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated January 17,
2007 by the Secretary of Revenue of
the State of North Carolina

against

(Taxpayer), Taxpayer

FINAL DECISION

Docket No. 2007-45

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 17, 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 17, 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 250 grams of marijuana on January 16, 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 \$875.00, penalties totaling \$350.00 and interest in the amount of \$6.13, for a total proposed tax liability of \$1,231.13.

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 January 17, 2007.

- US-2 Letter from Taxpayer's attorney, stamped as received by the Division on February 14, 2007, requesting a hearing and additional correspondence dated May 1, 2007.
- US-3 Letter from the Assistant Secretary, dated February 28, 2007, regarding the scheduling of the hearing and additional correspondence dated April 30, 2007.
- US-4 Forms BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," which names Taxpayer as the possessor of the controlled substances.
- US-5 Law Enforcement Investigation Report including SBI laboratory 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. During December 2006 and January 2007, Greensboro Police Department (GPD) officers received information from a confidential informant (CI) that Taxpayer, in cooperation with other individuals, was selling marijuana and cocaine from his residence. The CI further stated that a residence behind Taxpayer's was also involved. The CI further identified Taxpayer by a nickname, which he thought to be Taxpayer's real name, and by a business that Taxpayer previously owned.
2. Based upon the information received, GPD officers began surveillance of the residence and observed a minivan arrive at the residence. The driver of the minivan remained in the vehicle as if waiting for someone. Soon, a Dodge vehicle arrived at the residence and both drivers went into the residence.
3. After only about a minute and a half, the driver of the minivan exited the residence, got back into his vehicle, and left the trailer park. A subsequent traffic stop of the individual resulted in the seizure of marijuana, which the individual admitted to having purchased from the residence.

4. Upon resuming surveillance, GPD officers observed the Dodge still parked at the residence and a Chevrolet Trailblazer now parked next to it. They soon observed two individuals, one being identified as the driver of the Dodge, leave the residence and get into the Trailblazer.
5. As the vehicle left the area, officers observed a traffic violation for which they initiated a traffic stop on the vehicle. Upon approaching the vehicle, officers found Taxpayer, the individual previously identified by the CI, to be the passenger of the vehicle.
6. GPD officers asked Taxpayer to step out of the vehicle. As Taxpayer exited, an officer asked Taxpayer if he had anything on him. At that time, Taxpayer stated there was a gun in his waistband. Taxpayer was then handcuffed. The gun was retrieved by the officers.
7. When asked if he had anything additional on his person, Taxpayer admitted to a bag of marijuana in his pants. The bag of marijuana, weighing approximately 28 grams, was turned over to the officers by Taxpayer.
8. Taxpayer then consented to a search of his residence. Taxpayer told the officers that he had one-half of a pound of marijuana within his residence.
9. GPD officers returned with Taxpayer to his residence and completed a consent search. On Taxpayer's person, the officers found his identification card and thirty \$100 bills.
10. In a black sock on the kitchen table, officers located 7 bags of marijuana, each weighing approximately 28 grams, which are consistent with the package of marijuana found on Taxpayer's person at the time of the vehicle stop.
11. On January 17, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$875.00, penalties totaling \$350.00 and interest in the amount of \$6.13, for a total proposed tax liability of \$1,231.13, based upon Taxpayer's alleged possession of 250 grams of marijuana. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
12. Upon being assessed and in a timely manner, Taxpayer's attorney requested in writing an administrative tax hearing.
13. The letter contained no arguments in support of the Taxpayer's objection to the assessment.
14. On February 24, 2007, the NC State Bureau of Investigation (SBI) Laboratory issued a report indicating the substance at issue in this matter to be 189.3 grams of marijuana.

15. On January 16, 2007, Taxpayer exercised dominion and control over 189.3 grams of marijuana contained within a vehicle within the State of North Carolina as well as on the Taxpayer's person.
16. No tax stamps were purchased for or affixed to the cocaine or marijuana as required by law.

CONCLUSIONS OF LAW

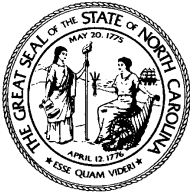
Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. A preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had actual and constructive possession 189.3 grams of marijuana on January 16, 2007.
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 189.3 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$662.55 in excise tax, penalties totaling \$265.02 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$662.55, penalties totaling \$265.02 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 189.3 grams of marijuana comprised of excise tax in the amount of \$662.55 and penalties totaling \$265.02, 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