

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated November 27,
2006 by the Secretary of Revenue of the
State of North Carolina

FINAL DECISION

Docket No. 2007-6

against

AN (AN Number)

(Taxpayer Name), 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 June 12, 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 June 12, 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 36,288 grams of marijuana on November 27, 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 \$127,008.00, penalties totaling \$50,803.20 and interest in the amount of \$754.57, for a total proposed tax liability of \$178,565.77.

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 November 27, 2006.

- US-2 Letter from Taxpayer's attorney, stamped as received by the Division on December 22, 2006, 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 19, 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 E. Norris Tolson, Secretary of Revenue, dated May 16, 2001, 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 27, 2006, Fayetteville Police Department (FPD) officers were conducting parcel interdiction at a local shipping company when they located a suspicious package. Due to the packaging, shipper, and the location from which the package was shipped, officers determined it to be consistent with the shipment of illegal drugs and requested a police K-9. A subsequent examination of the package by a FPD K-9 resulted in the K-9 giving a positive indication for the presence of narcotics.
2. FPD officers secured a search warrant for the package and opened it to find that it contained approximately 40 pounds of marijuana.
3. FPD officers then made arrangements to deliver the parcel to its intended address in Fayetteville, North Carolina. A detective delivered the parcel to the address, placed it on the patio, rang the doorbell, and left. While delivering the parcel, the detective noticed a similar looking package, addressed to the same person, already present at the door.

4. FPD officers maintained surveillance on the residence while waiting for the boxes to be picked up.
5. FPD officers soon observed a vehicle arrive at the residence and a male individual exit the vehicle and approach the residence. The individual began to knock on the door. While waiting to gain access to the residence, the detectives noted observing the male individual looking at the parcels and then looking around as if to see if anyone was watching.
6. The door to the residence opened and detectives observed the male enter carrying one of the packages. He then returned to the patio to retrieve the second package.
7. A search warrant was subsequently executed on the residence.
8. Upon execution of the search warrant, Taxpayer was found to be one of three individuals present in the residence.
9. The parcels were located on the dining room table. One of the parcels had already been opened by the individuals present in the residence. The second was opened by FPD officers and found to also contain approximately 40 pounds of marijuana. The marijuana was identified as such based upon the training and experience of the officers present and tested positive for marijuana when tested with a field test kit.
10. A search of the residence revealed numerous items of evidence consistent with the trafficking and use of marijuana. These items included a handgun, a suitcase with marijuana residue, a grinder with marijuana residue, a pipe with marijuana residue, a safe with both cocaine and marijuana residue, a plastic bag containing marijuana, digital scales, press plates, and a water pipe containing marijuana residue. These items were found in the master bedroom and bathroom of the residence. Taxpayer's wallet was also located in the master bedroom. In the garage, investigators located a cooler with the insulation removed to allow for the concealment and transportation of illegal drugs.
11. Taxpayer was informed of his Miranda Rights and invoked them by not wishing to make any statement without an attorney. However, he did make a statement implicating the other two individuals present at the residence, his girlfriend and another male, as being involved in the scheme to traffic marijuana.
12. On November 27, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$127,008.00, penalties totaling \$50,803.20 and interest in the amount of \$754.57, for a total proposed tax liability of \$178,565.77, based upon Taxpayer's alleged possession of 36,288 grams of marijuana. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.

13. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
14. Taxpayer's only objection to the assessment is contained within a letter from his attorney. In the letter, the Attorney argues that Taxpayer had no knowledge of the delivery.
15. Taxpayer lists the address of the delivery as his home address in subsequent arrest reports by law enforcement.
16. On November 27, 2006, 36,288 grams of marijuana were present in Taxpayer's residence within the State of North Carolina.
17. Taxpayer, along with two other individuals present in the residence, had non-exclusive possession of the 36,288 grams of marijuana.
18. 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. The presence of Taxpayer's wallet in the master bedroom, together with the pipe with marijuana residue, the water pipe with marijuana residue, and the digital scale, all of which were found in the master bedroom, as well as the plastic bag of marijuana, the carrying safe with marijuana and cocaine residue, and the ammo canister with marijuana residue inside, all of which were located in the closet of the master bedroom, are compelling proof that the Taxpayer was not only aware of drug activity in the house, but that he was an active participant in that drug activity. The packages of marijuana on the dining room table were in plain sight of the Taxpayer, as well, and the clear and unmistakable inference is that the Taxpayer was involved in the dealing of drugs. These facts allow the inference of knowledge and participation by the Taxpayer in the drug activities of his co-residents, and constitute other incriminating circumstances upon which a finding of constructive possession may be based.
3. Without authorization, Taxpayer had constructive possession of 36,288 grams of marijuana on November 27, 2006.
4. 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.

5. Taxpayer failed to pay Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
6. The appropriate assessment against a dealer who possesses 36,288 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$127,008.00 in excise tax, penalties totaling \$50,803.20 and interest until date of full and final payment.
7. Taxpayer is liable for excise tax in the amount of \$127,008.00, penalties totaling \$50,803.20 and interest until date of full and final payment.

DECISION

Wherefore an assessment based on possession of 36,288 grams of marijuana, comprised of excise tax in the amount of \$127,008.00 and penalties totaling \$50,803.20, 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 4th day of September, 2007.



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