

IN THE MATTER OF:)
)
The Proposed Assessment of Unauthorized)
Substance Tax dated June 23, 2006)
by the Secretary of Revenue of the)
State of North Carolina)
)
against)
)
(name of Taxpayer), Taxpayer)
)

FINAL DECISION

Docket No. 2006-234

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 April 17, 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 April 17, 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 (address of Taxpayer). Based on Taxpayer’s unauthorized possession of 251.6 grams of cocaine on October 17, 2005, 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 \$12,600.00, penalties totaling \$5,040.00 and interest in the amount of \$623.70, for a total proposed tax liability of \$18,263.70.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual 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 June 23, 2006.

- US-2 Letter from Taxpayer's attorney, dated July 21, 2006, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated August 1, 2006, 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 SBI Laboratory Report 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 October 17, 2005, officers with the Asheboro Police Department (APD) Street Crimes Unit received a telephone call in regards to the transportation of a quantity of narcotics into the City of Asheboro, North Carolina.
2. The call was made from a confidential and reliable informant (CI) who stated that Taxpayer would be transporting narcotics within a white Honda Accord automobile.
3. In response, APD officers with the Street Crimes Unit took up positions in and around Taxpayer's residence in Asheboro in search of Taxpayer's vehicle.
4. Taxpayer's vehicle, matching the description given by the CI, was located and followed. An APD officer then initiated a stop of Taxpayer's vehicle.
5. Taxpayer, the driver and sole occupant of his vehicle, stopped his vehicle at a red traffic light, and the APD officer approached the vehicle. Taxpayer shouted to the officer "let me get out of the road." Shortly thereafter, the traffic light turned green, and Taxpayer took off suddenly in his vehicle causing his rear tires to lose

traction momentarily. Taxpayer then attempted to flee from APD officers. Taxpayer proceeded in the direction of his residence and was ultimately contained by being blocked by APD vehicles not far from his residence on Pritchard Street in Asheboro.

6. An APD officer approached Taxpayer and extracted Taxpayer from the Honda vehicle. Taxpayer was then arrested. APD officers searched Taxpayer's vehicle incident to the arrest. Initially, no narcotics were found within the vehicle.
7. An APD K9 officer then initiated a K9 search of the vehicle. The dog alerted to the center console of the vehicle, despite no visible narcotics being present. Snack chips were observed strewn about the driver's floorboard of the vehicle.
8. APD officers suspected that Taxpayer threw contraband from his vehicle during their pursuit. APD officers' suspicions in this regard were prompted by Taxpayer's flight, the K9 positive alert and, that for a brief moment of time during the pursuit, Taxpayer was out of sight of APD officers.
9. In consequence of these suspicions, an APD officer traveled back to the initial point of contact with Taxpayer and began a search of the area for narcotics. A snack chip bag consistent with the chips found on Taxpayer's floorboard was found lying on the left side of a roadway traveled by Taxpayer during the pursuit.
10. The area where this bag was found was in the precise vicinity where APD officers lost sight of Taxpayer during the pursuit. The snack bag was lying in a grassy area covered with dew. However, the snack bag was dry to the touch indicating its recent deposit.
11. Inside the snack bag, APD officers discovered a clear plastic bag, which in turn contained two additional clear bags. APD officers found these bags to contain an off white in color substance determined by them to be cocaine. The cocaine was weighed at APD offices and determined to weigh approximately 250 grams. The cocaine was submitted by APD to the North Carolina State Bureau of Investigation (SBI) Laboratory for further analysis.
12. On June 23, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$12,600.00, penalties totaling \$5,040.00 and interest in the amount of \$623.70, for a total proposed tax liability of \$18,623.70, based upon Taxpayer's alleged possession of 251.6 grams of cocaine. 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. 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 argued that Taxpayer was not a dealer within the meaning of N.C.G.S. 105-113.106, that Taxpayer has not possessed any controlled substance, and that Taxpayer has not pled guilty to possession of the controlled substance.
15. On October 31, 2005, the SBI Laboratory issued a report that identified the substance at issue in this matter as being 251.6 grams of cocaine.
16. On October 17, 2005, Taxpayer had possession of 251.6 grams of cocaine, which were thrown by Taxpayer from his vehicle while being pursued by APD officers.
17. 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. Without authorization, Taxpayer had actual possession 251.6 grams of cocaine on October 17, 2005.
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 251.6 grams of cocaine without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$12,600.00 in excise tax, penalties totaling \$5,040.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$12,600.00, penalties totaling \$5,040.00 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 251.6 grams of cocaine, comprised of excise tax in the amount of \$12,600.00 and penalties totaling \$5,040.00, 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 16th day of July, 2007.



Eugene J. Cella

Eugene J. Cella
Assistant Secretary of Revenue