

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated December 14, 2006
by the Secretary of Revenue of the
State of North Carolina

FINAL DECISION

Docket No. 2007-7

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 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 275 grams of cocaine on December 5, 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 \$13,750.00, penalties totaling \$5,500.00 and interest in the amount of \$110.30, for a total proposed tax liability of \$19,360.30.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of cocaine 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 14, 2006.

- US-2 Letter from Taxpayer, received by the Division on January 8, 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 December 5, 2006, a Valdese Police Department (VPD) officer observed a vehicle driving left of center on Main Street in Valdese. The officer stopped the vehicle and confronted the driver. Based upon his driver's license, the officer identified the driver as Taxpayer.
2. The officer inquired if Taxpayer had been drinking. Taxpayer stated he had not and that he became lost trying to get a friend home.
3. Taxpayer and a passenger were asked to step out of the vehicle. Taxpayer then granted the officer consent to search the vehicle.
4. During the vehicle search, officers located a Christmas light box in the front passenger floorboard. The box was found to contain a plastic bag with chunks of a hard, white substance.
5. The substance was identified by the officers as cocaine and found to be 275 grams.

6. Taxpayer and the passenger were interviewed about the cocaine by a Burke County Narcotics Task Force (BCNTF) investigator. In the interview, the passenger stated that he and Taxpayer met an individual at a fast food restaurant in Icard and picked up the cocaine. He further stated he was planning to sell the cocaine in Valdese.
7. On December 14, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$13,750.00, penalties totaling \$5,500.00 and interest in the amount of \$110.30, for a total proposed tax liability of \$19,360.30, based upon Taxpayer's alleged possession of 275 grams of cocaine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
8. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
9. There were no arguments in support of the objection contained within Taxpayer's letter.
10. On December 5, 2006, 275 grams of cocaine were present in the subject vehicle while Taxpayer exerted dominion and control over such vehicle and operated same within the State of North Carolina.
11. No tax stamps were purchased for or affixed to the cocaine as required by law.

CONCLUSIONS OF LAW

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

1. Taxpayer has failed to produce any evidence to rebut the presumption that the assessment is correct. Alternatively, a preponderance of the evidence supports the foregoing findings of fact.
2. Without authorization, Taxpayer had constructive possession of 275 grams of cocaine on December 5, 2006.
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 275 grams of cocaine without having paid the Unauthorized Substances Excise Tax on same in a timely manner consists of \$13,750.00 in excise tax, penalties totaling \$5,500.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$13750.00, penalties totaling \$5,500.00 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 275 grams of cocaine, comprised of excise tax in the amount of \$13,750.00 and penalties totaling \$5,500.00, 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 10th day of December, 2007.



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