

IN THE MATTER OF:)
)
The Proposed Assessment of Unauthorized)
Substance Tax dated May 19, 2003)
by the Secretary of Revenue of the)
State of North Carolina)
)
against)
)
[Taxpayer])
)

FINAL DECISION

Docket No. 2003-269

AN: XXXXXX

Upon the 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 August 19, 2003 in the City of Raleigh, North Carolina. Neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing. For purposes of N.C.G.S. 105-241.1, the hearing concluded on August 19, 2003.

Pursuant to N.C.G.S. 105-113.111 and N.C.G.S. 105-241.1(a)&(b), a notice of proposed assessment was delivered to the Taxpayer by U.S. Mail sent to the Taxpayer's last known address of [street, city, state zip]. Based on the Taxpayer's unauthorized possession of 9,120 grams of marijuana, to which no tax stamps were affixed, the notice proposed an assessment comprised of excise tax in the amount of \$31,920.00, penalties totaling \$12,768.00, and interest in the amount of \$159.60, for a total proposed tax liability of \$44,847.60.

Two questions are at issue: (1) Did the Taxpayer have actual and/or constructive possession of marijuana without proper tax stamps affixed, and (2) Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

A Brief for Tax Hearing was submitted by the Unauthorized Substances Tax Division and was accepted into the record of the hearing. The Brief's exhibits were accepted into the record as evidence and are incorporated herein by reference. One exhibit was the law enforcement incident report, which stated the following:

On [Date] officers with [a law enforcement agency] made a controlled delivery of a FedEx package from [another state] addressed to the Taxpayer. [Agents] in [another state] had field-tested the contents of the package, 20 pounds of homemade chocolate fudge, and determined the fudge contained marijuana. The package was left with the

Taxpayer's mother since the Taxpayer was not home at the time of delivery. Surveillance officers observed [the Taxpayer's mother] leave the residence about 30 minutes after the delivery. Officers followed the vehicle and spoke to [the Taxpayer's mother] when she stopped. She advised that the name indicated on the package was that of her son and that he was expecting a shipment of records. She contacted the Taxpayer by cell phone and allowed him to speak to an officer. The Taxpayer advised that he was expecting a shipment of records. The Taxpayer agreed to meet the officers at the residence, where his mother had left the package on the Taxpayer's bed. Once in his bedroom, the Taxpayer said he did not recognize the package, that he was not expecting any parcels and that he did not recognize anyone from Oregon. Then the Taxpayer said that a few weeks earlier he had received a similar package that contained chocolate and a birthday card, but that he had thrown both out and that his mother had not seen either. When asked if the officers could search his room, the Taxpayer volunteered two jars containing marijuana buds and a pipe. Further searching revealed two sets of postal scales. The Taxpayer was arrested for marijuana trafficking and later interviewed. He stated that three or four months earlier an unknown person had asked to send packages to the Taxpayer. The Taxpayer would receive the packages and then place them on the porch so the unknown person could retrieve them at night. The Taxpayer declined the opportunity to offer substantial assistance.

Despite having been notified of the time and place of the hearing, neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing. 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 the Taxpayer denied that he had been in possession of the amount of marijuana specified in the tax assessment as well as denying having possessed any quantity of marijuana.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. Officers with [a law enforcement agency] conducted a controlled delivery of a package addressed to the Taxpayer after DEA agents in [another state] determined that the package contained 20 pounds of fudge that field tested positive for marijuana.
2. The Taxpayer resided at the address indicated on the package with his mother. After officers delivered the package, which was accepted by the Taxpayer's mother, the Taxpayer was contacted by telephone and indicated to officers that he was expecting a shipment of records.
3. The Taxpayer agreed to meet with officers at the residence. Initially, he denied recognizing the package, or the sender's name and address, however he later admitted that approximately three or four months earlier an unknown person had

asked to send packages to him. He indicated that when he receives these packages he leaves them on the porch for the unknown party to retrieve at night.

4. A search of the Taxpayer's bedroom located two jars containing marijuana buds, a pipe, and two sets of postal scales.
5. On [Date] an assessment of unauthorized substance tax was made against the Taxpayer comprised of excise tax in the amount of \$31,920.00, penalties totaling \$12,768.00, and interest in the amount of \$159.60, for a total proposed tax liability of \$44,847.60, based upon the Taxpayer's possession of 9,120 grams of marijuana. Notice of said assessment was delivered to the Taxpayer by U.S. Mail.
6. Upon being assessed, and in a timely manner, the Taxpayer requested in writing an administrative tax hearing.
7. Neither the Taxpayer nor anyone representing the Taxpayer submitted any arguments or evidence that would tend to contradict the assessment.
8. On [Date] the Taxpayer possessed 9,120 grams of marijuana in his residence.
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. Based on the foregoing findings of fact, which are supported by a preponderance of the evidence, the assessment of unauthorized substance tax against the Taxpayer is concluded to be correct.
2. Pursuant to N.C.G.S. §105-113.107(a1), "[a] quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers."
3. Without authorization, the Taxpayer had constructive possession of 9,120 grams of marijuana on [Date] and was therefore a "dealer" as that term is defined in N.C.G.S. 105-113.106(3).
4. The Taxpayer is liable for excise tax in the amount of \$31,920.00, penalties totaling \$12,768.00, and interest until date of full payment.

DECISION

Wherefore, an assessment based on possession of 9,120 grams of marijuana, comprised of excise tax in the amount of \$31,920.00 and penalties totaling \$12,768.00 is deemed to be proper under the law and the facts, and is sustained and declared to be final and immediately due and collectible, together with such interest as allowed by law.

This the 6th day of October, 2003.

Eugene J. Cella
Assistant Secretary of Revenue