

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**

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**IN THE MATTER OF:**

**SC 21-082; 21-T-143  
OTP**

**Taxpayer.**

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**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 June 30, 2021 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). Division’s Exhibit 11. That matter was resolved by a Stipulation of Settlement and Dismissal (“Stipulation”) dated May 31, 2024. Division’s Exhibit 14. On July 29, 2024, the Division issued a Notice of Hearing and Appointment of Hearing Officer (“Notice”) to the Taxpayer based on the Division’s allegation the Taxpayer breached the Stipulation. Division’s Exhibit 16. The Notice scheduled a hearing for August 29, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,<sup>1</sup> a hearing was held on August 29, 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

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<sup>1</sup> The Notice was sent by first class mail, postage prepaid and certified mail, return receipt requested. The certified mail was returned to the Division. Division’s Exhibits 16 (Notice) and 17 (returned certified mail as unclaimed, unable to forward). The first class mail was not returned. The address used by the Division was the last known address on record with the Division and was the address used by the Taxpayer in the Stipulation. Division’s Exhibit 14. Notice of the August hearing was also sent by electronic delivery to the Taxpayer’s email address on record with the Division. Division’s Exhibit 15.

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

## **IV. MATERIAL FACTS**

The Stipulation provided that on May 17, 2021, the Division inspected the Taxpayer's business for compliance with tax laws and seized other tobacco products ("OTP"). On June 9, 2021, the Division issued a notice of deficiency determination to the Taxpayer for OTP tax and penalties. Division's Exhibits 11 (Order to Show Cause) and Nine (9) (notice of deficiency).

Principal Tax Auditor, testified on the Division's behalf. He testified the Taxpayer held a cigarette dealer's license and retail sales permit for 2020 to 2021. Division's Exhibits Two (2) and Three (3). He testified that pursuant to the Stipulation, the Taxpayer was to pay the settlement amount by May 31, 2024 and to date, the Taxpayer has not paid that amount or any amount. He testified the Stipulation provides that if the Taxpayer defaults in its payment, the Taxpayer will owe the entire deficiency assessment. He testified the Taxpayer owes which is the total initial assessment. He testified that interest begins to accrue 30 days after the due date of a payment. He testified that the store at issue is now out of business.<sup>2</sup>

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<sup>2</sup> During the pendency of this hearing, the Taxpayer provided a copy of purchase of sales agreement indicating the Taxpayer sold the store on or about November 23, 2020. However, the Taxpayer did not cancel her account with the Division until July 30, 2021. Division's Exhibits 10 (purchase and sales agreement) and 12 (form RI-2625 account cancellation form dated July 30, 2021).

## 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 § 44-20-13.2 imposes tax on “other tobacco products.”<sup>3</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>4</sup>

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<sup>3</sup> 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 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.

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<sup>4</sup> 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:

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. Stipulation**

In order to settle the notice of deficiency issued on June 9, 2021 to the Taxpayer for tax owed for OTP, the Taxpayer entered into the Stipulation and agreed to pay a reduced amount of the total amount of the deficiency. However, the Taxpayer agreed to pay the full amount of the deficiency if she defaulted on the Stipulation.

Paragraph 17 of said Stipulation provides as follows:

DEFAULT. Failure of Taxpayer to abide by any of the requirements of this Stipulation shall be a 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.

### **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 deficiency in relation to the tax owed on OTP. The testimony at hearing was the Taxpayer did not pay any of the amount owed under the Stipulation. Division's Exhibit 14. The Taxpayer was to pay the settlement amount by May 31, 2024. It is undisputed that the Taxpayer did not pay the settlement amount by May 31,

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(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.

2024 or by the day of the hearing. It is undisputed the Taxpayer breached the Stipulation by its nonpayment of the amount due.

**E. What Does Taxpayer Owe**

Pursuant to paragraph 17 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 deficiency being owed immediately. Therefore, the Taxpayer shall pay assessment amount for the OTP (tax and penalties) issued on June 9, 2021. In addition, as testified at hearing, 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>

**VI. FINDINGS OF FACT**

1. On June 30, 2021, the Division issued the Order to Show Cause to the Taxpayer. The Order to Show Cause related to the seizure of other tobacco products from the Taxpayer by the Division. That matter was resolved by a Stipulation dated May 31, 2024.

2. On July 29, 2024, the Division issued a notice of hearing to the Taxpayer alleging the Taxpayer breached the Stipulation.

3. A hearing was scheduled a hearing for August 29, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing, a hearing was held on August 29, 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.

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<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.

5. The Taxpayer failed to make the settlement payment by May 31, 2024 as required by the Stipulation.

6. 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 breached the May 31, 2024 Stipulation by failing to timely pay the settlement amount.

3. As provided for in the Stipulation, the Taxpayer owes the full amount of tax and penalties imposed in the notice of deficiency issued to the Taxpayer as well as any accrued interest pursuant to R.I. Gen. Laws § 44-1-7, R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Laws § 44-20-13.2, 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, and R.I. Gen. Laws § 44-20-13.2, the Taxpayer breached the Stipulation so now owes the tax and penalties assessed by the Division in its June 9, 2021 notice of deficiency as well as any accrued interest pursuant to R.I. Gen. Laws § 44-1-7.

Date:

September 12, 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: 9/19/24

Neena S. Savage  
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 September, 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.

Sail Belasco



## 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: 9/19/24

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Tax Administrator

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Paul Belasco