STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2022-02

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

IN THE MATTER OF:	:	
	:	**Case No.: 21-T-164**
	:	**marijuana**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Pre-Hearing Conference and Appointment of Hearing Officer dated September 7, 2021 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing.[1] A hearing was scheduled for December 16, 2021 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,[2] a hearing was held before the undersigned on December 16, 2021. 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.[3] The Division was represented by counsel and rested on the record.

---

[1] It is noted that the initial notice of hearing was issued to two (2) taxpayers, but their matters were handled separately.
[2] The Taxpayer did not appear at the prehearing conference held on September 28, 2021. A hearing was scheduled for November 3, 2021 for which notice was given to the Taxpayer and at which he did not appear. Division's Exhibit Eight (8) (notice). The hearing was rescheduled for December 16, 2021 at which time the Taxpayer did not appear. Notice of the December 16, 2021 hearing was sent to the Taxpayer by letter dated November 3, 2021 and sent by first class and certified mail to the Taxpayer's last known address. The Taxpayer received the certified notice. Division's Exhibit Ten (10) (November 3, 2021 letter and print out of the United States Post Officer certified mail tracking sheet). The Division represented that the last known address was from the Taxpayer's last tax return filed with the Division.
[3] The notice of hearing informed the Taxpayer that failure to appear at hearing could lead to a default being entered against him. The Hearing Regulation provides that a defaulted party be given notice of the default by mail and said party 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 § 44-49-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, and the Hearing Regulation.

III. ISSUE

Whether the Taxpayer owes the assessed marijuana tax, interest, and penalty.

IV. MATERIAL FACTS AND TESTIMONY

Based on the pleading and exhibits entered at hearing, the following was undisputed. On March 22, 2016, the Gloucester Police Department executed a search warrant at a house resided in by the Taxpayer. The police seized approximately 8.71 kilograms of marijuana. On March 30, 2016, the chief of the Gloucester Police Department, pursuant to R.I. Gen. Laws § 44-49-9.1, reported this seizure to the Division. Division's Exhibits (1) (emails from said police department forwarding seizure report to the Division); and Two (2) (police seizure report dated March 22, 2016). On May 3, 2016, the Division issued the Taxpayer a notice of deficiency for tax and penalty for the marijuana. Division's Exhibit Four (4). The Taxpayer requested a hearing and requested a continuance pending his criminal charges. Division's Exhibit Five (5) (request for hearing).[4] On November 5, 2020, the Division learned that the criminal matter had been resolved in 2017 with the Taxpayer being sentenced to ten (10) years of probation for two (2) counts of possession of marijuana with intent to distribute and three (3) years of home confinement on both the failure to report income from Rhode Island's Controlled Substance Act and the possession of marijuana without affixed stamps. See notice of hearing.

---

[4] In 2016, a lawyer entered his appearance for the Taxpayer. In 2021, the Division reached out to the various lawyers that had been involved in this matter in 2016 and was informed by two (2) attorneys that they were not representing the Taxpayer or the other involved individual. They thought another attorney may have been representing the Taxpayer. The Division reached out to this other attorney but received no response and no power of attorney has been filed by him. Division's Exhibit Nine (9) (September 20, 2021 letter with initial notice of hearing sent to said attorney).

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 (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. Dept. of Environmental Management,* 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island 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 Statute

R.I. Gen. Laws § 44-49-2 provides in part as follows:

> Definitions.
> ***
> (c) "Marijuana" means any marijuana, whether real or counterfeit, as defined in § 21-28-1.02(30), that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Rhode Island laws.

R.I. Gen. Laws § 44-49-9 provides as follows:

> Tax rate. A tax is imposed on marijuana and controlled substances as defined in § 44-49-2 at the following rates:
> (1) On each gram of marijuana, or each portion of a gram, three dollars and fifty cents ($3.50); and
> (2) On each gram of controlled substance, or portion of a gram, two hundred dollars ($200); or
> (3) On each ten (10) dosage units of a controlled substance that is not sold by weight, or portion of the dosage units, four hundred dollars ($400).

R.I. Gen. Laws § 44-49-9.1 provides in part as follows:

> Imposition of tax, interest and liens. (a) Any law enforcement agency seizing marijuana and/or controlled substances as defined in § 44-49-2 in the quantities set forth in that section shall report to the division of taxation no later than the twenty-fifth (25th) of each month, the amount of all marijuana and controlled substances seized during the previous month and the name and address of each dealer from whom the marijuana and controlled substances were seized.
>
> (b) The tax administrator shall assess the dealer for any tax due at the rate provided by § 44-49-9. The tax shall be payable within fifteen (15) days after its assessment and, if not paid when due, shall bear interest from the date of its assessment at the rate provided in § 44-1-7 until paid.

R.I. Gen. Laws § 44-49-10 provides in part as follows:

> Penalties — Criminal provisions. (a) Penalties. Any dealer violating this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax imposed by § 44-49-9. The penalty will be collected as part of the tax.

C. Whether the Taxpayer Owes the Marijuana Tax Deficiency and Penalty

The Taxpayer did not appear at hearing. It was undisputed that the Respondent was in possession of 8.71 kilograms of marijuana that was seized by the police. It was undisputed that this seizure was reported by the police to the Division pursuant to R.I. Gen. Laws § 44-49-9.1. R.I. Gen. Laws § 44-49-9 provides that tax (tax rate of $3.50 per gram) is imposed on marijuana as defined in R.I. Gen. Laws § 44-49-2. R.I. Gen. Laws § 44-49-10 provides that a 100% penalty is imposed on marijuana in addition to any tax imposed by R.I. Gen. Laws § 44-49-9. The Division issued a notice of deficiency imposing the tax and penalty as provided for by statute on the 8.71 kilograms of marijuana possessed by the Taxpayer. The Division properly assessed the tax and penalty on the seized marijuana that was in the possession of the Taxpayer and was seized by the police. Division's Exhibits Three (3) (Division's marijuana tax report); and Four (4) (notice of deficiency).

D. Interest

R.I. Gen. Laws § 44-49-9.1(b) provides that interest shall be assessed only when a marijuana assessment is not paid and then the interest is to be imposed from the date when the assessment was due at the rate provided in R.I. Gen. Laws § 44-1-7 until paid. Pursuant to R.I. Gen. Laws § 44-49-9.1(b), an assessment is due 15 days from the date of the notice of deficiency. The notice of deficiency actually lists the due date as June 2, 2016 so 30 days from the date of assessment of May 3, 2016. It was undisputed that the Taxpayer has not paid the assessment. Thus, interest shall be imposed as provided for by R.I. Gen. Laws § 44-1-7 from June 2, 2016.

VI. FINDINGS OF FACT

1. On or about September 30, 2021, the Division issued a Notice of Hearing and an Appointment of Hearing Officer to the Taxpayer.

2. A hearing in this matter was held on December 16, 2021. The Taxpayer did not appear. As the Taxpayer was adequately notified of the hearing, a hearing was held with the Division resting on the record. The Taxpayer is in default for failing to appear at the hearing.

3. On March 22, 2016, the Taxpayer was in possession of 8.71 kilograms of marijuana which was seized by the police.

4. A notice of deficiency was sent to the Taxpayer on May 3, 2016 imposing tax and penalty on the marijuana. The tax assessment was due by June 2, 2016. The Taxpayer requested a hearing. He has not paid the assessment. He has not paid the penalty.

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 § 44-49-1 *et seq*. and R.I. Gen. Laws § 44-1-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § 44-49-9, the Division imposed tax on the Taxpayer's marijuana.

3. Pursuant to R.I. Gen. Laws § 44-49-10, the Division imposed a penalty on the Taxpayer's marijuana.

4. As the Taxpayer has not paid this assessment, pursuant to R.I. Gen. Laws § 44-49-9.1, interest as provided for in R.I. Gen. Laws § 44-1-7 is imposed on the assessment as of June 2, 2016.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § R.I. Gen. Laws § 44-49-9 and R.I. Gen. Laws § 44-49-10, the Taxpayer owes the assessed tax and penalty. Pursuant to R.I. Gen. Laws § 44-49-9.1, interest as provided for in R.I. Gen. Laws § 44-1-7 is imposed on the assessment as of June 2, 2016.

Date: 1/19/22

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: 1/26/2022

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 R.I. Gen. Laws § 44-49-13.1 WHICH STATES AS FOLLOWS:

> **R.I. Gen. Laws § 44-49-13.1. Hearings by tax administrator on application, appeals.** (a) Any dealer aggrieved by any assessment shall notify the tax administrator, in writing, within thirty (30) days from the date of mailing by the tax administrator of the notice of the assessment, and shall request a hearing relative to the assessment; and the tax administrator shall, as soon as practicable, fix a time and place for a hearing and shall, after the hearing, determine the correct amount of the tax, interest and penalties. The tax and penalties assessed by the tax administrator are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity.
> (b) Appeals from administrative orders or decisions made pursuant to any provisions of this chapter shall be to the sixth division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this section shall be expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

CERTIFICATION

I hereby certify that on the 27th day of January, 2022, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer's address on file with the Division of Taxation and by electronic delivery to Michael Brady, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Bilasco