

**IN THE MATTER OF:** )  
)  
The Proposed Assessment of Unauthorized )  
Substance Tax dated September 8, 2006 )  
by the Secretary of Revenue of the )  
State of North Carolina )  
)  
against )  
)  
(Taxpayer Name), Taxpayer )  
)

**FINAL DECISION**

**Docket No. 2006-291**

**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 June 12, 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 [June 12, 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 \(Taxpayer’s Address\)](#). Based on Taxpayer’s unauthorized possession of 418 grams of marijuana [on August 30, 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 \$1,463.00, penalties totaling \$585.20 and interest in the amount of \$11.22, for a total proposed tax liability of \$2,059.42.

**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 September 8, [2006](#).

- US-2 Letter from Taxpayer, received by the Department on October 3, 2006, requesting a hearing. Additional correspondence from Taxpayer received by the Department on March 21, 2007.
- US-3 Letter from the Assistant Secretary, dated October 18, 2006, regarding the scheduling of the hearing. Additional correspondence dated December 14, 2006, and March 22, 2007, regarding the rescheduling 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.
- US-6 Memorandum from E. Norris Tolson, Secretary of Revenue, dated May 16, 2001, 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 August 30, 2006, the Iredell County Sheriff's Office (ICSO) obtained and executed a search warrant on the residence of Taxpayer in the City of Statesville, North Carolina. The search warrant was obtained pursuant to an ongoing investigation by ICSO regarding controlled purchases of drugs from Taxpayer.
2. Upon execution of the search warrant, ICSO deputies located Taxpayer, two females, and one other male within Taxpayer's residence. 418 grams of marijuana were also located within the residence during the search. The marijuana was identified as such through the training and experience of ICSO deputies and its weight likewise determined.
3. The marijuana was located on the couch in the living room within the residence. Further, the marijuana was concealed under a blanket on the couch and was packaged in two separate plastic bags.

4. Two boxes of clear plastic bags (consistent with customary packaging for controlled substances) were found next to this same couch. Also, a set of black digital scales with marijuana residue was found on the coffee table within the living room.
5. The other persons located at the residence were similarly searched. No contraband was found upon their persons, and they were subsequently released. It was determined by ICSO deputies that these other individuals had no connection to the marijuana in question. They were subsequently released.
6. Taxpayer, however, was arrested and charged with possession with intent to sale and deliver marijuana, maintaining a dwelling for controlled substances, and possession of drug paraphernalia.
7. On September 8, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$1,463.00, penalties totaling \$585.20 and interest in the amount of \$11.22, for a total proposed tax liability of \$2,059.42, based upon Taxpayer's alleged possession of 418 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. On August 30, 2006, 418 grams of marijuana were present within or upon the premises of Taxpayer's residence in the State of North Carolina while such residence was under his dominion and control.
10. 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 418 grams of marijuana on August 30, 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 Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
5. The appropriate assessment against a dealer who possesses 418 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$1,463.00 in excise tax, penalties totaling \$585.20 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$1,463.00, penalties totaling \$585.20 and interest until date of full and final payment.

### DECISION

Wherefore, an assessment based on possession of 418 grams of marijuana, comprised of excise tax in the amount of \$1,463.00 and penalties totaling \$585.20, 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 28th day of August, 2007.



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