

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated February 1, 2007
by the Secretary of Revenue of the
State of North Carolina
against

(Taxpayer Name), Taxpayer

FINAL DECISION

Docket No. 2007-60

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 May 15, 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 May 15, 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 7,864 grams of marijuana on January 25, 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 \$27,524.00, penalties totaling \$11,009.60 and interest in the amount of \$229.08, for a total proposed tax liability of \$38,762.68.

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 February 1, 2007.

- US-2 Letter from Taxpayer's attorney, dated February 14, 2007, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated March 29, 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 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 January 24, 2007, Alamance County Sheriffs Office (ACSO) was contacted by Burlington Police Department (BPD) officers in reference to assisting with an investigation into marijuana trafficking. BPD officers had conducted a traffic stop on a vehicle and discovered a substantial quantity of recently cut green marijuana.
2. The driver and sole occupant of the vehicle was found to be Taxpayer. Through the course of the investigation, BPD officers determined that the vehicle Taxpayer was driving was registered to his mother. A conversation with Taxpayer's mother led them to the location of Taxpayer's residence in Alamance County, North Carolina.
3. Due to their belief that the marijuana was recently cut, BPD officers suspected that there was more marijuana at Taxpayer's residence and requested assistance from ACSO.
4. Taxpayer initially denied living at the residence, but later stated to investigators that he had been staying there and consented to a search of his belongings at the residence.

5. Investigators asked Taxpayer if there was any more marijuana at the residence. Although Taxpayer answered no, Investigators noted they observed his eyes open wide when questioned about the residence, which furthered their suspicions.
6. After completing their interview of Taxpayer, ACSO investigators traveled to the residence. Due to the late hour at which the case began, they did not arrive at the residence until the early morning hours of January 25, 2007. Investigators approached the residence, knocked on the door and it was opened from inside by a male individual.
7. Investigators detected the strong odor of marijuana coming from the residence when the door was opened. The male individual allowed the investigators to enter the residence and in subsequent conversation admitted to the presence of marijuana in the residence.
8. Investigators initially observed a bright light coming from the back of the mobile home which they believed to indicate the presence of a marijuana cultivation operation. The male gave consent to search the area of the suspected marijuana grow.
9. Once the presence of the marijuana cultivation operation was confirmed by investigators, the individual widened the scope of his consent to the entire residence.
10. Through further conversation with the male, investigators learned that he and Taxpayer had been roommates for about one year and split the cost of the bills. He further stated they had been growing marijuana for almost one year. He described the separation of the types of marijuana they were growing, the use of different tools, and implicated Taxpayer in the purchase of part of the tools.
11. A search of the residence yielded both cut marijuana and marijuana plants, which were identified as such based upon the training and experience of the officers present. The marijuana plants were collected and the rootballs were removed prior to weighing. Investigators found there was an aggregate total of 7,864 grams of marijuana, including cut marijuana and marijuana plants, present within the residence.
12. On February 1, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$27,524.00, penalties totaling \$11,009.60 and interest in the amount of \$229.08, for a total proposed tax liability of \$38,762.68, based upon Taxpayer's alleged possession of 7,864 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 was not a dealer, did not have sole possession, and that the tax is punitive.
15. On January 25, 2007, 7,864 grams of marijuana were present in Taxpayer's residence within the State of North Carolina.
16. Taxpayer shared his residence with another individual and had non-exclusive possession of the 7,864 grams of marijuana.
17. 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 7,864 grams of marijuana on January 25, 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 7,864 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$27,524.00 in excise tax, penalties totaling \$11,009.60 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$27,524.00, penalties totaling \$11,009.60 and interest until date of full and final payment.

DECISION

Wherefore an assessment based on possession of 7,864 grams of marijuana, comprised of excise tax in the amount of \$27,524.00 and penalties totaling \$11,009.60, 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 August, 2007.



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