

**IN THE MATTER OF:**

The Proposed Assessment of Unauthorized  
Substance Tax dated April 3, 2007  
by the Secretary of Revenue  
of the State of North Carolina  
against  
(Taxpayer), Taxpayer

**FINAL DECISION**

**Docket No. 2007-98**

**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 by written communication at Taxpayer's request. Taxpayer was represented by (Taxpayer Attorney), Attorney at Law. For purposes of N.C.G.S. 105-241.1, the hearing concluded on November 4, 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 271.9 grams of cocaine on March 28, 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 \$13,600.00, penalties totaling \$5,440.00 and interest in the amount of \$110.21, for a total proposed tax liability of \$19,150.21.

**ISSUES**

Two questions are at issue: (1) Did Taxpayer have actual and/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 April 3, 2007.

- US-2 Letter from Taxpayer's attorney, dated April 16, 2007, requesting a hearing by written communication.
- US-3 Letter from the Assistant Secretary, dated May 11, 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 including laboratory report.
- 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 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 March 28, 2007, Charlotte-Mecklenburg Police Department (CMPD) detectives received information from a confidential and reliable informant that a drug deal was occurring at a store in the 4300 block of Statesville Avenue in Charlotte.
2. Detectives arrived in the parking lot and observed individuals matching the description from the confidential informant.
3. Detectives initiated surveillance and observed one individual, later identified as Taxpayer, enter the store. Taxpayer then returned minutes later and approached the driver's side of another vehicle where another male individual was seated.
4. CMPD detectives initiated contact with the individuals. During the apprehension of Taxpayer, detectives observed that he was holding a plastic shopping bag in his right hand, which he never released.
5. After securing Taxpayer, detectives checked the shopping bag and found it to contain a bottle of bleach, two cigarette lighters, several small plastic bags, and a large bag full of individual bags of white powdery substance. In Taxpayer's front right pocket, detectives located a bag of marijuana.

6. Taxpayer was arrested and signed a Miranda Rights Waiver.
7. In a subsequent interview, Taxpayer stated that the other individual contacted him in an attempt to purchase cocaine. Taxpayer and the other individual discussed the price and the made arrangements to purchase the cocaine.
8. On April 3, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$13,600.00, penalties totaling \$5,440.00 and interest in the amount of \$110.21, for a total proposed tax liability of \$19,150.21, based upon Taxpayer's possession of 271.9 grams of cocaine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
9. On May 30, 2007, the CMPD Crime Laboratory issued a report showing the substance at issue in this matter to be an aggregate of 260.53 grams of cocaine. The Division has no objection to amending the assessment to conform to the laboratory report, which would result in a tax in the amount of \$13,050.00, penalty in the amount of \$5,220.00 and interest to the date of full and final payment.
10. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
11. The hearing was conducted by written communication at Taxpayer's request through his attorney.
12. 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's attorney contested Taxpayer's possession of the cocaine in question. Taxpayer's attorney also argued that the assessment, as well as the seizure of the controlled substances, were violations of Taxpayer's Constitutional Rights.
13. On March 28, 2007, 260.53 grams of cocaine were present upon Taxpayer's person within the State of North Carolina pursuant to Taxpayer's attempted delivery of same to another individual.
14. 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:

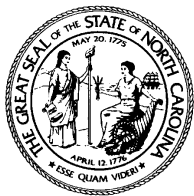
1. A preponderance of the evidence supports the foregoing findings of fact.
2. Taxpayer had actual possession of 260.53 grams of cocaine on March 28, 2007, within the State of North Carolina.

3. Taxpayer's possession of the aforementioned substance in the noted quantities 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 same.
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 260.53 grams of cocaine without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$13,050.00 in excise tax, penalties totaling \$5,220.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$13,050.00, penalties totaling \$5,220.00 and interest until date of full and final payment.

**DECISION**

Wherefore an assessment based on possession of 260.53 grams cocaine, comprised of excise tax in the amount of \$13,050.00 and penalties totaling \$5,220.00, 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