STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2022-09

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

IN THE MATTER OF:	:	**SC 18-018; 18-T-040**
	:	**cigarette tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer issued on January 23, 2020 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A prehearing conference was scheduled for February 24, 2020 at which time the parties tentatively settled the matter. On December 3, 2021, the Division requested that an administrative hearing be scheduled. A Notice of Hearing and Appointment of Hearing Officer dated December 20, 2021 was issued to the Taxpayer scheduling this matter for a hearing on January 19, 2021. The parties again tried to settle the matter. By noticed dated January 19, 2022, a hearing was scheduled for March 3, 2022 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,[1] a hearing was held on March 3, 2022 before the undersigned. Pursuant to Section 2.7(G)(3) of the

[1] Division's Exhibit One (1) is the December 20, 2021 notice of hearing. A hearing was scheduled for March 3, 2022, and a new notice dated January 19, 2022 was sent to the Taxpayer by first class and certified mail using its last known address. Division's Two (2) (notice of hearing dated January 19, 2022 with United States Post Office tracking print-out showing delivery of certified mail). The March 3, 2022 hearing was scheduled for 9:30 a.m. Using the email address by which the Taxpayer corresponded with the Division and undersigned, the time was changed to 3:00 p.m. on the same date. The Taxpayer did not appear at either 9:30 a.m. or 3:00 p.m. In addition to being notified by first class and certified mail of the hearing, the Department's attorney, at hearing, represented that the Taxpayer had indicated that he would come to the office prior to March 3, 2022 to sign a new stipulation agreement so the Taxpayer was aware of the hearing date. (The Taxpayer never signed a new stipulation agreement).

280-RICR-20-00-2 *Administrative Hearing Procedures* ("Hearing Regulation"), a default judgment may be entered against the party not appearing at hearing. The Department was represented by counsel who rested on the record.

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 breached its 2019 stipulation with the Division, and if so, should any sanctions be imposed.

IV. MATERIAL FACTS

On May 17, 2019, the Taxpayer entered into a stipulation of settlement with the Division. This stipulation was signed by the Taxpayer, his attorney, and the Division's attorney. The stipulation provided that on September 22, 2016, the Providence Police Department conducted a search of the Taxpayer's business (a convenience store) and residence and seized cigarettes and other tobacco products. On January 1, 2018 the Taxpayer sold his business to new ownership. On January 17, 2018, the police transferred said seized cigarettes and other tobacco products to the Division for review and assessment. On March 26, 2018, the Division issued a notice of deficiency determination of cigarette tax and penalties to the Taxpayer, and the Taxpayer requested a hearing. The notice of deficiency was for The settlement amount was for The payment of the settlement amount was spread over 36 months in 36 equal amounts with each monthly payment to be made by the 15th of each month until paid in full but with the first payment to be made by September 1, 2019. Division's Exhibit One (1) (December 21, 2021 notice of hearing with attached 2019 stipulation).

Principal Tax Auditor, testified on the Division's behalf. He testified that as of the day of the hearing, the Division had not received any payments from the Taxpayer for its 2019 stipulation, and that the initial assessment issued to the Taxpayer was for

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 imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2 imposes tax on "other tobacco products." R.I. Gen. Laws § 44-20-13 provides that tax is imposed on unstamped cigarettes. R.I. Gen. Laws § 44-20-51.1[2] provides for administrative penalties for the violation of the tax laws.

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[2] 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

C. Stipulation

In order to settle the notice of deficiency issued on March 26, 2018 to the Taxpayer for tax owed for cigarettes/other tobacco products, the Taxpayer entered into the May 17, 2019 stipulation and agreed to pay a reduced amount of the total amount of the deficiency. See stipulation.

Paragraph 12 of said stipulation provides as follows:

> If the Licensee fails to abide by of the requirements of this Agreement, the Division will initiate further administrative proceedings to impose penalties against it including, but not limited to, such additional administrative penalties as deemed appropriate by the Division. Licensee shall be provided with notice and opportunity for hearing should the Division decide to take further action.

D. Whether the Taxpayer Breached the Stipulation

The Taxpayer did not appear at hearing. The Taxpayer entered into a stipulation to pay a reduced amount from what was assessed in the 2018 notice of deficiency in relation to the tax owed on cigarettes/other tobacco products. The testimony at hearing is that the Taxpayer did not pay any amount of the assessment or as provided for in the stipulation. It is undisputed that the Taxpayer has paid nothing in relation to the assessed amount pursuant to the 2018 notice of deficiency and in relation to the reduced amount agreed to in the 2019 stipulation. The Taxpayer was to begin payments on September 1, 2019 and has paid nothing. It is undisputed that the Taxpayer has breached the stipulation by its nonpayment.

E. What Does Taxpayer Owe

The Taxpayer did not pay any of the agreed to amount owed under the stipulation. It is undisputed that the Taxpayer owed the full amount of the deficiency for tax and penalties as well

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(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.

as any interest, if imposed. The amount the Taxpayer owed was reduced by virtue of the Taxpayer's stipulation with the Division. The Taxpayer has not complied with and is in breach of the stipulation.

The stipulation provides for the imposition of additional penalties for such a breach. Therefore, the Taxpayer shall pay the full amount of the penalties imposed under the initial 2018 notice of deficiency as well as the full amount of tax owed.

VI. FINDINGS OF FACT

1. On September 22, 2016, the Providence Police seized cigarettes and other tobacco products from the Taxpayer. On January 17, 2018, the police transferred said seized cigarettes and other tobacco products to the Division for review and assessment. On March 26, 2018, a notice of deficiency for tax owed on cigarette/other tobacco products was issued to the Taxpayer.

2. The Taxpayer requested a hearing, and the matter was settled via a stipulation agreement dated May 19, 2019.

3. It is undisputed that the Taxpayer owed the tax assessed on the seized cigarettes/other tobacco products.

4. The Taxpayer has not made any of the monthly payments due under the stipulation agreement.

5. The Taxpayer has not paid any of the amount assessed and that which is owed under the notice of deficiency.

6. The Taxpayer has not paid any of the amount that is owed under the stipulation agreement.

7. A notice of hearing was issued on January 23, 2020, December 20, 2021, and January 19, 2022. A hearing was held on March 3, 2022. 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. The Taxpayer is in default for failing to appear at the hearing.

8. 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 has not complied with and has violated its May 19, 2019 stipulation.

3. The Taxpayer owes the taxes and penalties imposed in the 2018 notice of deficiency pursuant to R.I. Gen. Laws § 44-20-1 *et seq*., R.I. Gen. Laws § 44-20-12, R.I. Gen. Laws § 44-20-13, and R.I. Gen. Laws § 44-20-50.1.

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, R.I. Gen. Laws § 44-20-13, and R.I. Gen. Laws § 44-20-12, the Taxpayer is in breach of its 2019 stipulation so now owes the tax and penalties assessed by the Division in its initial notice of deficiency.[3]

Date: March 31, 2022

Catherine R. Warren
Hearing Officer

[3] While the notice of hearing indicated the deficiency notice sought the amount of representing tax, interest, and penalties owed pursuant to R.I. Gen. Laws § 44-20-12, R.I. Gen. Laws § 44-1-7, and R.I. Gen. Laws § 44-20-51.1, interest is usually not imposed for untaxed tobacco cases. A copy of the notice of deficiency was not entered as an exhibit at hearing so that the undersigned does not know how the deficiency amount was proportioned. Thus, if there was interest imposed under the notice of deficiency, the Taxpayer would also owe any interest pursuant to R.I. Gen. Laws § 44-1-7.

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: 4/11/22

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 11th day ~~March~~ April, 2022 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