

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-23

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

IN THE MATTER OF:

**SC 22-092; 23-T-002
refusal to inspect**

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 January 3, 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 (“Stipulation”) dated February 17, 2023. Division’s Exhibit 11. On August 20, 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 14. The Notice scheduled a hearing for September 16, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held on September 16, 2024 before the undersigned. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing*

¹ The Notice was sent by first class mail, postage prepaid and certified mail, return receipt requested. Division’s Exhibit 14 (Notice and United States Post Office tracking sheet print-out showing delivery of the certified mail). 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. Notice of the hearing date was also given to the Taxpayer by email. Division’s Exhibit 13.

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

IV. MATERIAL FACTS

The February 17, 2023 Stipulation provided that on November 16, 2022, the Division attempted to inspect the Taxpayer’s business for compliance with tax laws; however, the Taxpayer refused to allow the Division to properly conduct an inspection. On December 13, 2022, the Division issued a notice of assessment of a penalty to the Taxpayer for refusing inspection and issued a notice of cigarette dealer’s license suspension for ten (10) days as this was the Taxpayer’s second offense. The Taxpayer settled this matter by agreeing to pay a reduced amount of the penalty and serve a one (1) day suspension. Division’s Exhibits Ten (10) (Order to Show Cause); Five (5) (notice of license suspension); Six (6) (notice of assessment); and 11 (Stipulation).

Principal Tax Auditor, testified on the Division’s behalf. He testified the Taxpayer currently holds a cigarette dealer’s license. He testified the Taxpayer did not make any payments of the amount owed pursuant to the Stipulation, and the Stipulation provided that if the Taxpayer defaulted in its payment, it would owe the entire assessment. He testified the Stipulation provided the Taxpayer’s cigarette dealer’s license was suspended for five (5) days with one (1) day to be served and the other four (4) days to be put in abeyance pending compliance with the Stipulation. He testified that he did not believe the Taxpayer served the one (1) day suspension.

He testified the Taxpayer is still in business and is still selling tobacco. He testified that interest has not accrued on the Taxpayer's non-payment because it is a penalty and not taxed owed.

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

Inspections of tobacco dealers are allowed by R.I. Gen. Laws § 44-20-40.1.² R.I. Gen. Laws § 44-20-51.1³ provides for administrative penalties for the violation of the tax laws. In

² R.I. Gen. Laws § 44-20-40.1 provides as follows:

Inspections.(a) The administrator or his or her duly authorized agent shall have authority to enter and inspect, without a warrant during normal business hours, and with a warrant during nonbusiness hours, the facilities and records of any manufacturer, importer, distributor, or dealer.

(b) In any case where the administrator or his or her duly authorized agent, or any police officer of this state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes or other tobacco products in violation of this chapter, the administrator, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes or other tobacco products.

³ R.I. Gen. Laws § 44-20-51.1 provides as follows:

(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.

addition, R.I. Gen. Laws § 44-20-8⁴ 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 December 13, 2022 to the Taxpayer, 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 it 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.

In relation to the suspension, the Stipulation provided as follows:

Suspension. Taxpayer agrees that the ten (10) day suspension of its License will be reduced to a five (5) day suspension of its License, with a one (1) day suspension of its license to be served on February 23, 2023 and the remaining four (4) days will be held in abeyance for six (6) months upon the effective date of this Stipulation Agreement. However, if Taxpayer commits a subsequent violation of the provisions of R.I. Gen. Laws §§ 44-20-1 *et seq.* or violates the terms and conditions of this Stipulation, then the License shall be suspended for the four (4) days without further hearing on dates that will be determined by the Tax Division. (bolding omitted). (p. 2).

(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.

⁴ R.I. Gen. Laws § 44-20-8 provides as follows:

Suspension or revocation of license. The tax administrator may suspend or revoke any license under this chapter for failure of the licensee to comply with any provision of this chapter or with any provision of any other law or ordinance relative to the sale or purchase of cigarettes or other tobacco products. The tax administrator may also suspend or revoke any license for failure of the licensee to comply with any provision of chapter 19 of title 44 and chapter 13 of title 6, and, for the purpose of determining whether the licensee is complying with any provision of chapter 13 of title 6, the tax administrator and his or her authorized agents are empowered, in addition to authority conferred by § 44-20-40, to examine the books, papers, and records of any licensee. *** Any person aggrieved by the suspension or revocation may apply to the administrator for a hearing as provided in § 44-20-47, and may further appeal to the district court as provided in § 44-20-48.

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. The Stipulation provided for payment by March 31, 2023.⁵ 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 required by the Stipulation. It was undisputed the Taxpayer breached the Stipulation by its nonpayment of the required payment. It was also undisputed that the Taxpayer did not serve the one (1) day suspension provided for in the Stipulation so also breached the Stipulation in relation to the suspension of the Taxpayer's cigarette dealer's license. 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 its refusal to allow inspection issued on December 13, 2022.

In the Stipulation, the Taxpayer agreed to a five (5) day suspension of its cigarette dealer's license with only (1) day to serve and the remainder held in abeyance pending compliance with the Stipulation. The Stipulation provided the Taxpayer would serve the additional four (4) day suspension if the Taxpayer breached the Stipulation. The Division requested the additional four (4) day suspension be imposed. However, there was no evidence that the Taxpayer complied with the one (1) day suspension provided for in the Stipulation. The Taxpayer breached the Stipulation not only by not paying the amount owed but by not serving the suspension. As noted in paragraph

⁵ The date in the Stipulation has a typographical error of the year 2022 but as the Stipulation was signed in February, 2023, the due date would be 2023.

19 of the Stipulation, “[u]pon breach by Taxpayer, the Tax Division may invoke any further remedies under Rhode law that it deems appropriate.”

As the Taxpayer did not serve the one (1) day suspension and since it is also in breach of the Stipulation by its nonpayment of the settlement amount (now more than one (1) year late) and this is its second offence, it is appropriate for the Taxpayer to serve the full ten (10) day suspension set forth in the notice of license suspension for its second offence. Division’s Exhibits Five (5) and 11.

VI. FINDINGS OF FACT

1. On January 3, 2023, the Division issued the Order to Show Cause to the Taxpayer. The Order to Show Cause related to the Taxpayer’s refusal to allow inspection. That matter was resolved by a Stipulation dated February 17, 2023.

2. On August 20, 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 September 16, 2024 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing, a hearing was held on September 16, 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 2022 assessment.

5. The Taxpayer failed to make the payment in 2023 as required by the Stipulation.

6. The Taxpayer did not serve the cigarette dealer license suspension required by the 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 violated the February 17, 2023 Stipulation.
3. The Taxpayer owes the full amount of the assessment imposed in the 2022 notice of assessment issued to the Taxpayer pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Laws § 44-20-40.1, and R.I. Gen. Laws § 44-20-51.1.
4. The Taxpayer shall serve a ten (10) day suspension of its cigarette dealer's license.

VIII. RECOMMENDATION

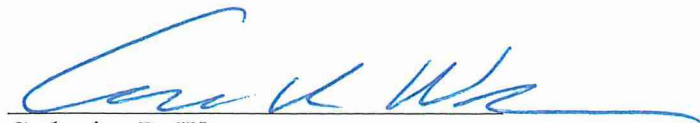
Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Laws § 44-20-51.1, and R.I. Gen. Laws § 44-20-40.1, the Taxpayer is in breach of its 2023 Stipulation so now owes the full assessment set forth in the initial notice of assessment and as provided for in the Stipulation. The Taxpayer shall pay the assessment owed by the 31st day after the execution of this decision.

The Taxpayer's cigarette dealer's license shall be suspended for ten (10) days. The suspension shall begin on the 31st day after the execution of this decision. The terms of compliance with such a suspension are set forth in the Stipulation, and the Taxpayer must comply with those requirements for the suspension and, of course, is subject to inspection during the suspension (as well at any other time that it is open for business).

Date:

September 30, 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
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, R.I. 02908.

John J. Deegan