

STATE OF RHODE ISLAND  
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-21

**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 22-086; 21-T-116  
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 January 19, 2023 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 (“First Stipulation”) dated March 10, 2023. Division’s Exhibit 11. On December 21, 2023, the Division issued a Notice of Hearing and Appointment of Hearing Officer (“First Notice”) to the Taxpayer based on the Division’s allegation the Taxpayer breached the First Stipulation. Division’s Exhibit 12. The First Notice was resolved by an Amended Stipulation of Settlement and Dismissal (“Second Stipulation”) dated January 10, 2024. Division’s Exhibit 14. On August 6, 2024, the Division issued a Notice of Hearing and Appointment of Hearing Officer (“Second Notice”) to the Taxpayer based on the Division’s allegation the Taxpayer breached the Second Stipulation. Division’s Exhibit 16. The Second Notice scheduled a hearing for September 4, 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 September 4, 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.

## **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 stipulations with the Division, and if so, should any sanctions be imposed.

## **IV. MATERIAL FACTS**

The First Stipulation provided that on November 4, 2022, the Division inspected the Taxpayer’s business for compliance with tax laws and seized untaxed other tobacco products (“OTP”). The First Stipulation also indicated that at the time of the inspection, the Taxpayer did not hold a cigarette dealer’s license nor a sales tax permit. On November 21, 2022, the Division issued a notice of assessment to the Taxpayer for OTP tax and penalties. On November 21, 2022, the Division issued a notice of license suspension to the Taxpayer. Division’s Exhibits 11 (Order to Show Cause); Seven (7) (notice of license suspension); and Eight (8) (notice of assessment). The Second Stipulation recited the same facts but provided the Taxpayer was to pay the full amount of the assessment rather than the reduced amount under the First Stipulation.

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<sup>1</sup> The Second Notice was sent by first class mail, postage prepaid and certified mail, return receipt requested to the Taxpayer’s principal place of business address and store location address. Division’s Exhibits One (1) (Secretary of State records for Taxpayer) and 16 (Second Notice sent to both addresses; and United States Post Office certified mail tracking sheets showing that both copies of the Second Notice were picked up at the post office).

Principal Tax Auditor, testified on the Division's behalf. He testified the Taxpayer did not hold either a cigarette dealer's license or a retail sales permit at the time of the inspection. He testified that pursuant to the First Stipulation, the Taxpayer was to pay the settlement amount by June 15, 2023. He testified the Taxpayer did make any payments under the First Stipulation. He testified the First Stipulation provided that if the Taxpayer defaulted, the Taxpayer would owe the full amount of the assessment. He testified the Taxpayer signed the Second Stipulation which provided the Taxpayer would pay the full amount of the assessment by February 12, 2024, but the Taxpayer did not make any payments by the due date or thereafter. He testified the Second Stipulation provided for a five (5) day cigarette dealer license suspension if the Taxpayer, in future, obtained such a license. He testified that interest has begun to accrue on the payment owed. He testified that the Taxpayer's store is now out of business.

## 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>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 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 assessment issued on November 21, 2022 to the Taxpayer for tax owed for OTP, the Taxpayer entered into the First 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 it defaulted on the Stipulation. See Paragraph 19 of First Stipulation.

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<sup>2</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>3</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:

(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.

The Taxpayer did not pay the amount due under the First Stipulation and entered into a Second Stipulation to pay the entire amount of the assessment by February 12, 2024.

Paragraph 19 of Second Stipulation provides as follows:

DEFAULT. Failure of Taxpayer to abide by any of the requirements of this Amended Stipulation shall be a default under the Amended Stipulation. In the event Taxpayer defaults under the Amended 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 Second Stipulation**

The Taxpayer did not appear at hearing. The Taxpayer entered into the Second Stipulation and agreed to pay the entire amount of the assessment after breaching the First Stipulation. The testimony at hearing was the Taxpayer did not pay any of the amount owed under the Second Stipulation. Division's Exhibit 14. The Taxpayer was to pay the settlement amount by February 12, 2024. It is undisputed that the Taxpayer did not pay the settlement amount by February 12, 2024 or by the day of the hearing. It is undisputed the Taxpayer breached the Second Stipulation by its nonpayment of the amount due.

**E. What Does Taxpayer Owe and any Sanctions**

Pursuant to the Second Stipulation, the Taxpayer agreed that in the event of a breach, it would pay the original amount of the notice of assessment. Therefore, the Taxpayer shall pay the assessed amount for the OTP (tax and penalties) issued on November 21, 2022 and as set forth in the Second Stipulation. In addition, as testified at hearing, the imposition of interest after the nonpayment of an assessment by its due date is authorized by R.I. Gen. Laws § 44-1-7.<sup>4</sup>

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<sup>4</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.

The Taxpayer agreed in the Second Stipulation to a suspension of its cigarette dealer's license on any dates determined by the Division. The Taxpayer did not hold such a license at the time of the Second Stipulation and does not currently hold such a license. The Division requested that if the Taxpayer ever obtains a cigarette dealer's license again, such a license should be suspended for five (5) days. The undersigned assumes if in future, the Taxpayer applies for a cigarette dealer's license, it would at the very least be unable to obtain a cigarette dealer's license without satisfying the amount owed in this decision and complying with a five (5) day suspension such as delaying the effective date of issuing such a license.

## **VI. FINDINGS OF FACT**

1. On January 19, 2023, 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 the First Stipulation dated March 20, 2023.

2. On December 21, 2023, the Division issued the First Notice to the Taxpayer alleging the Taxpayer breached the First Stipulation. That matter was resolved by the Second Stipulation dated January 10, 2024.

3. On August 6, 2024, the Division issued the Second Notice to the Taxpayer alleging the Taxpayer breached the Second Stipulation.

4. A hearing was scheduled for September 4, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing, a hearing was held on September 4, 2024 before the undersigned. The Taxpayer is in default for failing to appear at the hearing.

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

6. The Taxpayer failed to make the settlement payment by February 12, 2024 as required by the Second 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 breached the Second Stipulation.

3. As provided for in the Second Stipulation, the Taxpayer owes the full amount of tax and penalties imposed in the notice of assessment and as provided for in the Second Stipulation 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 is in breach of the Second Stipulation so now owes the tax and penalties assessed by the Division in its November 21, 2022 notice of assessment and as provided for in the Second Stipulation as well as any accrued interest pursuant to R.I. Gen. Laws § 44-1-7.<sup>5</sup> The payment is due by the 30<sup>th</sup> day after the execution of this decision.

Date:

September 18, 2024

  
Catherine R. Warren  
Hearing Officer

<sup>5</sup> If, in future, the Taxpayer seeks to obtain a cigarette dealer's license, the Division will consider whether the Taxpayer has complied with this decision and the applicability of the agreed to five (5) day cigarette dealer license suspension.



**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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Neena S. Savage  
Tax Administrator

**NOTICE OF APPELLATE RIGHTS**

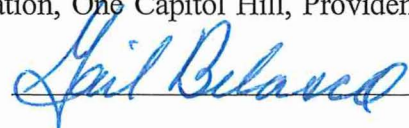
**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:**

**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 addresses 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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Paul Belarco