

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-29

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

IN THE MATTER OF:

**SC 23-003; 23-T-011
SC 23-018; 23-T-025
cigarette tax**

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 January 30, 2023 and an Order to Show Cause, Notice of Pre-Hearing Conference, and Appointment of Hearing Officer (collectively “Order to Show Cause”) issued on March 10, 2023 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to requests for hearing. These two (2) matters were consolidated. A hearing was held on November 21, 2024. The parties were represented by counsel, and they 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 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”).

III. ISSUE

Whether the Taxpayer owes cigarette tax and if so, should sanctions be imposed.

IV. MATERIAL FACTS

The Taxpayer stipulated to the two (2) cigarette seizures (in 2022 and 2023) at issue and agreed that it owed tax on the seized products but did not agree to monetary penalties sought by the Division nor to the revocation of its cigarette dealer's license.

("Auditor"), Principal Tax Auditor, testified on behalf of the Division. He testified the total assessment for the December 29, 2022 seizure was representing in tax owed with penalty (a) being and penalty (b) being . He testified the statutory cigarette tax was applied and penalty (a) was calculated with a factor of seven (7) with five (5) being the factor for first offense within 24 months and two (2) aggravating factors of no invoices and hiding product. He testified that penalty (b) was calculated as five (5) times the cigarette tax due as the greater amount. Division's Exhibits Five (5) (assessment); Six (6) (compliance report); Seven (7) (seizure report); and Eight (8) (audit report).

The Auditor testified the January 18, 2023 seizure was the Taxpayer's sixth overall offense, and a notice of revocation was issued to the Taxpayer for its cigarette's dealer's license. He testified that a notice of revocation is always issued after a sixth offense because that means the taxpayer is a repeat offender. He testified the total assessment for the 2023 seizure was representing in tax owed with penalty (a) being and penalty (b) being . He testified for the 2023 violation, the tax was assessed pursuant to the statute and since this was the second offense within 24 months, penalty (a) was calculated with a factor of 11 representing ten (10) for second offense and one (1) aggravating factor for out of state cigarette sales. He testified penalty (b) was assessed at as that was the greater amount under the statute. He testified interest is owed after 30 days of nonpayment. Division's Exhibits 11 (notice of revocation); 12 (assessment); 13 (compliance report); 14 (seizure report); and 15 (audit report).

On cross-examination, the Auditor testified a notice of revocation is issued after a taxpayer's sixth offense and does not time depend on a time frame. He testified that in reviewing the Taxpayer's list of prior offenses (Division's Exhibit Eight (8)), in 2014, the Taxpayer paid the assessment and there was no suspension. He testified in 2017, the Taxpayer settled the matter and served a four (4) day suspension. He testified the 2018 matter is listed as abated and withdrawn, and usually when a matter is withdrawn, it would not be a violation, and the record shows the 2018 matter was withdrawn. He testified the 2020 assessment was paid in full, and the taxpayer served a three (3) day suspension. He testified there have been no violations since January, 2023. He testified the 2023 seizure was of nine (9) packs of Marlboro for which Massachusetts tax had been paid. He testified there was no evidence for the 2023 seizure whether the Taxpayer did or did not pay Massachusetts tax. He testified they just know the Taxpayer did not pay Rhode Island tax on the 2023 seizure. He testified the 2022 seizure was of empty and open packs of cigarettes, and they could not tell if Rhode Island tax was paid because the Taxpayer could have put cigarette packs in the cellophane that had Rhode Island tax stamps on them.

Tax Investigator, testified on behalf of the Division. He testified he and another inspector conducted the 2022 inspection, and they found open cigarette packs in a pizza oven and in a pizza box in a cooler. He testified the open packs contained 16 to 19 cigarettes in each pack and the foil top was removed from each pack which was unusual. He testified the cellophane that would be around each pack had been opened. He testified the cigarettes in the packs were crushed or bent like they were forced into the packs. On cross-examination, he testified all the packs were open and the seizure report states there were 87 open full packs but none of the packs were actually full with 20 cigarettes. He testified the other 11 packs were empty and had no cigarettes in them. When asked if the Taxpayer could have been taking cigarettes out of the packs,

he testified the Taxpayer should not have been selling single cigarettes and should not have open packs under R.I. Gen. Laws § 44-20-39. He testified he could not tell if the open packs had Rhode Island tax stamps or not.

testified on behalf on the Taxpayer.¹ He testified the partially filled and empty Newport packs that were seized in 2022 were purchased from J. Polyp or Duffy. He testified that in the three (3) years from 2022 through 2024, he spent in purchasing cigarettes and cigars. He testified as to J. Polyp records for 2022 to 2024 showing those purchases and to a printout from J. Polyp that showed he paid in 2022 in prepaid cigarette tax. He testified the records showed the purchase of Newport packs. He testified that if he was purchasing over worth of cigarettes and cigars, he would not have purposely purchased out of state tobacco. Taxpayer's Exhibits One (1) (J. Polyp print out for 2022, 2023, 2024 sales) and Two (2) (2023 J. Polyp prepaid tax amount). He testified the 2023 seizure was purchased from the Duffy distributor, and he picked them up from Duffy and did not realize the packs had Massachusetts stamps. He testified that he understands that he cannot sell cigarettes with Massachusetts stamps, but cigarette tax in Massachusetts and Rhode Island are the same, so he was not benefitting from the sale. He testified since January 2023, the inspectors have come four (4) times to his store, and there have been no violations. There was no cross-examination.

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

¹ This witness is listed as the vice president and secretary of the Taxpayer. Division's Exhibit One (1) (secretary of state's record for Taxpayer corporation).

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 § 44-20-12 imposes a tax on cigarettes sold and R.I. Gen. Laws § 44-20-51 provides for administrative penalties for the violation of the tax laws.²

C. Arguments

The Division requested that the tax and penalties assessments be upheld and sought revocation of the Taxpayer’s cigarette dealer’s license.

² R.I. Gen. Laws § 44-20-12 provides as follows:

Tax imposed on cigarettes sold. A tax is imposed on all cigarettes sold or held for sale in the state. The payment of the tax to be evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such cigarettes. Any cigarettes on which the proper amount of tax provided for in this chapter has been paid, payment being evidenced by the stamp, is not subject to a further tax under this chapter. The tax is at the rate of two hundred twelve and one-half (212.5) mills for each cigarette.

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

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.

The Taxpayer argued the revocation notice was issued after six (6) offenses irrespective of the context and the time frame of the offenses. It also argued that since the 2018 violation was withdrawn, this was not the Taxpayer's sixth offense so even under the Division's rules, these seizures are not a revocable offense as the 2023 violation is the fifth offense. It argued there was no evidence that tax was not paid on the 2023 seizure in that Massachusetts tax was paid, and there was no evidence that tax was not paid in 2022. It argued that there should be a reasonable penalty imposed, and these (2) offenses do not merit revocation.

D. Whether Tax is Owed on the Cigarettes

On December 29, 2022 and January 18, 2023, the Division seized cigarettes from the Taxpayer for which Rhode Island tax had not been paid. *Supra.* R.I. Gen. Laws § 44-20-12 provides that tax is imposed on cigarettes, so the Division assessed tax on the seized cigarettes. There was no showing the Division improperly calculated the tax owed pursuant to the applicable statute, and the Taxpayer agreed tax was owed on the seized products.³ Thus, the Taxpayer owes the assessed tax.

E. What Sanctions Should be Imposed

1. Penalties (a) and (b)

R.I. Gen. Laws § 44-20-51.1(a) provides that for a first offense in a 24 month period, a penalty of not more than ten (10) times the retail value of the cigarettes and/or other tobacco products involved "shall" be imposed. The statute further provides that for a second or subsequent offense in a 24 month period, a penalty of not more than 25 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 the tax due or \$1,000 whichever is greater shall be

³ Some of the packs were empty and the others contained some cigarettes but were not full packs of 20. However, the calculations were made on each pack being a complete pack. Division's Eight (8).

imposed. Penalty (b) does not reset the clock for violations within a 24 month period as does penalty (a). 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 nonpayment of tax on the seized cigarettes pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b). For the 2022 seizure, penalty (a) used a factor of seven (7) times the retail value representing a factor of five (5) for a first offense within 24 months and a factor of two (2) for the aggravating factors of not having invoices and hiding products. Penalty (b) was calculated as five (5) times the cigarette tax due as the greater amount by statute. For the 2023 seizure, penalty (a) used a factor of 11 times the retail value representing a factor of ten (10) for the second offense within 24 months and an aggravating factor of having out of state cigarettes. Penalty (b) was calculated as \$1,000 as the greater amount by statute. The penalties imposed are in line with the statutory penalties for a first offense and second offense in the last 24 months for penalty (a) and for penalty (b). As a consequence, the Taxpayer's violations justified the penalties imposed in the Division's notices of assessment for the seized cigarettes.

The imposition of interest after the nonpayment of a deficiency by its due date is authorized by R.I. Gen. Laws § 44-1-7.⁴

2. Whether Dealer's License Should be Revoked

Along with the monetary penalties that "shall" be imposed under the statute, R.I. Gen. Laws § 44-20-8 provides the suspension or revocation of a cigarette dealer's license "may" be

⁴ 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.

imposed. R.I. Gen. Laws § 44-20-51.1(c) provides that when determining the administrative penalty to be imposed, mitigating and aggravating factors including severity, history, and intent shall be considered. The suspension and revocation statute does not contain the same kind of mitigating and aggravating factors as those found in the administrative penalty statute. *Supra*. It also does not provide a look back of two (2) years when determining first or subsequent offences. Instead, it provides that a license may be suspended or revoked for failure to comply with that chapter or with any other law or ordinance relative to the sale or purchase of cigarettes or other tobacco products and for failure to comply with R.I. Gen. Laws § 44-19-1 *et seq.* or R.I. Gen. Laws § 6-13-1 *et seq.* Nonetheless, in considering whether a licensee's violations merit either a suspension or a revocation in addition to the mandatory monetary penalties, an agency does not have unbridled discretion but rather must determine the appropriate penalty in light of the relevant facts. Not all violations merit a revocation and not all violations merit a suspension of the same amount of time.

In *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971), the Supreme Court construed a license renewal statute that did not provide specific statutory violations as grounds for denial but rather provided the license renewal could be denied for "cause." In that situation, the Court found that in "establishing cause as the controlling standard, the Legislature obviously did not intend to confer upon the licensing authority a limitless control or to permit the exercise of an unbridled discretion." *Chernov* at 287. The Court found that such administrative action needed to be based on legally competent evidence, and a review of such an action would only be "to ascertain whether the action being reviewed was so arbitrary or capricious as to constitute an abuse of discretion, whether there was any legal evidence to support it, and whether the licensing proceeding was otherwise affected by an error of law." *Id.* at 288. In other words, the Court would

decide whether there was legally competent evidence to support the denial of a renewal application or whether the action was so arbitrary or capricious that it would be an abuse of discretion. The Superior Court has discussed the same kind of considerations for determining whether a suspension or revocation of a license is an appropriate sanction for a licensee's violations.

Under *Rocha vs. Public Utilities Commission*, 694 A.2d 722 (R.I. 1997), a court cannot substitute its judgment for what should be an appropriate sanction but instead the Court will determine if there was legally competent evidence to support an agency's decision. Thus, in *Rocha*, the Court upheld the revocation of license as there was legally competent evidence to support the finding of the violation that was a basis for revocation under the statute.

A Superior Court decision, *Jake and Ella's Inc. v. Department of Business Regulation*, 2002 WL977812 (R.I. Super.), discussed *Rocha's* holding that as long as there is an evidentiary basis for an agency's finding, a court cannot overturn a sanction because it disagrees with the sanction. However, the Court discussed how in general hearing officers must apply concepts of proportionality to sanctions. The Court found that "[t]here are times when the sanction imposed by an agency, while permitted by law, is so arbitrary and extreme that it constitutes a clear abuse of discretion" so that under the arbitrary and capricious standard contained in R.I. Gen. Laws § 42-35-15 of the Administrative Procedures Act ("APA"), the Court can reverse the lower court's decision. *Jake* at 5. The Court found there are two (2) components to administrative decision: 1) a determination of the merits of the case; and 2) determination of the sanction and while the former is mainly factual, the latter not only involves ascertainment of factual circumstances but the application of administrative judgment and discretion. The Court indicated that factors to be considered in weighing the severity of a violation should include the number and frequency of the

violations, the real and/or potential danger to the public posed by the violation(s), history of any prior violations and sanctions, and other relevant facts to determining an appropriate sanction.

In 2014, the Superior Court in reviewing a Department of Health's licensee's sanction on appeal cited to the factors considered in *Jake* for sanctions and discussed whether it had been properly applied by an agency director. *Blais v. Department of Health*, 2014 WL 7368789 (R.I.Super.). A more recent Superior Court case, *John Hope Settlement House, Inc. v. DCYF et al.*, 2017 WL 2021402 (R.I.Super.), also discussed *Rocha* and the applicability of *Jake* when determining administrative penalties for a licensee and what should be considered. In that case, the Superior Court discussed what would be the appropriate sanction by the Department of Children, Youth, and Families on a day care licensee for three (3) violations. The Court found there was not enough information in the record to make a determination about sanctions as the Court could not tell if the violations were intermittent technical violations or a "pattern of inability to comply with substantive Department policies." *John Hope* at 6. The Court remanded the matter so the record could be supplemented so the Court could make a determination on sanctions.⁵

⁵ *John Hope* at 6 found as follows:

Finally, the Center contends that despite the three violations found, the Hearing Officer erred by affirming DCYF's penalty—the revocation of its day care license. Specifically, John Hope argues that these three violations do not merit the "death sentence" that revocation would bring. . . . To that end, the Center points to *Jake & Ella's* . . . In *Jake & Ella's*, the Superior Court vacated the revocation of a liquor license because "the sanction imposed [was] excessive and disproportionate as a matter of law." *Id.* at *5. There, the Court held that "implementation of that sanction [revocation] under the facts of this case was clearly an abuse of discretion, ignoring concepts of proportionality that hearing officers should be expected to apply." *Id.* at *6.

On the other hand, the Court is mindful of *Rocha v. State Pub. Utils. Comm'n*, 694 A.2d 722 (R.I. 1997), heavily cited to in *Jake & Ella's*, which stated that "[t]he Superior Court is limited in its review of an agency decision to examining the record to determine whether it contains some or any legal evidence therein to support the finding made by the division." *Rocha*, 694 A.2d at 727. This Court cannot "merely disagree[] with the sanction decided upon by the division and reverse[] the division's decision." *Id.* at 726 (internal citations omitted).

Nevertheless, based solely on the three violations before the Court, the Court could find the revocation to be "so arbitrary and extreme that it constitutes a clear abuse of discretion" in the vein of *Jake & Ella's*, 2002 WL 977812 at *5. This Court lacks a sufficiently-developed record to make such a conclusion. Of the three violations, two were technical and only one potentially could have threatened the safety and welfare of the children in John Hope's care. ***

If the Department's revocation was based on the cumulative effect of the violations which led

For an administrative appeal, the Division is not subject to the APA. When its decisions are appealed, its appeals are *de novo* to District Court. See R.I. Gen. Laws § 44-20-48. Thus, on appeal, the court would not be deciding whether a sanction was arbitrary and capricious, but rather the court, if it found violations after a *de novo* hearing, would determine the appropriate sanction. The suspension and revocation statute provides the statutory grounds for such an action but not every violation will merit a suspension of the same length of time or a revocation. There are several factors to be considered - even if they are not specifically delineated in the suspension and revocation statute - to assure that a sanction that is imposed is not disproportionate. The imposition of a suspension or revocation is not subject to unbridled discretion. Such a determination includes consideration of relevant facts to the licensee and its violations. Therefore, in determining the appropriate sanction for the Taxpayer's violations, it is relevant to consider the Taxpayer's disciplinary history, the seriousness of violations, the type of violations, and the effect on the public among the relevant factors to be considered.

In 2014, the Taxpayer was assessed for other tobacco products ("OTP") seizure and paid with no suspension requested. In 2014, the Taxpayer was assessed for an OTP seizure and paid with a four (4) day suspension. In 2020, the Taxpayer was assessed for an OTP seizure and paid \$1,500 and served a three (3) day suspension with seven (7) days abated. For a 2018 incidence, the Division's records indicated that it was abated and withdrawn as the Auditor testified. Thus, there was no violation in 2018, and the 2022 seizure was the fourth offense, and the 2023 seizure was the fifth offense. Division's Exhibit Eight (8)

to the several probationary periods, the nature of John Hope's previous violations is unclear from the record. While the record hints at technical violations, see R. Ex. 9, there may be more substantive violations that were not mentioned. Whether the decision of the Department to revoke the license was arbitrary, capricious, or an abuse of discretion depends on whether John Hope has committed intermittent technical violations of DCYF regulations or has shown a pattern of inability to comply with substantive Department policies. The record here lacks the information needed for the Court to make such a determination.

(disciplinary record). The assessment for the 2022 seizure was . . . representing . . . in tax owed with penalty (a) being . . . and penalty (b) being The assessment for the 2023 seizure was representing . . . in tax owed with penalty (a) being . . . and penalty (b) being . . . Division's Exhibits Five (5) and Eight (8). The Taxpayer has been inspected four (4) times since the 2023 seizure without any violations.

The only evidence regarding the prior violations is the date and type of violation (OTP and not cigarette) and the total assessed amount and the settled amount as well as if a suspension was imposed in addition to the mandatory monetary penalties. It is not known if the Taxpayer had all OTP records but never filed the required OTP-4 tax form or if the Taxpayer not only did not pay the OTP tax but failed to keep purchase records, etc. What is known is the second offense in 2017 merited a four (4) day suspension and the third offense in 2020 merited a three (3) suspension in addition to the mandatory monetary penalties indicating the seriousness of the violations.

The 2022 seizure was of empty and partially filled packs of cigarettes that were in Rhode Island stamped cellophane but had been opened. As the packs were opened, it cannot be proved the packs had Rhode Island tax paid on them. The Taxpayer argued that he orders so much Rhode Island cigarettes that these packs would have had Rhode Island tax paid on them. He did not provide an explanation for why the packs were opened and hidden. The evidence also included that the cigarettes in the packs were forced in those packs so were not necessarily the original cigarettes in the seized packs. There was speculation the cigarettes could have been being sold individually. Indeed, the 2023 compliance report indicated that a customer of the store exited with a "loosie," e.g. single cigarette. Division's Exhibit 13. It could be the packs were hidden because the store was selling individual cigarettes. The Taxpayer testified the invoices he provided showed

the purchase of Newport 100's (the packs seized). The invoices provided did not show the specific purchases made by the Taxpayer but rather just showed the total amount of purchases.

The hiding of the packs and the packs having been opened indicated the Taxpayer probably was using them to sell individual cigarettes. However, the sale of "loosies" is not before the undersigned. What is before the undersigned is the issue of whether tax was paid on the seized cigarette packs. While the cellophane that the 2022 seized packs were in had Rhode Island tax stamps, it cannot be determined that tax was paid because the packs had been opened.

The evidence for the 2023 violation was the Taxpayer accidentally picked up Massachusetts taxed cigarettes so that nine (9) packs of Massachusetts tax stamped cigarettes were seized. The Taxpayer did not provide specific invoices for those purchases. However, the Taxpayer did not buy out of state lower taxed cigarettes and sell them in an attempt to evade the cigarette tax and make a profit. The evidence was that Rhode Island and Massachusetts have the same cigarette tax.

The Division asserted that revocation should be imposed. However, the Division testified that revocation is requested after a sixth offense, and these are the Taxpayer's fourth and fifth offenses. The Taxpayer's prior violations merited a four (4) day suspension in 2017 and a three (3) day suspension in 2020. In *In the Matter of Taxpayer*, 2024 WL 47298216 (R.I. Div. Tax), the Division imposed a 30 day suspension of a cigarette dealer's license after a taxpayer had six (6) violations in ten (10) years and previously had a suspension of license as well as prior violations including a recent violation and during the inspection at issue, that taxpayer interfered with the inspection. That decision found the purchase of the products were part of pattern of willful noncompliance by the Taxpayer over several years, and it had failed to institute corrective measures after prior violations, and it failed to maintain records.

In 2022, the Taxpayer could not prove that tax had been paid on Rhode Island stamped cigarette packs as the packs were opened. The Taxpayer provided proof that it purchased a large amount of products from Rhode Island based distributor, so it is likely the 2022 products were Rhode Island tax stamped. Nonetheless, the Taxpayer could not prove that because they were opened. The 2023 violation was based on an error by the Taxpayer in that it picked up Massachusetts' stamped cigarettes and failed to realize its error. The 2022 violation was the fourth violation in eight (8) years. The 2023 violation is more akin to a technical violation rather than a deliberate evasion of Rhode Island tax for profit.

The violations demonstrate the Taxpayer has over time failed to pay the appropriate tobacco taxes. Revocation could be merited prior to a sixth offense dependent on the type of offense, e.g. very egregious. However, revocation is disproportionate to the violations at issue. The facts at issue in *In the Matter of Taxpayer*, 2024 WL 47298216 (R.I. Div. Tax) which imposed a 30 day suspension are not in play here. These are the fourth and fifth offenses in almost ten (10) years. The Taxpayer did not interfere with either inspection. The fifth offense is more akin to a technical violation rather than a pattern of noncompliance. However, similar to the taxpayer in that administrative matter, this Taxpayer had prior short suspensions.

Based on the foregoing, a 14 day suspension is imposed on the Respondent's cigarette dealer's license.

VI. FINDINGS OF FACT

1. Cigarettes for which no tax was paid were seized by the Division from the Taxpayer on December 29, 2022 and January 18, 2023.
2. The Taxpayer holds a cigarette dealer's license.
3. An Order to Show Cause was issued on January 30, 2023.

4. A hearing on this matter was held on November 21, 2024 with the parties both represented by counsel who rested on the record.

5. 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.*, R.I. Gen. Laws § 44-20-1 *et seq.*, and the Hearing Regulation.

2. The Taxpayer violated R.I. Gen. Laws § 44-20-12 on December 29, 2022 and January 18, 2023.


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 § 44-20-12, and R.I. Gen. Laws § 44-20-51.1, the Taxpayer owes the tax and penalties assessed by the Division as set forth in the notices of assessment contained in Division's Exhibits Five (5) and 12. Additionally, the Taxpayer owes the accrued interest pursuant to R.I. Gen. Laws § 44-1-7. Payment shall be made by the 31st day from the date of execution of this decision.

Pursuant to R.I. Gen. Laws § 44-20-8, the License shall be suspended for 14 days to begin on the 31st day after the execution of this decision.

Date: December 17, 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: 12/23/24

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 23rd day of December, 2024 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by electronic delivery to the Taxpayer's attorney'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.

Paul Belasco