

IN THE MATTER OF:)
)
The Proposed Assessment of Unauthorized)
Substance Tax dated June 21, 2006)
by the Secretary of Revenue of the)
State of North Carolina)
)
against)
)
(Taxpayer Name), Taxpayer)
)

FINAL DECISION

Docket No. 2006-230

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 May 10, 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 May 10, 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 2,268 dosage units of methamphetamine on June 14, 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 \$11,350.00, penalties totaling \$4,540.00 and interest in the amount of \$82.66, for a total proposed tax liability of \$15,972.66.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of methamphetamine 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 June 21, 2006.

- US-2 Letter from Taxpayer, stamped as received by the Division on July 25, 2006, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated August 1, 2006, regarding the scheduling of the hearing and additional correspondence dated October 2, 2006.
- US-4 Forms BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," which name Taxpayer as the possessor of the controlled substances.
- US-5 Law Enforcement Investigation Reports, including DEA Laboratory Reports for controlled substances tested in this matter.
- 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 June 14, 2006, a Sergeant with Randolph County Sheriffs Office (RCSO) observed a white Lincoln Town car traveling on Interstate 85 in Randolph County.
2. As the vehicle passed, the Sergeant observed the driver slide down in the seat. As the Sergeant began to follow the vehicle, the vehicle began traveling too close to the vehicle in front of it and then drastically reduced its speed to the point of impeding traffic.
3. The Sergeant conducted a traffic stop on the vehicle on Interstate 85 near Highway 62. The vehicle was occupied by a male driver and Taxpayer, who was seated in the front passenger seat.
4. Upon approaching the vehicle on the passenger's side, the Sergeant requested from the driver his driver's license and registration. The driver handed to him an identification card from a Sheriff's Office in New York and a rental agreement for the vehicle.

5. During this transaction, the Sergeant observed Taxpayer, who appeared to be sleeping when he first got behind the vehicle, to be sitting straight up in his seat and his heart beating hard enough that he could see the movement in his t-shirt.
6. The driver was asked to exit the vehicle to speak with the Sergeant at the rear of the vehicle. As the driver exited, the Sergeant observed him hand something to Taxpayer who then placed it behind his back.
7. At the rear of the vehicle, the Sergeant asked the driver what he had handed to Taxpayer, and the driver stated nothing. The Sergeant then approached Taxpayer, asked him to step out of the vehicle, and patted him down for any weapons. After also checking the immediate area of the passenger's seat, Taxpayer was seated back in the vehicle while an interview of the driver continued.
8. The driver of the vehicle stated that they were returning from visiting Taxpayer's daughter in Charlotte. In a subsequent interview of Taxpayer, he stated they were returning from visiting his son in Georgia. During both interviews and while confronting the two about their conflicting stories, the Sergeant observed both men acting nervously. The driver avoided looking at the Sergeant by wearing sunglasses or staring at the ground when forced to remove the sunglasses. When asked further questions about the trip, the driver would start to stretch and look away. Taxpayer became uneasy when asked about the conflicting stories and became unable to sit still in the seat.
9. After issuing a citation and warning to the driver, the Sergeant approached Taxpayer once more. Since Taxpayer was listed on the rental agreement as the renter of the vehicle, the Sergeant asked him for consent to search. After first stating he was unsure if the rental company would want him to allow that, he consented to the search.
10. A small amount of rock-like substance was first located in a plastic bag corner in a red drink coozie. An additional amount was found in a black leather bag in the rear passenger area, and the largest amount was found in the glove box.
11. The rock-like substance was secured as evidence in RCSO Evidence Control until it was released to a Drug Enforcement Administration (DEA) agent. The DEA agent submitted the three quantities of substance found in the vehicle, suspected to be methamphetamine, to the DEA Laboratory in Miami Florida for analysis.
12. On June 21, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$11,350.00, penalties totaling \$4,540.00 and interest in the amount of \$82.66, for a total proposed tax liability of \$15,972.66, based upon Taxpayer's alleged possession of 2,268 dosage units of methamphetamine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.

13. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
14. On August 4, 2006, the DEA Laboratory issued a report that identified the substance at issue in this assessment as being an aggregate total of 228.9 grams (or 2,289 dosage units) of methamphetamine which is slightly more than the amount for which the assessment was issued.
15. On June 14, 2006, a minimum of 2,268 dosage units of methamphetamine were present in a vehicle rented by Taxpayer, which was under Taxpayer's dominion and control, and which was operated within the State of North Carolina.
16. 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 the Form BD-4 was incomplete by having no Social Security number listed, and thus was not correctly filed.
17. Taxpayer, and another individual, had possession of a minimum of 2,268 dosage units of methamphetamine present throughout the vehicle.
18. No tax stamps were purchased for or affixed to the methamphetamine 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 a minimum of 2,268 dosage units of methamphetamine on June 14, 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 2,268 dosage units of methamphetamine without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$11,350.00 in excise tax, penalties totaling \$4,540.00 and interest until date of full and final payment.

6. Taxpayer is liable for excise tax in the amount of \$11,350.00, penalties totaling \$4,540.00 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 2,268 dosage units of methamphetamine, comprised of excise tax in the amount of \$11,350.00 and penalties totaling \$4,540.00, 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 August, 2007.



Eugene Cella
Eugene J. Cella
Assistant Secretary of Revenue