

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-27

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

IN THE MATTER OF:

**SC 22-091; 22-T-122
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 December 28, 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 November 13, 2024 at which time the Taxpayer did not appear at the hearing. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held on November 13, 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.

¹ By letters dated October 11, 2024, notices of the hearing were sent to the Taxpayer’s addresses on record with the Division. The Taxpayer’s attorney withdrew before hearing. Division’s Exhibit 15. The notice of hearing was sent to the store location by first class and certified mail with the certified mail being returned. Division’s Exhibit 17. The notice of hearing was also sent by first class and certified mail to the address of Taxpayer individual who requested the hearing, and the certified mail was delivered. Division’s Ten (10) (Taxpayer’s request for hearing); and Exhibit 18 (notice and United States Post Office tracking sheet showing certified mail delivery). The notice of hearing was also sent to the address of the individual who signed the Taxpayer’s articles of incorporation. Division’s Exhibit One (1) (articles of incorporation); and 19 (notice of hearing sent by first class and certified mail with both first class and certified mail being returned to sender). See also testimony of the auditor below.

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 (“OTP”) tax and if so, should any sanctions be imposed.

IV. MATERIAL FACTS

Tax Investigator, Tax Investigator, Special Investigations Unit, testified on behalf of the Division. He testified he conducted an inspection of the Taxpayer on October 21, 2022, and he seized untaxed OTP for which there were no invoices. Division’s Exhibit Six (6) (seizure report). He testified the Taxpayer’s store is no longer in business.

Principal Tax Auditor, testified for the Division. He testified the Taxpayer did not hold a valid permit to make sales at retail nor a valid cigarette dealer’s license at the time of the inspection. He testified this was the Taxpayer’s second offense. He testified a notice of assessment was sent to the Taxpayer. He testified the Taxpayer was assessed the statutory tax for the OTP and cigars. He testified penalties were imposed with penalty (a) being calculated with a factor of 13 representing ten (10) for a second offence and three (3) aggravating factors of no invoices, no permit to make sales at retail, and no cigarette dealer’s license. He testified that penalty (b) was calculated as two (2) times the tax due as a second offense and the greater amount under the statute. Division’s Exhibits Seven (7) (audit report including violation history) and Nine (9) (notice of assessment dated November 23, 2024).

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” and R.I. Gen. Laws § 44-20-51.1² provides for administrative penalties for the violation of the tax laws. Inspections of cigarette dealers are allowed by R.I. Gen. Laws § 44-20-40.1.

² R.I. Gen. Laws § 44-20-13.2 provides in part as follows:

Tax imposed on other tobacco products, smokeless tobacco, cigars, and pipe tobacco products.

(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.

(b) Any dealer having in his or her possession any other tobacco products with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after coming into

C. Whether Tax is Owed on Other Tobacco Products

The Taxpayer did not appear at hearing. It is undisputed that on October 21, 2022, the Division seized OTP from the Taxpayer for which Rhode Island tax had not been paid. Division's Exhibits Six (6); Seven (7); and Nine (9). 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. 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. 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 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.

possession of the other tobacco products in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due. Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

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 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 13 representing a factor of ten (10) for the second offense plus three (3) aggravating factors. The three (3) aggravating factors were no invoices, no permit to make sales at retail, and no cigarette dealer's license. Penalty (b) was for two (2) times the tax due as the second offense and the greater amount 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 § 44-1-7.³

VI. FINDINGS OF FACT

1. OTP for which no tax was paid was seized from the Taxpayer on October 21, 2022.
2. An Order to Show Cause, Notice of Pre-Hearing Conference, and Appointment of Hearing Officer was issued on December 28, 2022 in relation to said seizure and request for hearing.
3. A hearing was scheduled for November 13, 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 November 13, 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.

³ 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.

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 October 21, 2022.

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 Nine (9). The Taxpayer also 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.

Date: December 4, 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: 12/17/24


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 19th day of December, 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 addresses 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.

