

IN THE MATTER OF:)
)
The Proposed Assessment of Unauthorized)
Substance Tax dated February 5, 2007)
by the Secretary of Revenue of the)
State of North Carolina)
)
against)
)
(Taxpayer Name), Taxpayer)
)

FINAL DECISION

Docket No. 2007-53

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 16, 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 16, 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 89 dosages of Oxycontin on February 4, 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 \$1,800.00, penalties totaling \$720.00 and interest in the amount of \$12.62, for a total proposed tax liability of \$2,532.62.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of Oxycontin 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 February 5, 2007.

- US-2 Letter from Taxpayer, stamped as received by the Division on February 21, 2007, requesting a hearing.
- US-3 Letter from the Assistant Secretary, dated February 28, 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 substance.
- 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 February 4, 2007, a Cumberland County Sheriffs Office (CCSO) deputy conducted a traffic stop in Fayetteville, North Carolina. Upon approaching the vehicle, he found Taxpayer to be the driver.
2. During the course of the traffic stop, the deputy found that another agency possessed warrants for the Taxpayer's arrest. Taxpayer was arrested and a search conducted incident to the arrest.
3. A search of Taxpayer's person yielded a prescription bottle containing 89 tablets.
4. The deputy found that the prescription label indicated the medication was not prescribed to Taxpayer. It also indicated that the medication was a generic form of Oxycontin.
5. The deputy requested a CCSO narcotics investigator to assist in the investigation. A CCSO investigator subsequently met with the deputy and Taxpayer.

6. The investigator began a second search of Taxpayer, which resulted in Taxpayer questioning what was happening. The investigator explained the trafficking charges to Taxpayer, who in turn began to explain the situation.
7. Taxpayer stated to the investigator that the prescription belonged to a relative that needed money. Taxpayer purchased the pills from the relative for \$25.00. Taxpayer stated he thought the pills were only a muscle relaxer.
8. The investigator confirmed the identity of the pills contained within the bottle by contacting a pharmacist at a local drug store. Based upon the imprint on the tablets, the pharmacist confirmed the tablets were a generic form of Oxycontin, a schedule II controlled substance.
9. On February 5, 2007, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$1,800.00, penalties totaling \$720.00 and interest in the amount of \$12.62, for a total proposed tax liability of \$2,532.62, based upon Taxpayer's alleged possession of 89 dosages of Oxycontin. Notice of said assessment was sent to Taxpayer at his last know address by U.S. Mail.
10. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
11. 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 substances at issue were not his and belonged to a passenger of the vehicle.
12. On February 4, 2007, Taxpayer had possession of 89 dosages of Oxycontin found upon his person within the State of North Carolina.
13. No tax stamps were purchased for or affixed to the Oxycontin 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 of 89 dosages of Oxycontin on February 4, 2007.
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 89 dosages of Oxycontin without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$1,800.00 in excise tax, penalties totaling \$720.00 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$1,800.00, penalties totaling \$720.00 and interest until date of full and final payment.

DECISION

Wherefore, an assessment based on possession of 89 dosages of Oxycontin, comprised of excise tax in the amount of \$1,800.00 and penalties totaling \$720.00, 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 8th day of August, 2007.



Eugene Cella
Eugene J. Cella
Assistant Secretary of Revenue