

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-09

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

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<b>IN THE MATTER OF:</b>	:	
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	:	<b>SC 19-036; 19-037; 20-006</b>
	:	<b>19-T-041; 21-T-016</b>
	:	<b>cigarette and OTP</b>
<b>Taxpayer.</b>	:	
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**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 May 3, 2019 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) for cases SC 19-036 and 19-037 and an Order to Show Cause, Notice of Pre-Hearing Conference, and Appointment of Hearing Officer issued on January 27, 2021 to the Taxpayer by the Division for case SC 20-006. These matters were consolidated. A hearing was scheduled for March 20, 2024 at which time the Taxpayer did not appear at the hearing. Since the Taxpayer was adequately noticed of hearing,<sup>1</sup> a hearing was held on March 20, 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 Division was represented by counsel who rested on the record.

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<sup>1</sup> Notice of the full hearing was sent by first class and certified mail to the Taxpayer. The certified mail was delivered to the Taxpayer. Division’s Exhibit 19 (notice of hearing dated February 2, 2024 scheduling the hearing for March 20, 2024 sent to Taxpayer and the United States Post Office tracking website printout showing delivery of said notice). Prior to hearing, the Taxpayer’s attorney withdrew as counsel. Division’s Exhibit 18. The undersigned noted on the record that the attorney’s office indicated that it too would notify the Taxpayer of the hearing date as the attorney had withdrawn representation.

## **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 and other tobacco products tax and if so, should any sanctions be imposed.

## **IV. MATERIAL FACTS**

Tax Investigator, testified on behalf of the Division. He testified that before joining the Division's Special Investigation Unit ("SIU"), he was with the Providence Police Department for 20 years. He testified that he is an inspector for the SIU which ensures compliance with tobacco tax statutes. He testified the Providence Police contacted him regarding a search warrant that they were planning to execute at the Taxpayer's business. He testified that on the day (November 18, 2018) that the search warrant was to be executed, he went to the Taxpayer's location. He testified that he waited until the police had executed the search and secured the scene and then went into the business. He testified that he was advised the Taxpayer had a "hide" for tobacco products which he located in the back stairwell. He testified the police seized cigarettes and other tobacco products ("OTP"), and he helped identify for the police which were legitimate products or untaxed products. He testified that on January 9, 2019, he issued a chain of custody letter to the police for them to transfer the seized untaxed products to the Division, and he put those products in the Division's vault. He testified that he prepared a compliance report and seizure report for the inspection. Division's Exhibits Four (4) (compliance report dated November 20, 2018); and Five (5) (January 9, 2018 chain of custody letter and seizure report).

Tax Investigator, testified on behalf of the Division. He testified that prior to working for the SIU, he retired from the Johnston Police Department as a captain. He testified on October 22, 2019, he performed a random inspection of the Taxpayer accompanied by

. He testified they found a plastic bag with unstamped cigarette packs where the cellophane had been removed from the packs. He testified that since the cigarette packs had no tax stamps, there was no proof of tax being paid so they seized the cigarettes and prepared a seizure and compliance report. Division's Exhibits 11 (compliance report dated October 25, 2019); and 12 (seizure report dated October 22, 2019).

("Auditor"), Principal Tax Auditor, testified on behalf of the Division. He testified that he is the supervisor of the SIU. He testified the Taxpayer held a cigarette dealer's license and a permit to make sales from July 1, 2018 to June 30, 2019 and July 1, 2019 to June 30, 2020. Division's Exhibit Three (3). He testified that two (2) notices of deficiencies, one for cigarettes and one for OTP, were issued after the 2018 seizure. He testified that "penalty A" was calculated at 20 times the retail value of the products as this was the Taxpayer's fifth offense in 24 months. He testified that "penalty B" was imposed at five (5) times the tax due. He testified that interest was included on the OTP notice of deficiency, but overall interest accrues after nonpayment of an assessment. Division's Exhibit Eight (8) (April 3, 2019 notices of deficiency for cigarettes and OTP). He testified that a notice of deficiency was also issued for the 2019 seizure for which penalty A was calculated at 13 times the retail value because it was the second offense within 24 months. He testified that notices of revocation were issued for the 2018 and 2019 seizure. Division's Exhibits 15 (notice of deficiency dated October 9, 2020); Seven (7) (April 3, 2019 notice of revocation); and 14 (October 9, 2020 notice of revocation). He testified the Taxpayer's store is now closed, and it has not paid any of the assessments.

## 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<sup>2</sup> imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2 imposes tax on “other tobacco products.”<sup>3</sup> Inspections of cigarette dealers are allowed by R.I. Gen.

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<sup>2</sup> 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 two hundred twelve and one-half (212.5) mills for each cigarette.

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

Tax imposed on other tobacco products, smokeless tobacco, cigars, and pipe tobacco products.  
(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.

Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1<sup>4</sup> provides for administrative penalties for the violation of the tax laws. In addition, R.I. Gen. Laws § 44-20-8 provides for the suspension or revocation of a cigarette dealer's license.

### **C. Whether Tax is Owed on Cigarettes and Other Tobacco Products**

The Taxpayer did not appear at hearing. It is undisputed that on November 20, 2018, the police seized cigarettes and OTP from the Taxpayer for which Rhode Island tax had not been paid. The products seized included over 350 packs of cigarettes as well over 500 cigars and over 240 packages of OTP of varying amounts for which no tax had been paid. Some of the cartons of cigarettes seized had out of state tax stamps. Division's Exhibits Four (4) (2018 compliance report); Five (5) (2018 seizure report); and Six (6) (audit workpaper reports for both 2018 seizures). R.I. Gen. Laws § 44-20-12 provides that tax is imposed on cigarettes, so the Division properly assessed tax on the seized cigarette products. R.I. Gen. Laws § 44-20-13.2 provides that tax is imposed on other tobacco products, so the Division properly assessed tax on the seized other tobacco products.

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(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 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.

<sup>4</sup> R.I. Gen. Laws § 44-20-51.1 provides as follows:

Civil penalties. (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.

It is undisputed that on October 29, 2019, the Division seized cigarettes from the Taxpayer for which Rhode Island tax had not been paid. Division's Exhibits 11 (2019 compliance report); 12 (2019 seizure report); and 13 (audit workpaper report for 2019 seizure). R.I. Gen. Laws § 44-20-12 provides that tax is imposed on cigarettes, so the Division properly assessed tax on the seized cigarette products.

**D. What Sanctions Should be Imposed**

R.I. Gen. Laws § 44-20-51.1(a) provides that for a second or subsequent offense in a 24 month period, a penalty of not more than twenty-five (25) times the retail value of the cigarettes and/or other tobacco products involved shall be imposed. R.I. Gen. Laws § 44-20-51.1(b) provides that a penalty of not more than five (5) times of the tax or \$1,000 which is greater shall 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.

The Division seeks monetary penalties for the unpaid cigarette and other tobacco products tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b) for the 2018 seizures.

The notices of deficiency for the 2018 seizures admitted as Division's Exhibit Eight (8) represented cigarette tax imposed on cigarettes, cigars, and OTP. The penalties imposed were under (a) and (b) of R.I. Gen. Laws § 44-20-51.1. The penalties for (a) were based on the retail value of the products and were 20 times the retail value, and the penalties for (b) were five (5) times the tax as that was greater than \$1,000. The 2018 seizure represented the Taxpayer's fourth offense in 24 months.<sup>5</sup> Division's Exhibits Four (4) (audit workpapers) and Eight (8) (2018 notices of deficiency).

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<sup>5</sup> The testimony at hearing was it was the fifth offense but the audit workpapers show that the Taxpayer had an offense on September 24, 2016 so 26 months prior to the 2018 seizure. There was then an offense in February 2017, and two offenses in March, 2017 so that the November, 2018 seizure became the fourth offense in 24 months.

The Taxpayer did not appear at hearing. No mitigating factors were shown in relation to the monetary penalties requested for the 2018 seizures. This was not the Taxpayer's first offense. Indeed, it was its fifth offense in 26 months and fourth offense within 24 months. There were many untaxed products seized from the Taxpayer including those with out of state tax stamps. The seizure was related to a Providence police investigation. This matter was not an issue of a mistake or minor violations but rather the Taxpayer was purposely circumventing Rhode Island tax laws related to tobacco. As a consequence, the severity of the violations justified the penalties imposed in the Division's notices of deficiency issued for cigarette tax and for OTP tax in Exhibit Eight (8) at 20 times the retail value of the products and five (5) times the tax owed.

The Division seeks monetary penalties for the unpaid cigarette tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b) for the 2019 seizure.

The notice of deficiency admitted as Division's Exhibit 15 represented the cigarette tax for the 2019 seizure. The penalties imposed were under (a) and (b) of R.I. Gen. Laws § 44-20-51.1. The penalty for (a) was based on the retail value of the products and was 13 times the retail value, and the penalty for (b) was \$1,000 as that was greater than five (5) times the tax owed. The 2019 seizure represented the Taxpayer's second offense in 24 months.<sup>6</sup> Division's Exhibits 13 (audit workpaper) and 15 (2019 notice of deficiency).

The Taxpayer did not appear at hearing. No mitigating factors were shown in relation to the monetary penalties requested for the 2019 seizure. This was not the Taxpayer's first offense. It was its second offense in 24 months which justified the 13 times the retail value. As a consequence, the violation justified the penalties imposed for Division's notice of deficiency

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<sup>6</sup> The prior offense within 24 months from the 2019 seizure was the 2018 seizure.

issued for cigarette tax in Exhibit 15 at 13 times the retail value of the products and \$1,000 rather than the five (5) times the tax owed.

R.I. Gen. Laws § 44-20-8 authorizes the suspension or revocation of cigarette dealer's license. Clearly, the many violations by the Taxpayer of the tobacco taxing statute since 2017 would justify the revocation of the Taxpayer's cigarette dealer's license. However, the evidence is that the Taxpayer no longer has such a license to revoke and is out of business.

The imposition of interest after the nonpayment of a deficiency by its due date is authorized by R.I. Gen. Laws § 44-1-7.<sup>7</sup> While one of the 2018 notices of deficiency included interest, the other two (2) notices of deficiency did not. The Auditor testified that interest has been accruing since the nonpayment of the assessments by the Taxpayer after payment was due. This is consistent with R.I. Gen. Laws § 44-1-7.

## **VI. FINDINGS OF FACT**

1. Cigarettes and other tobacco products for which no tax was paid were seized from the Taxpayer on November 18, 2018.
2. Cigarettes for which no tax was paid were seized from the Taxpayer on October 22, 2019.
3. An Order to Show Cause for the 2018 seizures was issued on May 5, 2019. An Order to Show Cause for the 2019 seizure was issued on January 27, 2021. These matters were consolidated.

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<sup>7</sup> R.I. Gen. Laws § 44-1-7 provides in part as follows:

Interest on delinquent payments. (a) Whenever the full amount of any state tax or any portion or deficiency, as finally determined by the tax administrator, has not been paid on the date when it is due and payable, whether the time has been extended or not, there shall be added as part of the tax or portion or deficiency interest at the rate as determined in accordance with subsection (b) of this section, notwithstanding any general or specific statute to the contrary.

4. A hearing on these matters was scheduled for March 20, 2024, and all parties were notified. 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.

5. The facts contained in Section IV and V are reincorporated 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 § 44-20-12 and R.I. Gen. Laws § 44-20-13.2 on November 18, 2018.

3. The Taxpayer violated R.I. Gen. Laws § 44-20-12 on October 22, 2019.

**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 § 44-20-12, and R.I. Gen. Laws § 44-20-13.2, the Taxpayer owes the tax and penalties assessed by the Division as set forth in the notices of deficiency contained in Division's Exhibits Eight (8) and 15. Finally, the Taxpayer owes the accrued interest pursuant to R.I. Gen. Laws § 44-1-7. Payment shall be made by the 31<sup>st</sup> day from the date of execution of this decision.

Date: April 11, 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: 4/19/24

  
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 20<sup>th</sup> day of April, 2024 a copy of the above Decision and Notice of Appellate Rights was sent by electronic delivery and by first class mail, postage prepaid 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.

