

IN THE MATTER OF:)
)
The Proposed Assessment of Unauthorized)
Substance Tax dated August 15, 2006)
by the Secretary of Revenue of the)
State of North Carolina)
)
against)
)
(Name of Taxpayer), Taxpayer)
)

FINAL DECISION

Docket No. 2006-262

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 February 9, 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 February 9, 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 35 grams of cocaine, 409 grams of marijuana and 40 dosages of crack cocaine on August 4, 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 \$3,981.50, penalties totaling \$1,592.60 and interest in the amount of \$32.05, for a total proposed tax liability of \$5,606.15.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of cocaine and 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 August 15, 2006.

- US-2 Letter from Taxpayer, marked as received by the Division on August 29, 2006, requesting a hearing. Additional correspondence from Taxpayer marked as received by the Division on August 28, 2006. Additional correspondence from Taxpayer's attorney dated January 24, 2007.
- US-3 Letter from the Assistant Secretary, dated September 12, 2006, regarding the scheduling of the hearing. Additional correspondence regarding the rescheduling of the hearing dated November 14, 2006. Additional correspondence regarding the rescheduling of the hearing dated January 30, 2007.
- 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 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 4, 2006, the Vice Narcotics Unit of the Rockingham Police Department (RPD) used a confidential informant (CI) to conduct a controlled purchase of cocaine at Taxpayer's residence in Rockingham, North Carolina. Taxpayer was the target of this controlled purchase.
2. After the CI made a purchase of cocaine from Taxpayer, the CI informed officers with the RPD Vice Narcotics Unit that Taxpayer was hiding drugs in the trunk of a Dodge Intrepid automobile.
3. After Taxpayer's residence was secured by RPD, officers found Taxpayer across the street from his residence sitting in a chair beside vehicles in his care. These vehicles included a 1998 Ford Explorer, a 1989 Isuzu pickup truck, and a 1993 Dodge Intrepid.

4. Further investigation revealed that these vehicles were provided to Taxpayer for his use and that Taxpayer maintained sole care and control of these vehicles. RPD officers obtained written statements signed by the owners of these vehicles attesting to Taxpayer's exclusive use, care, and control of these vehicles.
5. RPD officers obtained written consent from the vehicle owners to search the vehicles and from the owner of Taxpayer's residence to search the residence.
6. A search of the residence and vehicles ensued that same day. RPD officers located a black nylon bag in the Isuzu pickup truck. This bag was found in turn to contain the following items: clear plastic bags each containing a green vegetable substance, a clear plastic bag containing a white powder substance, and clear plastic bags each containing an off-white substance. Additionally, officers found a set of digital scales within the Isuzu pickup.
7. RPD officers logged the items found into evidence. Through their training and experience, the officers determined the green vegetable substance to be 47 grams of marijuana. On the same basis, they determined the white powder substance to be 1.6 grams of powder cocaine and the off-white substance to be 8 dosage units of crack cocaine.
8. A search of the Dodge Intrepid revealed clear plastic bags each containing a green vegetable substance and a clear plastic bag containing a white powder substance. RPD officers also found 3 loaded pistols and additional ammunition in the Dodge Intrepid.
9. These items were logged into evidence. Through their training and experience, RPD officers determined the green vegetable matter found in the Dodge Intrepid to be 409 grams of marijuana. Likewise, they determined the white powder substance in the Dodge vehicle to be 35 grams of powder cocaine.
10. A search of the Ford Explorer revealed \$2,000.00 in United States currency hidden in the tire jack compartment of that vehicle. A search of Taxpayer's person revealed \$1,000.00 in United States currency in his right rear pocket and an additional \$120.00 in his wallet.
11. A search of Taxpayer's room at his residence revealed clear plastic bags each containing an off-white rock like substance and clear plastic bags each containing a green vegetable substance.
12. These items were logged into evidence by RPD officers. Through their training and experience, the RPD officers determined the off-white rock-like substance found in Taxpayer's room was determined by RPD officers to be 32 dosage units of crack cocaine. On the same basis, the green vegetable substance found in Taxpayer's room was determined to be 27 grams of marijuana.

13. Officers also found a police scanner radio in Taxpayer's room consistent with drug dealing activity and a case of cigars consistent with the manufacture of marijuana blunts.
14. On August 15, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$3,981.50, penalties totaling \$1,592.60 and interest in the amount of \$32.05, for a total proposed tax liability of \$5,606.15, based upon Taxpayer's alleged possession of 35 grams of cocaine, 409 grams of marijuana and 40 dosages of crack cocaine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
15. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
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 he never possessed the controlled substance at issue upon which the assessment is based.
17. On August 4, 2006, Taxpayer had possession of 35 grams of cocaine, 409 grams of marijuana and 40 dosages of crack cocaine were present within the State of North Carolina within vehicles and a residence over which Taxpayer exercised dominion and control.
18. No tax stamps were purchased for or affixed to the cocaine or 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. Taxpayer had the intent and capability to maintain control and dominion over the marijuana and cocaine found in the vehicles and Taxpayer's room at the residence.
3. The marijuana and cocaine found at the residence were found in Taxpayer's room, as was the police scanner and drug paraphernalia, which shows Taxpayer's ability and intent to control the disposition of the drugs.
4. Without authorization, Taxpayer had constructive possession 35 grams of cocaine, 409 grams of marijuana and 40 dosages of crack cocaine on August 4, 2006.

5. 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.
6. Taxpayer failed to pay Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
7. The appropriate assessment against a dealer who possesses 35 grams of cocaine, 409 grams of marijuana and 40 dosages of crack cocaine without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$3,981.50 in excise tax, penalties totaling \$1,592.60 and interest until date of full and final payment.
8. Taxpayer is liable for excise tax in the amount of \$3,981.50, penalties totaling \$1,592.60 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 35 grams of cocaine, 409 grams of marijuana and 40 dosages of crack cocaine, comprised of excise tax in the amount of \$3,981.50 and penalties totaling \$1,592.60, 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 1st day of May, 2007.



Eugene J. Cella

Eugene J. Cella
Assistant Secretary of Revenue