

IN THE MATTER OF:)
)
The Proposed Assessment of Unauthorized)
Substance Tax dated December 6, 2006)
by the Secretary of Revenue of the)
State of North Carolina)
)
against)
)
(Taxpayer), Taxpayer)
)

FINAL DECISION

Docket No. 2007-19

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 September 20, 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 [September 20, 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 14.4 grams of cocaine [on December 6, 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 \$750.00, penalties totaling \$300.00 and interest in the amount of \$4.70, for a total proposed tax liability of \$1,054.70.

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 December 6, [2006](#).

- US-2 Letter from Taxpayer's attorney, dated January 5, 2007, requesting a hearing.
- US-3 [Letter from the Assistant Secretary, dated January 25, 2007](#), regarding the scheduling of the hearing and additional correspondence dated March 26, 2007 and June 21, 2007.
- 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 photographs and SBI Laboratory report.
- US-6 Memorandum from Reginald S. Hinton, Secretary of Revenue, dated July 2, 2007, 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 December 6, 2006, Pender County Sheriffs Office (PCSO) detectives assisted North Carolina Probation and Parole officers with a search of Taxpayer's residence.
2. Taxpayer, apparently alone, was located in a bedroom of the residence and was arrested for violating probation.
3. On a computer monitor next to where Taxpayer was standing, detectives located bags of crack cocaine.
4. Also in the bedroom, detectives located digital scales, plastic baggies, a knife with cocaine residue on the blade, a rifle, and \$1,385.00 in U.S. currency. A field test conducted on the knife and scales showed positive for cocaine and was photographed.
5. The cocaine was determined by the detectives to be an aggregate of 14.4 grams.

6. On December 6, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$750.00, penalties totaling \$300.00 and interest in the amount of \$4.70, for a total proposed tax liability of \$1,054.70, based upon Taxpayer's alleged possession of 14.4 grams of cocaine. Notice of said assessment was sent to Taxpayer at his last known address by U.S. Mail.
7. Upon being assessed and in a timely manner, Taxpayer's attorney requested in writing an administrative tax hearing.
8. In the letter requesting a hearing, Taxpayer's attorney offers four arguments in support of Taxpayer's objection. First, that the assessment is based on an inaccurate weight that had not yet been confirmed by the North Carolina State Bureau of Investigation (SBI) Laboratory. Second, that the statutory definition of a dealer is overbroad and violates Taxpayer's rights to due process. Third, that the tax assessments are excessive and punitive. And, finally, that the tax is unconstitutional.
9. On July 3, 2007, the SBI Laboratory issued a report showing the substance at issue in this matter to be an aggregate of 11.7 grams of cocaine.
10. On December 6, 2006, 11.7 grams of cocaine were present in the residence, which Taxpayer exerted dominion and control over within the State of North Carolina.
11. 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 **constructive** possession of 11.7 grams of cocaine on December 6, 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's third and fourth arguments cannot be addressed in this forum and/or are meritless.

5. Taxpayer failed to pay the Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.
6. The appropriate assessment against a dealer who possesses 11.7 grams of cocaine without having paid the Unauthorized Substances Excise Tax on same in a timely manner consists of \$600.00 in excise tax, penalties totaling \$240.00 and interest until date of full and final payment.
7. Taxpayer is liable for excise tax in the amount of \$600.00, penalties totaling \$240.00 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 11.7 grams of cocaine, comprised of excise tax in the amount of \$600.00 and penalties totaling \$240.00, 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 10th day of December, 2007.



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