

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), Taxpayer

FINAL DECISION

Docket No. 2007-77

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 18, 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 18, 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 464 grams of marijuana on January 26, 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 \$1,624.00, penalties totaling \$649.60 and interest in the amount of \$13.16, for a total proposed tax liability of \$2,286.76.

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, stamped as received by the Division on March 29, 2007, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated April 4, 2007, regarding the scheduling of the hearing and additional correspondence dated May 16, 2007 and September 19, 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 September 27, 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 January 26, 2007, Randolph County Sheriffs Office (RCSO), assisted by Randleman Police Department (RPD) and Chatham County Sheriffs Office (CCSO), executed a search warrant at a residence in Randleman, North Carolina.
2. Upon execution of the search warrant, RCSO detectives encountered two male individuals in a vehicle parked in the driveway of the residence. Detectives checked the identification of both individuals and found the passenger of the vehicle to be Taxpayer.
3. Detectives also discovered that Taxpayer had outstanding warrants, and he was subsequently arrested.
4. A search of the vehicle ensued incident to the arrest. In the passenger side floorboard of the vehicle, officers located approximately one pound of marijuana, which they determined to be such based upon the training and experience of the officers present.

5. Detectives advised both individuals of their Miranda Rights. In a conversation with detectives, Taxpayer stated he would claim half of the marijuana from the car. However, he stated the other half belonged to the driver of the vehicle.
6. The search of the residence revealed additional marijuana, steroids, and drug paraphernalia. However, neither of the vehicle's occupants lived at the residence nor were targets of the initial search warrant.
7. On February 1, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$1,624.00, penalties totaling \$649.60 and interest in the amount of \$13.16, for a total proposed tax liability of \$2,286.76, based upon Taxpayer's alleged possession of 464 grams of marijuana. 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. The only argument in the record in support of the objection to the assessment was contained in the letter requesting a hearing. In that letter, Taxpayer argued that he had not yet been convicted of the charges.
10. On May 18, 2007, the NC State Bureau of Investigation (SBI) Laboratory issued a report indicating the substance at issue in this matter to be 445.2 grams of marijuana.
11. On January 26, 2007, Taxpayer exercised dominion and control over 445.2 grams of marijuana contained within a vehicle within the State of North Carolina.
12. 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 constructive possession of 445.2 grams of marijuana on January 26, 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 445.2 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$1,561.00 in excise tax, penalties totaling \$624.40 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$1,561.00, penalties totaling \$624.40 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 445.2 grams of marijuana comprised of excise tax in the amount of \$1,561.00 and penalties totaling \$624.40, 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