

IN THE MATTER OF:)
)
The Proposed Assessment of Unauthorized)
Substance Tax dated July 16, 2007)
by the Secretary of Revenue of the)
State of North Carolina)
)
against)
)
(Taxpayer), Taxpayer)
)

FINAL DECISION

Docket No. 2007-183

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 October 24, 2007, in the City of Raleigh, North Carolina. Taxpayer was represented at hearing by (Taxpayer’s Attorney) of (Law Firm), Attorneys at Law. For purposes of N.C.G.S. 105-241.1, the hearing concluded on October 24, 2007.

Pursuant to N.C.G.S. 105-113.111 and N.C.G.S. 105-241.1(a)&(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 1,800 grams of marijuana on July 10, 2007, 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 \$6,300.00, penalties totaling \$2,520.00 and interest in the amount of \$51.06, for a total proposed tax liability of \$8,871.06.

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 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 July 16, 2007.

- US-2 Letter from Taxpayer's attorney, stamped as received by the Division on August 13, 2007, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated August 22, 2007, 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 substances.
- US-5 Law Enforcement Investigation Report.
- US-6 Memorandum from Reginald S. Hinton, Secretary of Revenue, dated September 26, 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.

Exhibits from Taxpayer admitted, without objection, into the record prior to its closing in opposition to the assessment were as follows:

- TP-1 Handwritten Notes of NCSHP Trooper's interview with Taxpayer.
- TP-2 Judgment Suspending Sentence – Felony for Taxpayer's cohort.
- TP-3 Transcript of Plea for Taxpayer's cohort.
- TP-4 Judgment Suspending Sentence – Misdemeanor for Taxpayer.
- TP-5 Dismissal for Taxpayer.

In addition to the exhibits submitted by the Division, the Assistant Secretary entered into the record of the hearing both the prepared brief of the Division and the transcript of the proceeding.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. On July 10, 2007, a North Carolina State Highway Patrol (NCSHP) Trooper was traveling on Interstate 95 when he observed a vehicle fail to move over for a stopped emergency vehicle. The Trooper initiated a stop on the vehicle, a Dodge Charger bearing Louisiana license tags, near the 82 mile marker of Interstate 95.
2. Upon approaching the passenger's side of the vehicle, the Trooper found the vehicle occupied by a front seat passenger and Taxpayer, who was the driver.

3. Taxpayer was asked to produce his driver's license and the vehicle registration. Upon being handed the driver's license, the Trooper noticed Taxpayer's hand to be shaking.
4. He also observed that the passenger avoided looking at him and that his pulse was pounding in his neck. Both Taxpayer and the passenger were smoking cigarettes rapidly and obviously shaking while doing so.
5. The front seat passenger then opened the glove box to retrieve the registration at which time the Trooper observed a brown paper bag and a bottle of No-Doze pills. The paper bag had a cigar protruding from the top of it. The passenger quickly tried to conceal the bag under the owner's manual in the glove box and then presented a rental agreement for the vehicle to the Trooper.
6. The Trooper then asked Taxpayer to accompany him to his patrol vehicle. Taxpayer complied and, prior to be seated in the vehicle, the Trooper conducted a frisk of Taxpayer for any weapons.
7. No weapons were discovered during the frisk, however the Trooper noted Taxpayer was still trembling and the Trooper could feel Taxpayer's pulse pounding in his chest.
8. When issuing Taxpayer a warning ticket, the Trooper spoke with Taxpayer about his travels. Taxpayer informed the Trooper that he and the passenger had taken a one-way flight to Miami, Florida for vacation and were driving back home to New Jersey.
9. The Trooper observed that Taxpayer remained nervous even after being told he was only being issued a warning ticket.
10. The Trooper found the travel arrangements suspicious, as a return flight would have been cheaper than the rental car price listed on the agreement. He also noted that they were traveling from a known source city of illegal narcotics, that the passenger attempted to hide a bag containing a cigar that in the Trooper's experience is known to be used in association with marijuana, and that they remained nervous the entire time. The Trooper further noted that the price Taxpayer had paid for the rental car was greater than what he would have paid for return airfare.
11. The Trooper then returned the driver's license and vehicle registration to Taxpayer and gave him the warning ticket. The Trooper then asked for consent to search the vehicle, which Taxpayer granted.
12. Inside the paper bag in the glove box the Trooper located approximately 5 grams of marijuana.

13. When the Trooper opened the trunk of the vehicle, the Trooper noted the strong odor of marijuana. A NCSHP K-9 was then used and indicated the presence of illegal drugs in luggage contained in the trunk.
14. In a duffle bag, Troopers located 8 packages of marijuana wrapped in a bed sheet. The marijuana was identified as such based upon the training and experience of the officer present as well as the utilization of a field test kit, which showed positive results for marijuana.
15. The marijuana was weighed on digital scales in the NCSHP offices and found to be 1,800 grams.
16. In subsequent interviews, the passenger initially claimed ownership of the bag in which the marijuana was found. The passenger later recanted this statement and stated that Taxpayer was aware at all times of the presence of the marijuana.
17. In reviewing the tape from the Trooper's in-car camera, the Trooper discovered that both Taxpayer and the passenger were discussing their plans if the Trooper found the marijuana.
18. On July 16, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$6,300.00, penalties totaling \$2,520.00 and interest in the amount of \$51.06, for a total proposed tax liability of \$8,871.06, based upon Taxpayer's possession of 1,800 grams of marijuana. Notice of said assessment was sent to Taxpayer by U.S. Mail.
19. Upon being assessed and in a timely manner, Taxpayer's attorney requested in writing an administrative tax hearing.
20. At hearing, Taxpayer's attorney disputed Taxpayer's involvement with the marijuana at issue. Taxpayer's attorney argued that Taxpayer had no knowledge of the marijuana until the time of the vehicle stop. Taxpayer's attorney further argued that a cohort had claimed possession of the marijuana in the resolution of the related criminal matter. Taxpayer, however, pleaded guilty to maintaining a vehicle for the purpose of storing or transporting marijuana.
21. On July 10, 2007, Taxpayer had possession of 1,800 grams of marijuana stored within the trunk of a vehicle, which Taxpayer had previously rented and then exercised dominion and control over by operating same in the State of North Carolina.
22. No tax stamps were purchased for or affixed to the cocaine and 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 constructive possession of 1,800 grams of marijuana on July 10, 2007.
3. Taxpayer's possession of the aforementioned substances in the noted quantities 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 same.
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 1,800 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$6,300.00 in excise tax, penalties totaling \$2,520.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$6,300.00, penalties totaling \$2,520.00 and interest until date of full and final payment.

DECISION

Wherefore an assessment based on possession of 1,800 grams of marijuana, comprised of excise tax in the amount of \$6,300.00 and penalties totaling \$2,520.00, 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 December, 2007.



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