

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated February 9, 2007
by the Secretary of Revenue of the
State of North Carolina

FINAL DECISION

Docket No. 2007-66

against

AN (AN Number)

(Taxpayer), 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 October 31, 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 31, 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 120 dosages of methamphetamine on February 7, 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 \$600.00, penalties totaling \$240.00 and interest in the amount of \$4.34, for a total proposed tax liability of \$844.34.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of methamphetamine 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 9, 2007.

- US-2 Letter from Taxpayer, dated February 8, 2007, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated March 19, 2007, regarding the scheduling of the hearing and additional correspondence dated May 25, 2007 and September 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 Reports.
- 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. On February 7, 2007, North Carolina State Highway Patrol (NCSHP) Troopers and Jackson County Sheriffs Office (JCSO) detectives initiated a traffic stop near Highway 74 and Ochre Hill Road. The purpose of the stop was to effect the arrest of Taxpayer, the driver of the vehicle, whom detectives knew to have outstanding warrants.
2. After completing the arrest, a police K-9 was utilized to search the vehicle and indicated the presence of controlled substances in the back floor area of the truck.
3. In the back floor area, detectives located a red and white cigarette box. The box contained a bag of a clear, crystal substance, a glass pipe, and a lighter.
4. Once detectives returned to their office, the crystal substance was field tested and showed positive for methamphetamine. It was subsequently weighed and found to be 12 grams.

5. On February 9, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$600.00, penalties totaling \$240.00 and interest in the amount of \$4.34, for a total proposed tax liability of \$844.34, based upon Taxpayer's possession of 120 dosages of methamphetamine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
6. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
7. Taxpayer's letter contained no arguments in support of his objection to the assessment.
8. On February 7, 2007, 120 dosages of methamphetamine were present in a vehicle, which Taxpayer exerted dominion and control over and operated within the State of North Carolina.
9. 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 120 dosages of methamphetamine on February 7, 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 the Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
5. The appropriate assessment against a dealer who possesses 120 dosages of methamphetamine without having paid the Unauthorized Substances Excise Tax on same in a timely manner consists of \$600.00 in excise tax, penalties totaling \$240.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$600.00, penalties totaling \$240.00 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 120 dosages of methamphetamine, comprised of excise tax in the amount of \$600.00 and penalties totaling \$240.00, 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