DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 28-930104 CSET

CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1992

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ISSUE

1. Controlled Substance Excise Tax-Imposition

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

Taxpayer protests the assessment of Controlled Substance Excise Tax.

2. Controlled Substance Excise Tax-Amount of Tax

Authority: IC 6-7-3-6, Tax Court Rule 4, IC 6-8.1-5-1.

Taxpayer protests the amount of the Controlled Substance Excise Tax assessment.

3. Tax Administration-Collection of Tax

Authority: IC 6-7-3-19.

Taxpayer protests the collection of the Controlled Substance Excise Tax.

4. Tax Administration-Hearing

Authority: IC 6-8.1-5-1.

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

Statement of Facts

Taxpayer was arrested for possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on September 30, 1992 in a base tax amount of $1,411,160.00. Taxpayer pled guilty to possession of ten pounds or less of marijuana in July, 1993 and subsequently served time in jail. Taxpayer filed a protest to the controlled substance excise tax assessment on October 22, 1992. A hearing on the protest was held on November 16, 1999.

1. Controlled Substance Tax-Imposition

Discussion

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 of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a person is put at risk of punishment. Bryant v. State of Indiana, 660 NE 2d 290 (Ind.1995). In the instant case, the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand put Taxpayer at risk of punishment or in jeopardy on September 30, 1992. Criminal jeopardy attached when Taxpayer pled guilty in July, 1993. Therefore the Department's jeopardy assessment was the first and constitutionally permissible jeopardy in this situation.

Finding

Taxpayer's first point of protest is denied.

2. Controlled Substance Excise Tax-Amount of Tax

Discussion

Taxpayer's second point of protest concerns the amount of the Controlled Substance Excise Tax assessment. Pursuant to the provisions of IC 6-7-3-6, tax was assessed at $40.00 per gram on 352,790 grams. Since Taxpayer pled guilty in the criminal proceeding to the possession of ten pounds of marijuana or less, he contends that the tax should merely be assessed on ten pounds of marijuana.

The Controlled Substance Excise Tax was imposed under civil taxation statutes. Tax was imposed on the weight of the marijuana actually impounded by the police. Taxpayer is charged with the burden of proving that the tax assessment is incorrect based upon evidence in the tax matter. IC 6-8.1-5-1. The Indiana Tax Court is the only court with jurisdiction over tax issues. Indiana Tax Court Rule 4. The plea agreement was made pursuant to a criminal action in a criminal court. Statements in the plea agreement were made for the purpose of affecting the criminal prosecution and

sentencing. Any statement concerning the weight of the marijuana in that plea agreement is unrelated to the civil taxation statute and cannot be used to prove the weight of the marijuana for tax purposes. Taxpayer did not sustain his burden of proving that the weight of the marijuana was actually ten pounds or less.

Finding

Taxpayer's second point of protest is denied.

3. Tax Administration-Collection of Tax

Taxpayer contends that the Indiana Department of Revenue is barred from collecting the assessed tax by IC 6-7-3-19 which provides that a collection action cannot be initiated unless the Indiana Department of Revenue "is notified in writing by the prosecuting attorney of the jurisdiction where the defense occurred that the prosecuting attorney does not intend to pursue criminal charges. . ." This provision was added to the law in 1998.

Collection of this assessment was initiated on September 30, 1992. The provisions of IC 6-7-3-19 take effect prospectively and will not be applied retroactively to Taxpayer's assessment.

Finding

Taxpayer's protest is denied.

4. Tax Administration-Hearing

Discussion

Taxpayer's final point of protest concerns the length of time between the filing of the original protest and the actual hearing on the matter. Taxpayer contends that the period was so long that it kept him from effectively defending himself in the tax matter. Taxpayer contends that the original evidence is gone and he is unable to require it to be independently weighed to contest the amount reported by the police. Taxpayer has, however, known of the tax assessment since September 30, 1992. Taxpayer could have had the marijuana independently weighed at that time. The hearing was scheduled and held pursuant to the provisions of IC 6-8.1-5-1. That statute requires that a hearing be held but does not state a time limit within which the hearing must be held. In Taxpayer's case, the procedures under which the hearing was held satisfied the requirements of the law.

Finding

Taxpayer's final point of protest is denied.

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