

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-24

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

---

**IN THE MATTER OF:**

**SC 22-053; 22-T-065  
other tobacco products**

**Taxpayer:**

---

**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 issued on July 15, 2022 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was scheduled for October 2, 2024 at which time the Taxpayer did not appear at the hearing. Since the Taxpayer was adequately noticed of hearing,<sup>1</sup> a hearing was held on October 2, 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 Division was represented by counsel who rested on the record.

---

<sup>1</sup> Notice of the October 2, 2024 hearing was sent by first class and certified mail to the Taxpayer at the Taxpayer’s last known address on record with the Division. The certified and first class mail were returned to the Division. Division’s Exhibit 14 (notice of hearing); 15 (copy of first class and certified mail envelopes returned to Division); and Two (2) (business application and registration form with Taxpayer’s address). Notice of the hearing was also sent to the Taxpayer by email. The Taxpayer corresponded with the Division and the undersigned by email and requested the hearing be held in October. Notice of the October 2, 2024 hearing date was then also sent to the Taxpayer by email. Division’s Exhibit 13 (email correspondence from Taxpayer requesting hearing in October and email scheduling hearing for October 2, 2024).

## **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 owes other tobacco products tax and if so, should any sanctions be imposed.

## **IV. MATERIAL FACTS**

Tax Investigator, Special Investigation Unit, testified on behalf of the Division. He testified he conducted an inspection of the Taxpayer on June 9, 2022. He testified there were boxes of Backwood cigars for sale that had mixed manufacturing dates. He testified the Backwood cigars' manufacturing dates were from May and June, 2021, but the invoices provided by the Taxpayer for those products were from May and June, 2022. He testified that based on his experience, the tobacco distributors would not sell products that were over one (1) year old. He testified the Taxpayer was trying to pass off 2022 invoices for 2021 manufactured products. He testified that Backwood cigars were untaxed OTP so they seized those products. He testified that at the time of the inspection, Backwood cigars were very popular so the time between the manufacture to retail sale would have been about four (4) weeks so the manufacturing date should have been about a month before the sale date. Division's Exhibits Three (3) and Four (4) (cigarette dealer license and retail sales permit for July 1, 2021 to June 30, 2022); Five (5) and Six (6) (complaint report and seizure report each dated June 9, 2022); Seven (7) (2022 invoices produced by the Taxpayer); Eight (8) (audit report dated June 22, 2022); Nine (9) (notice of license revocation hand delivered June 29, 2022); and Ten (10) (notice of assessment dated June 28, 2022).

Principal Tax Investigator, testified on behalf of the Division. He testified untaxed OTP was seized, and it was the Taxpayer's first offense. He testified the statutory OTP tax was applied and penalty (a) was calculated at eight (8) times the retail value representing a factor of five (5) for a first offense and three (3) aggravating factors. He testified that penalty (b) was because that sum was greater than one (1) time the tax owed. He testified that interest began to accrue after 30 days of no payment. He testified the Taxpayer is no longer in 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." Inspections of cigarette dealers are allowed by R.I. Gen. Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1<sup>2</sup> provides for administrative penalties for the violation of the tax laws.

---

<sup>2</sup> R.I. Gen. Laws § 44-20-51.1 provides as follows:

**C. Whether Tax is Owed on Other Tobacco Products**

The Taxpayer did not appear at hearing. It is undisputed that on June 9, 2022, the Division seized OTP from the Taxpayer for which Rhode Island tax had not been paid. Division's Exhibits Five (5); Six (6); and Eight (8). R.I. Gen. Laws § 44-20-13.2 provides that tax is imposed on OTP, so the Division properly assessed tax on the seized OTP.

**D. What Sanctions Should be Imposed**

R.I. Gen. Laws § 44-20-51.1(a) provides that for a first offense in 24 months, 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 of the tax 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 unpaid OTP tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b) for said seizure. Penalty (a) represented a penalty of a factor of eight (8) representing a factor of five (5) for the first offense plus three (3) aggravating factors. The three (3) aggravating factors were no OTP-4 form<sup>3</sup> filings, blended products, and missing invoices. Division's Exhibit Eight (8). Penalty (b) was for \$1,000 as that was greater than five (5) times the

---

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.

<sup>3</sup> The form required to be filed with the Division when cigarette dealer purchases tobacco from unlicensed distributor.

tax due as mandated by statute. The Taxpayer did not appear at hearing. No mitigating factors were shown in relation to the monetary penalties requested for the seizure. Thus, the Taxpayer owes the assessed penalties.

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>4</sup>

## **VI. FINDINGS OF FACT**

1. Other tobacco products for which no tax was paid were seized from the Taxpayer on June 9, 2022.
2. An Order to Show Cause, Notice of Pre-Hearing Conference, and Appointment of Hearing Officer was issued on July 15, 2022 in relation to said seizure and request for hearing.
3. A hearing on these matters was scheduled for October 2, 2024, and all parties were notified. The Taxpayer did not appear at the hearing. As the Taxpayer was adequately notified of hearing, a hearing was held on October 2, 2024. The Division was represented by counsel and rested on the record. The Taxpayer is in default for failing to appear at the hearing.
4. 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.* and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer violated R.I. Gen. Laws § 44-20-13.2 on June 9, 2022.

---

<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.

**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 owes the tax and penalties assessed by the Division as set forth in the notice of assessment contained in Division's Exhibit 10. The Taxpayer also 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: October 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: October 21, 2024

  
Neena S. Savage  
Tax Administrator

**NOTICE OF APPELLATE RIGHTS**

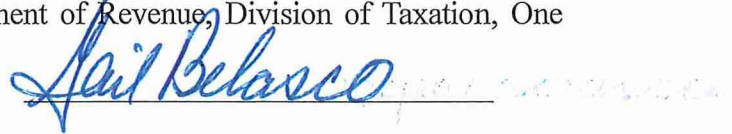
**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:**

**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 21<sup>st</sup> day of October, 2024 a copy of the above Decision and Notice of Appellate Rights was sent by electronic delivery and by first class mail, postage prepaid and certified mail, return 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.

  
Paul Belasco