

STATE OF RHODE ISLAND  
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

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

---

**IN THE MATTER OF:**

**Taxpayer.**

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**SC 20-002; SC 20-078  
20-T-001; 20-T-082  
OTP**

**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 January 10, 2020 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in relation to the Taxpayer’s Warwick location and an Order to Show Cause, Notice of Pre-Hearing Conference, and Appointment of Hearing Officer issued on April 1, 2021 to the Taxpayer by the Division for the Coventry location. These matters were consolidated. A hearing was scheduled for March 28, 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 28, 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.

---

<sup>1</sup> Notice of the full hearing was sent by first class and certified mail to the Taxpayer’s address on record with the Division. See testimony. Both the first class mail and certified mail were returned to the Division. Division’s Exhibit 23 (notice of hearing dated January 23, 2024 scheduling the hearing for March 28, 2024 sent to Taxpayer; copies of envelope showing returned to the Division).

## **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 other tobacco products (“OTP”) tax and if so, should any sanctions be imposed.

## **IV. MATERIAL FACTS**

(“Investigator”), Tax Investigator, testified on behalf of the Division. He testified that prior to working for the Division’s Special Investigation Unit (“SIU”), he retired from the Johnston Police Department as a detective major. He testified he and performed a random inspection on October 22, 2019 of the Taxpayer at its Warwick location. He testified that they first checked cigarettes to ensure they were stamped, and then checked the OTP. He testified the Taxpayer was required to keep invoices on the premises, so they seized items that did not match any invoices provided that day. Division’s Exhibits Five (5) and Six (6) (October 22, 2019 compliance report and seizure report); and Seven (7) (November 11, 2019 field audit report).

The Investigator testified on February 19, 2020, he performed a random inspection with of the Taxpayer at its Coventry location. He testified they seized OTP that did not match the invoices provided by the Taxpayer that day. Division’s Exhibits 15 (February 19, 2020 compliance report); 16 (February 19, 2020 seizure report); and 17 (June 24, 2020 field audit report). He testified that about a year later, the Taxpayer provided more invoices but they either were duplicates or did not show the seized products, so those invoices did not change the assessments. Division’s Exhibits 13 and 14 (further invoices); and Eight (8) (supplemental field audit report for the invoices submitted by Taxpayer dated September 10, 2020).

(“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 dealers license and a permit to make sales for both locations from July 1, 2019 to June 30, 2020. Division’s Exhibits Three (3) and Four (4). He testified the Taxpayer was incorporated in 2013 but that was revoked on May 23, 2023. Division’s Exhibits One (1) (articles of incorporation); and Two (2) (Taxpayer’s annual reports from 2019 to 2022; revocation of certification of incorporation). He testified the seizure at the Warwick location was the Taxpayer’s fifth offense. He testified that a notice of deficiency for the 2019 seizure was issued to the Taxpayer for tax owed and penalties. He testified that penalty (a) was calculated at 12 times the retail value of the products because it was the Taxpayer’s second offense in 24 months and in addition, there were no invoices and no OTP-4 filings. He testified that the seizure at the Coventry location was also the Taxpayer’s fifth offense. He testified that a notice of deficiency for the 2020 seizure was issued to the Taxpayer for tax owed and penalties. He testified that penalty (a) was calculated at 13 times the retail value of products because it was the Taxpayer’s second offense in 24 months, and there was hidden contraband, blended product, and no filed OTP returns. He testified the second offenses merited a factor of ten (10) (five (5) times for each offense) for Penalty (a) with each aggravating factor meriting a further factor of one (1). He testified that both deficiencies calculated Penalty (b) at \$1,000. He testified the Taxpayer’s store is now closed, and it has not paid any of the assessments. He testified that the Taxpayer no longer has a cigarette dealer’s license or permit to make sales at retail. He testified the notice of hearing (Division’s Exhibit 23) was sent to the Taxpayer’s last known address on record with the Division. He testified that interest is running on the deficiencies as interest is imposed 30 days from the assessment if no payment is made.

## 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 Omust 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.”<sup>2</sup> Inspections of cigarette dealers are allowed by R.I. Gen. Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1<sup>3</sup> provides for administrative penalties for the

---

<sup>2</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.

\*\*\*

<sup>3</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:

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 the Other Tobacco Products**

The Taxpayer did not appear at hearing. It is undisputed that on October 22, 2019 and February 19, 2020, the Division seized OTP from the Taxpayer for which Rhode Island tax had not been paid. *Supra*. 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.

**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 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 other tobacco products tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b) for the 2019 seizure and the 2020 seizure.

The notices of deficiency for the 2019 seizure and the 2020 seizure admitted as Division's Exhibits 10 and 19 respectively assessed tax on the 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

---

(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.

products and were 12 and 13 times the retail value, and the penalties for (b) were \$1,000 as the greater amount as provided by statute. Both seizures represented the Taxpayer's second offense in 24 months.<sup>4</sup> *Supra*.

The Taxpayer did not appear at hearing. No mitigating factors were shown in relation to the monetary penalties requested for either the 2019 or 2020 seizure. This was not the Taxpayer's first offense. There was testimony in support of the aggravating factors for imposing penalties. As a consequence, the Taxpayer's violations justified the penalties imposed for the Division's notices of deficiency for the OTP seized in 2019 and 2020.

R.I. Gen. Laws § 44-20-8 authorizes the suspension or revocation of 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>5</sup> The Auditor testified that interest has been accruing since the nonpayment of the assessment by the Taxpayer after payment was due. This is consistent with R.I. Gen. Laws § 44-1-7.

## **VI. FINDINGS OF FACT**

1. Other Tobacco Products for which no tax was paid were seized from the Taxpayer's Warwick location on October 22, 2019.

---

<sup>4</sup> Overall, the 2019 seizure was the fifth offense for the Warwick location since 2013 and the 2020 seizure was the fifth offense for the Coventry location since 2013. Division's Exhibits 7 and 17 respectively.

<sup>5</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.

2. Other Tobacco Products for which no tax was paid were seized from the Taxpayer's Coventry location on February 19, 2020.

3. An Order to Show Cause for the 2019 seizure was issued on December 12, 2019. An Order to Show Cause for the 2020 seizure was issued on October 29, 2020. These matters were consolidated.

4. A hearing on these matters was scheduled for March 28, 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 § 44-20-13.2 on October 22, 2019.

3. The Taxpayer violated R.I. Gen. Laws § 44-20-13.2 on February 19, 2020.

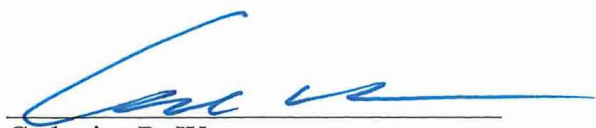
## **VIII. RECOMMENDATION**

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 § 44-20-13.2, the Taxpayer owes the tax and penalties assessed by the Division as set forth in the notices of deficiency contained in Division's Exhibits 10 and 19. 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 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: 4/19/24

  
Neena S. Savage  
Tax Administrator

**NOTICE OF APPELLATE RIGHTS**

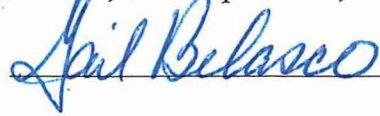
**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:**

**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 2nd day of April, 2024 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and certified mail, return 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.

  
\_\_\_\_\_