STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2021-10

STATE OF RHODE ISLAND
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	**SC 20-081; 21-T-083**
	:	**cigarette tax**

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to an Order to Show Cause, Notice of Pre-Hearing Conference and Appointment of Hearing Officer issued on April 1, 2021 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was scheduled for October 25, 2021 at which time the Taxpayer did not appear at the hearing. Since the Taxpayer was adequately noticed of hearing,[1] a hearing was held on October 25, 2021 before the undersigned. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* ("Hearing Regulation"), a default judgment may be entered against the party not appearing at hearing.[2] The Department was represented by counsel who rested on the record.

[1] Division's Exhibit Nine (9) is the initial notice of hearing. However, prior to the originally scheduled prehearing conference, the parties tried to resolve this matter. When the parties were unable to resolve this matter, a prehearing conference was held on September 10, 2021 at which time the Taxpayer did not appear. A hearing was scheduled for October 25, 2021, and a new notice was sent to the Taxpayer using its last known addresses. Division's Exhibits A (business application and registration dated January 27, 2020 with business address); and Ten (10) (second notice of hearing sent to Taxpayer at business address with United States Post Office tracking print-out showing delivery of certified mail). Service was made to the Taxpayer's last known addresses. *Castro v. Employees' Retirement System of Rhode Island*, 2012 R.I. Super. LEXIS 54.

[2] The Hearing Regulation provides that the defaulted party be given notice of the default by mail and may request reinstatement of the matter pursuant to a motion for reconsideration as set forth in the Hearing Regulation.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, and the Hearing Regulation.

III. ISSUE

Whether the Taxpayer owes cigarette tax and if so, should any sanctions be imposed.

IV. MATERIAL FACTS

Tax Investigator, testified on behalf of Division. He testified that on July 22, 2020, he inspected the Taxpayer's location for compliance with tobacco taxing statutes. He testified that during his inspection, he seized cartons of cigarettes, packs of cigarettes, rolling papers, and tubes that did not have the statutorily required Rhode Island cigarette tax stamps on them. He testified that a notice of deficiency was issued to the Taxpayer for cigarette taxes owed and penalties. Division's Exhibits Four (4) (compliance report and seizure report dated July 22, 2020); Five (5) (copies of photographs taken at the inspection); Six (6) (audit workpaper and audit report dated October 21, 2020); and Seven (7) (notice of deficiency dated October 29, 2020).

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.,* 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v.*

DEM, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Relevant Statutes

R.I. Gen. Laws § 44-20-12[3] imposes a tax on cigarettes sold.[4] R.I. Gen. Laws § 44-20-13[5] provides that tax is imposed on unstamped cigarettes. Inspections of cigarette dealers are allowed by R.I. Gen. Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1[6] provides for administrative penalties for the violation of the tax laws.

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[3] R.I. Gen. Laws § 44-20-12 states as follows:

> Tax imposed on cigarettes sold. – A tax is imposed on all cigarettes sold or held for sale in the state. The payment of the tax to be evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such cigarettes. Any cigarettes on which the proper amount of tax provided for in this chapter has been paid, payment being evidenced by the stamp, is not subject to a further tax under this chapter. The tax is at the rate of one hundred seventy-five (175) mills for each cigarette.

[4] R.I. Gen. Laws § 44-20-1(2) defines cigarettes as follows:

> [M]eans and includes any cigarettes suitable for smoking in cigarette form, and each sheet of cigarette rolling paper, including but not limited to, paper made into a hollow cylinder or cone, made with paper or any other material, with or without a filter suitable for use in making cigarettes.

[5] R.I. Gen. Laws § 44-20-13 provides as follows:

> Tax imposed on unstamped cigarettes. A tax is imposed at the rate of two hundred twelve and one-half (212.5) mills for each cigarette upon the storage or use within this state of any cigarettes not stamped in accordance with the provisions of this chapter in the possession of any consumer within this state.

[6] R.I. Gen. Laws § 44-20-51.1 provides as follows:

> (a) Whoever omits, neglects, or refuses to comply with any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall, in addition to any other penalty provided in this chapter, be liable as follows:
>
> (1) For a first offense in a twenty-four-month (24) period, a penalty of not more than ten (10) times the retail value of the cigarettes and/or other tobacco products involved; and
>
> (2) For a second or subsequent offense in a twenty-four-month (24) period, a penalty of not more than twenty-five (25) times the retail value of the cigarettes and/or other tobacco products involved.
>
> (b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this chapter, be liable for a penalty of one thousand dollars ($1,000) or not more than five (5) times the tax due but unpaid, whichever is greater.
>
> (c) When determining the amount of a penalty sought or imposed under this section, evidence of mitigating or aggravating factors, including history, severity, and intent, shall be considered.

C. Whether Tax is Owed on the Cigarettes

The Taxpayer did not appear at hearing. It is undisputed that the Division seized cigarettes from Taxpayer for which the Rhode Island cigarette tax had not been paid. R.I. Gen. Laws § 44-20-12 provides that tax is imposed on cigarettes, and R.I. Gen. Laws § 44-20-13 provides that tax is imposed on unstamped cigarettes so that the Division properly assessed tax on the seized cigarette products. Division's Exhibit Seven (7).

D. What Sanctions Should be Imposed

R.I. Gen. Laws § 44-20-51.1(a) provides that penalties are to be imposed for the first offense at not more than ten (10) times the retail value of cigarettes. R.I. Gen. Laws § 44-20-51.1(b) provides that a penalty of not more than five (5) times the tax owed or $1,000 whichever is greater is to be imposed. R.I. Gen. Laws § 44-20-51.1(c) provides that when determining the penalty to be imposed, mitigating and aggravating factors such as history, severity, and intent shall be considered. Thus, the statute envisions progressive discipline based on the history of offenses with the penalties becoming greater based on aggravating factors. The Division represented that this is the Taxpayer's first offense. Division's Exhibit Six (6) (audit workpaper and audit report indicating penalties imposed).

The Division seeks penalties for the unpaid cigarette tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b). The Division seeks a penalty of five (5) times the retail value of the cigarette products and a penalty of one (1) times (greater than $1,000) the tax due. These penalties are in the low range and middle range for first offenses.[7] Division's Exhibits Six (6); and Seven (7)

[7] The Division inspector testified that the Taxpayer had properly taxed tobacco products in the shop so was aware of the Rhode Island tobacco taxing requirements. He also testified that some cigarette products were without tax stamps, and some were cigarette cartons that had New Hampshire tax stamps that had been partially rubbed off. Thus, while this may be a first offense, there is evidence that the Taxpayer knew of and purposely sold cigarettes that were not compliant with Rhode Island statutory tax requirements. Such evidence justifies the middle range for a first offense.

(notice of deficiency). The penalties are consistent with the statutory requirements for first offenses. No reason was shown to vary from the penalties sought by the Division.

VI. FINDINGS OF FACT

1. Cigarettes for which no State tax was paid were seized from the Taxpayer on July 22, 2020.

2. A notice of hearing was issued on April 1, 2021 and September 10, 2021. A hearing was held on October 25, 2021. The Taxpayer did not appear at the hearing. As the Taxpayer was adequately notified of hearing, a hearing was held. The Division was represented by counsel and rested on the record.

3. The facts contained in Section IV and V are incorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq*. and R.I. Gen. Laws § 44-20-1 *et seq*.

2. The Taxpayer violated R.I. Gen. Laws § 44-20-1 *et seq*. on July 22, 2020.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-20-1 *et seq*., R.I. Gen. Laws § 44-20-51.1, and R.I. Gen. Laws § 44-20-13, the Taxpayer owes the tax and penalties assessed by the Division as set forth in the Division's Exhibit Seven (7).

Date: November 22, 2021

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

✓ ADOPT
_____ REJECT
_____ MODIFY

Dated: 12/20/21

Neena S. Savage
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-20-48 Appeal to district court.

Any person aggrieved by any decision of the tax administrator under the provisions of this chapter may appeal the decision within thirty (30) days thereafter to the sixth (6th) division of the district court. The appellant shall at the time of taking an appeal file with the court a bond of recognizance to the state, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. These appeals are preferred cases, to be heard, unless cause appears to the contrary, in priority to other cases. The court may grant relief as may be equitable. If the court determines that the appeal was taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all those appeals, which may be denied, costs may be taxed against the appellant at the discretion of the court. In no case shall costs be taxed against the state, its officers, or agents. A party aggrieved by a final order of the court may seek review of the order in the supreme court by writ of certiorari in accordance with the procedures contained in § 42-35-16.

CERTIFICATION

I hereby certify that on the 21st day ~~November~~ December, 2021 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, post prepaid and certified mail, receipt requested to the Taxpayer's address on record with the Division and by electronic delivery to Michael Brady, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Gail Belasco