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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 28-930444 CSET

CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1993

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ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: Double Jeopardy

Authority: IC 6-7-3-5, United States Constitution Amendments 5 and 14, Bryant v. State of Indiana, 660 N.E. 2d 290, (Ind. 1995).

Taxpayer asserts that the assessment of Controlled Substance Excise Tax violates his constitutional rights.

2. CONTROLLED SUBSTANCE EXCISE TAX: Rate of Tax

Authority: IC 6-7-3-6 (a) (1).

Taxpayer protests the rate of tax imposed on the marijuana.

3. CONTROLLED SUBSTANCE EXCISE TAX: Laches

Authority: Ball v. State of Indiana, 563 N.E. 2d 522, (Ind. 1990).

Taxpayer protests the length of time between the protest and hearing.

Statement of Facts

Taxpayer was arrested on May 5, 1993 for the possession of marijuana. On May 6, 1993 the Indiana Department of Revenue issued a "Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand" a base tax amount of $18, 048.00. Subsequently, Taxpayer pled guilty to possession of marijuana in criminal court. Taxpayer protested the assessment of the tax on May 28, 1993. A hearing was held on April 25, 2000. Further facts will be provided as necessary.

Discussion

1. CONTROLLED SUBSTANCE EXCISE TAX: Double Jeopardy

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. The Fifth and Fourteenth Amendments to the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana, 660 N.E. 2d 290, (Ind. 1995). In the instant case, Taxpayer was put at risk of punishment or in jeopardy by the "Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand" prior to the jeopardy in the criminal action. Therefore, Taxpayer is liable for the tax as assessed.

Finding

Taxpayer's protest is denied.

2. CONTROLLED SUBSTANCE EXCISE TAX: Rate of Tax

Discussion

Taxpayer contends that the rate of the Controlled Substance Excise Tax is too high. IC 6-7-3-6 (a) (1), in effect in 1993, set the tax on marijuana at $40.00 per gram. The tax was assessed against Taxpayer at $40.00 per gram.

Finding

Taxpayer's protest is denied.

3. CONTROLLED SUBSTANCE EXCISE TAX: Laches

Discussion

Taxpayer finally contends that the collection of the tax, interest and penalties should be barred by the doctrine of laches. Taxpayer cites the length of time between the assessment and hearing as evidence that the Indiana Department of Revenue delayed to such an extent that the tax should not be collected in this instance. The Indiana Supreme Court dealt with this issue in Ball v. State of Indiana, 563 N.E. 2d 522, (Ind. 1990). In that case at page 525 the Court stated that laches would bar collection by the Indiana Department of Revenue only if the Department attempted to collect the taxes "in an unusually dilatory manner." In Taxpayer's situation, the Department levied against Taxpayer's checking account on May 7, 1993, only one day after the jeopardy assessment. The Department acted on the protest in its normal manner. These efforts of collection do not meet the Court's criteria Therefore the doctrine of laches does not bar collection of the tax in this case.

Finding

Taxpayer's protest is denied.

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