

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-14

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

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IN THE MATTER OF:	:	
	:	
	:	SC 23-073; SC 23-074
	:	24-T-009
	:	cigarette and OTP
Taxpayer.	:	

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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 (“Order to Show Cause”) issued on March 29, 2024 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was held on April 24, 2024. The parties were represented by counsel, and they rested on the record.<sup>1</sup>

**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 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”).

**III. ISSUE**

Whether the Taxpayer owes cigarette and/or other tobacco products (“OTP”) tax and if so, should any sanctions be imposed.

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<sup>1</sup> The Taxpayer did not appear, but his attorney appeared. His attorney noted for the record that after he received the Order to Show Cause, his office informed the Taxpayer of the hearing date and time.

#### IV. MATERIAL FACTS

Tax Investigator, Special Investigations Unit (“SIU”), testified on behalf of the Division. He testified that on September 5, 2023, during a routine store inspection, he found contraband tobacco product at a store. He testified that based on previous information received from the Johnston Police Department and otherwise, the SIU had reason to believe that said store’s owner, the Taxpayer, stored tobacco products at his house. Therefore, he testified that the SIU thought that the Taxpayer might try to remove products from his house after the seizure from his store. He testified that the next day, September 6, 2023, he went to observe the Taxpayer’s house. He testified he saw a U-Haul truck parked in the driveway, and people including the Taxpayer were loading boxes into the truck. He testified he called the Johnston police who responded and arrested the Taxpayer and seized cigarettes and other tobacco products. He testified that he and other investigators went to the Johnston police department to inventory the seized tobacco products. He testified that he wrote compliance reports for the cigarette and OTP seizures. Division’s Exhibits One (1) (cigarette and OTP compliance reports dated September 6, 2023); Two (2) (seizure reports); and Ten (10) (arrest report of Taxpayer dated September 12, 2023).

(“Auditor”), Principal Tax Auditor, supervisor of SIU, testified on behalf of the Division. He testified the Taxpayer does not hold either a tobacco dealer’s permit or a tobacco distributor license. He testified this was the Taxpayer’s first offense. He testified the cigarette tax was calculated pursuant to R.I. Gen. Laws § 44-20-12, and the OTP tax was calculated pursuant to R.I. Gen. Laws § 44-20-13.2(a). He testified that for penalty (a) for both assessments, the retail value of the tax was multiplied by a factor of six (6) which represented a factor of five (5) for being a first offence and an additional factor for not having invoices. He testified that penalty (b) is the greater amount of \_\_\_\_\_ or a penalty based on the tax owed. He testified that

as this was the Taxpayer's first offense a factor of one (1) was used to calculate penalty (b) for both assessments. He testified that neither assessment has been paid and interest begins to accrue 30 days after the issuance of the assessment if not paid. Division's Exhibits Three (3) (cigarette audit papers); Four (4) (OTP audit papers); and Five (5) (notices of assessment for cigarette and OTP).<sup>2</sup>

## 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).

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<sup>2</sup> The Taxpayer's attorney did not cross-examine witnesses and did not call any witnesses.

## B. Relevant Statutes

R.I. Gen. Laws § 44-20-12<sup>3</sup> imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2<sup>4</sup> imposes tax on “other tobacco products.” R.I. Gen. Laws § 44-20-51<sup>5</sup> provides for administrative penalties for the violation of the tax laws.

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<sup>3</sup> R.I. Gen. Laws § 44-20-12 provides 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>4</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.

(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.

(b) Any dealer having in his or her possession any other tobacco products with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after coming into possession of the other tobacco products in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due. Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

<sup>5</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.

**C. Whether Tax is Owed on the Cigarettes and/or Other Tobacco Products**

It was undisputed that on September 6, 2023, the Johnston police seized cigarettes and OTP from the Taxpayer for which no Rhode Island tax had 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. R.I. Gen. Laws § 44-20-12 provides that tax is imposed on cigarettes, so the Division properly assessed tax on the seized cigarettes. There was no showing that the Division improperly calculated the tax owed pursuant to the applicable statutes.

**D. What Sanctions Should be Imposed**

R.I. Gen. Laws § 44-20-51.1(a) provides that for a first offense in a 24 month period, a penalty of not more than ten (10) 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 the tax due or \$1,000 whichever 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 nonpayment of tax on the seized cigarettes and other tobacco products pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b). The penalties for (a) used a factor of six (6) times the retail value representing five (5) for first offense and one (1) for no invoices, and the penalties for (b) used a factor of one (1) for the tax due as a greater amount as provided by statute. A factor of one (1) was used for penalty (b) as this seizure was the Taxpayer's first offense.

The Taxpayer did not show any mitigating factors in relation to the monetary penalties requested for the seizure. The penalties imposed are in line with the statutory penalties for a first

offense. As a consequence, the Taxpayer's violations justified the penalties imposed for the Division's notices of deficiency for the seized cigarettes and OTP.

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>6</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 by the police from the Taxpayer on September 6, 2024.
2. Cigarettes for which no tax was paid were seized by the police from the Taxpayer on September 6, 2024.
3. An Order to Show Cause was issued on March 29, 2024.
4. A hearing on this matter was held on April 24, 2024 with the parties both represented by counsel who rested on the record.
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.*, R.I. Gen. Laws § 44-20-1 *et seq.*, and the Hearing Regulation.

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<sup>6</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. The Taxpayer violated R.I. Gen. Laws § 44-20-12 and R.I. Gen. Laws § 44-20-13.2 on September 6, 2023.

**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 § 44-20-12, R.I. Gen. Laws § 44-20-13.2, and R.I. Gen. Laws § 44-20-51.1, the Taxpayer owes the tax and penalties assessed by the Division for the seized cigarettes and OTP as set forth in the notices of deficiency contained in Division's Exhibits Five (5). Additionally, 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: May 16, 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: 5/21/24

  
Neena S. Savage  
Tax Administrator



**NOTICE OF APPELLATE RIGHTS**

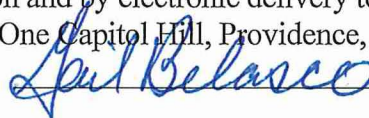
**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:**

**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 22nd day of May, 2024 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by electronic delivery to the Taxpayer's attorney'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.

  
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