

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-22

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

IN THE MATTER OF:

SC 22-079; 22-T-098
OTP

Taxpayer.

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 November 14, 2022 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 (“Stipulation”) dated March 27, 2023. Division’s Exhibit 11. On August 19, 2024, the Division issued a new notice (“Notice”) of hearing to the Taxpayer based on the Division’s allegation the Taxpayer breached the Stipulation. Division’s Exhibit 15. The Notice scheduled a hearing for September 12, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held on September 12, 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.

¹ The Notice was sent by first class mail, postage prepaid and certified mail, return receipt requested. The certified mail was delivered to the Taxpayer. Division’s Exhibits 15 (Notice and United States Post Office tracking print-out showing delivery). 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 11.

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 2023 Stipulation with the Division, and if so, should any sanctions be imposed.

IV. MATERIAL FACTS

The March 27, 2023 Stipulation provided that on September 14, 2022, the Division inspected the Taxpayer's business (a convenience store) for compliance with tax laws and seized untaxed other tobacco products ("OTP"). On October 6, 2022, the Division issued a notice of assessment for OTP tax and penalties. On October 6, 2022, the Division issued a notice of cigarette dealer's license suspension for five (5) days. Division's Exhibits Ten (10) (Order to Show Cause); Four (4) (notice of license suspension); and Five (5) (notice of assessment).

Principal Tax Auditor, testified on the Division's behalf. He testified the Taxpayer held a cigarette dealer's license and retail sales permit for 2022 to 2023. Division's Exhibits Two (2) and Three (3). He testified the Taxpayer did not make any payments of the amount owed pursuant to the Stipulation, and the Stipulation provides that if the Taxpayer defaults in his payments, he will owe the entire assessment. He testified the Taxpayer now owes the initial assessment minus a credit from his personal income tax refund. He testified the Stipulation provided that a five (5) day suspension of the Taxpayer's cigarette dealer's permit be put in abeyance pending compliance with the Stipulation. He testified 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.”² Inspections of tobacco dealers are allowed by R.I. Gen. Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1³

² 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.

³ 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 assessment and notice of cigarette dealer's license suspension both issued on October 6, 2022 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 assessment. However, the Taxpayer agreed to pay the full amount of the assessment if he defaulted on the Stipulation.

Paragraph 19 of the Stipulation's terms provides as follows:

DEFAULT. Failure of Taxpayer to abide by any of the requirements of this Stipulation shall be in 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 2022 notice of assessment in relation to the tax owed on OTP. The Stipulation provided for two (2) payment dates of April 30, 2023 and May 31, 2023. Division's Exhibit 11. The testimony at hearing was the Taxpayer made no payments on the amount owed under the Stipulation. It was undisputed the Taxpayer made no payments as

(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.

required by the Stipulation. It was undisputed the Taxpayer breached the Stipulation by his nonpayment of the required payment. Thus, the Taxpayer breached the Stipulation.

E. What Does Taxpayer Owe and Should Any Sanctions be Imposed

Pursuant to paragraph 19 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 assessment being owed immediately. Therefore, the Taxpayer shall pay the amount owed for the assessment for OTP (tax and penalties) issued on October 6, 2022.

In the event of a breach of the Stipulation, the Taxpayer agreed in the Stipulation to a five (5) day suspension of its cigarette dealer's license on any dates determined by the Division. The Taxpayer no longer holds a cigarette dealer's license. Division's Exhibit 13 (Division records). 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 November 14, 2022, the Division issued the Order to Show Cause to the Taxpayer. The Order to Show Cause related to the seizure of untaxed OTP from the Taxpayer by the Division. That matter was resolved by a Stipulation dated March 27, 2023.

2. On August 19, 2024, the Division issued a notice of hearing to the Taxpayer alleging that the Taxpayer breached the Stipulation.

3. A hearing was scheduled a hearing for September 12, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing, a hearing was

held on September 12, 2024 before the undersigned. The Taxpayer is in default for failing to appear at the hearing.

4. It is undisputed the Taxpayer owed the tax assessed on the seized OTP.
5. The Taxpayer failed to make the payments in 2023 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 violated the March 27, 2023 Stipulation.
3. As provided for in the Stipulation, the Taxpayer owes the full amount of taxes and penalties imposed in the October 6, 2022 notice of assessment issued to the Taxpayer pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Laws § 44-20-13.2, and R.I. Gen. Laws § 44-20-51.1 as well as any interest pursuant to R.I. Gen. Laws § 44-1-7.


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 its 2023 Stipulation so now owes the full tax and penalties assessed by the Division in its initial notice of assessment as well as any accrued interest pursuant to R.I. Gen. Laws § 44-1-7.⁴ The Taxpayer shall pay the tax and penalties owed by the 31st day after the execution of this decision.

⁴ 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.

Date: September 26, 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: 10/7/24


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 7th day of October 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 Matthew Williamson, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

