

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-06

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

IN THE MATTER OF:	:	
	:	
	:	SC 22-010; 22-T-019
	:	OTP and cigarette tax
	:	
Taxpayer.	:	
	:	

DECISION

I. INTRODUCTION

The above-entitled matter initially came for hearing pursuant to an Order to Show Cause and Notice of Pre-Hearing Conference and Appointment of Hearing Officer (“Order to Show Cause”) issued on February 18, 2022 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). Division’s Exhibit Ten (10). That matter was resolved by a Stipulation of Settlement and Dismissal (“Stipulation”) dated April 28, 2023. Division’s Exhibit 11. On December 21, 2023, the Division issued a new notice of hearing to the Taxpayer based on the Division’s allegation that the Taxpayer breached the Stipulation. Division’s Exhibit 12. The parties agreed to a hearing date on February 26, 2024 at which time the Taxpayer failed to appear. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held on February 26, 2024 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. The Department was represented by counsel who rested on the record.

¹ The Taxpayer, the Division, and the undersigned communicated by e-mail to pick a convenient date for the hearing. The Taxpayer suggested February 26, 2024 as a date that was convenient for him, and the hearing was scheduled for that date. Division’s Exhibit 13.

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 2023 Stipulation with the Division, and if so, should any sanctions be imposed.

IV. MATERIAL FACTS

The April 28, 2023 Stipulation provided that on November 18, 2021, the Division inspected the Taxpayer's business (a convenience store) for compliance with tax laws and seized untaxed other tobacco products. On December 8, 2021, the Division issued a notice of assessment for other tobacco products tax and penalties. On December 6, 2021, the Division issued a notice of cigarette dealer's license suspension for 20 days. Division's Exhibits Ten (10) (Order to Show Cause); Seven (7) (notice of license suspension); and Eight (8) (notice of assessment).

Principal Tax Auditor, testified on the Division's behalf. He testified the Taxpayer held a cigarette dealer's license and retail sales permit for 2021 to 2022. Division's Exhibits Two (2) and Three (3). He testified the Taxpayer was to pay the settlement amount in the Stipulation in five (5) monthly payments but made no payments. He testified the Stipulation provides that if the Taxpayer defaults in its payments, it will owe the entire amount of the assessment. He testified the Taxpayer owes which represents the initial assessment. Division's Exhibits Six (6) (audit workpapers); and Eight (8) (assessment). He testified the Taxpayer also agreed to serve a three (3) day suspension of its cigarette dealer's license but did not serve any of its suspension. He testified that Division inspectors have recently inspected the Taxpayer who is still open but was not selling tobacco at the time of the recent inspections.

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 § 44-20-12² imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2 imposes tax on “other tobacco products.”³ Inspections of tobacco dealers are allowed by R.I. Gen.

² 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.

³ R.I. Gen. Laws § 44-20-13.2 provides in part as follows:

(a) A tax is imposed on all other tobacco products, smokeless tobacco, cigars, and pipe tobacco products sold, or held for sale in the state by any person, the payment of the tax to be accomplished according to a mechanism established by the administrator, division of taxation, department of revenue. The tax imposed by this section shall be as follows:

(1) At the rate of eighty percent (80%) of the wholesale cost of other tobacco products, cigars, pipe tobacco products, and smokeless tobacco other than snuff.

(2) Notwithstanding the eighty percent (80%) rate in subsection (a) above, in the case of cigars, the tax shall not exceed fifty cents (\$.50) for each cigar.

(3) At the rate of one dollar (\$1.00) per ounce of snuff, and a proportionate tax at the like rate on all fractional parts of an ounce thereof. Such tax shall be computed based on the net weight as listed

Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1⁴ provides for administrative penalties for the violation of the tax laws. In addition, R.I. Gen. Laws § 44-20-8⁵ provides for the suspension or revocation of a cigarette dealer's license.

C. Stipulation

In order to settle the notice of assessment and notice of cigarette dealer's license suspension issued on December 8, 2021 and December 6, 2021 respectively to the Taxpayer for tax owed for other tobacco products, the Taxpayer entered into the Stipulation and agreed to pay a reduced amount of the total amount of the assessment. However, the Taxpayer agreed to pay the full amount of the assessment if it defaulted on the Stipulation.

by the manufacturer; provided, however, that any product listed by the manufacturer as having a net weight of less than 1.2 ounces shall be taxed as if the product has a net weight of 1.2 ounces.

⁴ 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.

⁵ R.I. Gen. Laws § 44-20-8 provides as follows:

Suspension or revocation of license. The tax administrator may suspend or revoke any license under this chapter for failure of the licensee to comply with any provision of this chapter or with any provision of any other law or ordinance relative to the sale or purchase of cigarettes or other tobacco products. The tax administrator may also suspend or revoke any license for failure of the licensee to comply with any provision of chapter 19 of title 44 and chapter 13 of title 6, and, for the purpose of determining whether the licensee is complying with any provision of chapter 13 of title 6, the tax administrator and his or her authorized agents are empowered, in addition to authority conferred by § 44-20-40, to examine the books, papers, and records of any licensee. The administrator shall revoke the license of any person who would be ineligible to obtain a new or renew a license by reason of any of the conditions for licensure provided in § 44-20-4.1. Any person aggrieved by the suspension or revocation may apply to the administrator for a hearing as provided in § 44-20-47, and may further appeal to the district court as provided in § 44-20-48.

Paragraph 19 of the Stipulation's terms provides as follows:

DEFAULT. Failure of Taxpayer to abide by any of the requirements of this Stipulation shall be in default under the Stipulation. In the event Taxpayer defaults under the Stipulation, Taxpayer agrees that the entire amount due pursuant to the Assessment Notice, as set forth herein, shall be immediately due, final, and payable. Upon breach by Taxpayer, the Tax Division may invoke any further remedies under Rhode law that it deems appropriate.

In the Stipulation, the parties agreed to a seven (7) day suspension of cigarette dealer's license rather than the 20 day suspension in the notice of license suspension. It was agreed that three (3) of the seven (7) days would be served, and the four (4) days would be held in abeyance for six (6) months. It was agreed that if the Taxpayer committed a subsequent violation of R.I. Gen. Laws § 44-20-1 *et seq.*, or the Stipulation, a total of seven (7) days would be served by the Division picking four (4) further days for the Taxpayer to be suspended.

Paragraph 1 of the Stipulation's terms provides as follows:

SUSPENSION. Taxpayer agrees that the twenty (20) day suspension of its License will be reduced to a period of seven (7) days, with a three (3) day License Suspension to be served and the remaining four (4) day License Suspension held in abeyance for six (6) months from the effective date of this Stipulation Agreement. Taxpayer shall serve a three (3) day license suspension on the following dates: May 5, 2023, May 12, 2023, and May 19, 2023. However, if Taxpayer commits a subsequent violation of the provisions of R.I. Gen. Laws §§ 44-20-1 *et seq.* or violates the terms and conditions of this Stipulation, then the License shall be suspended for the four (4) days without further hearing on the dates that will be determined by the Tax Division. (bold in original omitted).

D. Whether the Taxpayer Breached the Stipulation

The Taxpayer did not appear at hearing. The Taxpayer entered into the Stipulation to pay a reduced amount from what was assessed in the 2021 notice of assessment in relation to the tax owed on other tobacco products. The Stipulation provided for payment dates in May, June, July, August, and September of 2023. Division's Exhibit 11. The testimony at hearing was the Taxpayer made no payments on the amount owed under the Stipulation. It was undisputed that the Taxpayer made no payments as required by the Stipulation. It was undisputed that the Taxpayer breached

the Stipulation by its nonpayment of the required five (5) monthly payments. It was undisputed that the Taxpayer did not serve any days of its suspension of its cigarette dealer's license. Thus, the Taxpayer breached the Stipulation.

E. What Does Taxpayer Owe

Pursuant to paragraph 19 of the Stipulation, the Taxpayer agreed that any default by the Taxpayer of the Stipulation would result in the original amount of the notice of assessment being owed immediately. Therefore, the Taxpayer shall pay the amount owed for the assessment for other tobacco products (tax and penalties) issued on December 8, 2021.

F. Suspension

The Taxpayer did not serve the three (3) day suspension that was agreed to with four (4) days being held in abeyance rather than the full 20 day suspension contained in the notice of suspension of cigarette dealer's license. The Stipulation indicated the further four (4) day suspension would be imposed if there was a statutory violation or a violation of the Stipulation. That agreement assumed that the three (3) days would have been served; but they were not served. The testimony indicated that the Taxpayer may no longer be selling tobacco products. Obviously, if the Taxpayer does not have a current cigarette dealer's license, it cannot be selling tobacco products. However, if it holds a current cigarette dealer's license and is selling tobacco products, its cigarette dealer's license shall be suspended for 20 days.

VI. FINDINGS OF FACT

1. On February 18, 2022, the Division issued the Order to Show Cause to the Taxpayer. The Order to Show Cause related to the seizure of untaxed other tobacco products from the Taxpayer by the Division. That matter was resolved by a Stipulation dated April 28, 2023.

2. On December 21, 2023, the Division issued a notice of hearing to the Taxpayer alleging that the Taxpayer breached the Stipulation.

3. A hearing was scheduled a hearing for February 26, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing, a hearing was held on February 26, 2024 before the undersigned. The Taxpayer is in default for failing to appear at the hearing.

4. It is undisputed that the Taxpayer owed the tax assessed on the seized other tobacco products.

5. The Taxpayer failed to make the five (5) monthly payments in 2023 required by the Stipulation.

6. The Taxpayer did not serve the three (3) day suspension for its cigarette dealer's license as required by the Stipulation.

7. 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 the April 28, 2023 Stipulation.

3. The Taxpayer owes the full amount of taxes and penalties imposed in the December 8, 2021 notice of assessment issued to the Taxpayer 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 2023 Stipulation so now owes the full tax and penalties assessed by the Division in its initial notice of assessment and its cigarette dealer's license (if still licensed) shall be suspended for 20 days.

The Taxpayer shall pay the tax and penalties owed by the 31st day after the execution of this decision. The Taxpayer's cigarette dealer's license shall be suspended for 20 days starting on the 31st day after the execution of this decision.

Date: March 15, 2024



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: 3/18/24



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 20th day March, 2024 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 John Beretta, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.


