

STATE OF RHODE ISLAND  
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2025-04

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

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**IN THE MATTER OF:**

**SC 23-068; 23-T-075  
cigarette tax**

**Taxpayer.**

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**DECISION**

**I. INTRODUCTION**

The above-entitled matter came for hearing pursuant to an Amended Order to Show Cause, Notice of Pre-Hearing Conference, and Appointment of Hearing Officer (“Amended Order to Show Cause”) issued on October 24, 2023 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was held on December 12, 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 the 2023 assessment and, if so, should sanctions be imposed.

**IV. MATERIAL FACTS**

(“Inspector”), Tax Investigator, testified on behalf of the Division. He testified that he and his partner conducted an inspection of the Taxpayer on September 14, 2023 at 10:00 a.m., and the store was open and serving customers. He testified that a cigarette dealer

license and a permit to make sales at retail were not on display at the store. He testified they requested invoices from the clerk on duty, and the employee did not know where the invoices were kept. He testified they tried to find the invoices behind the counter but could not find any. He testified they requested the key to a locked room, and the employee gave them a key, but it did not work on the room's lock. He testified they were unable to access the room. He testified they verified the cigarettes on display had valid Rhode Island stamps. He testified there were other tobacco products ("OTP") which they were unable to verify without invoices, but they gave the Taxpayer the benefit of the doubt and did not seize it and told the clerk that if they had seized the OTP, the Taxpayer would have five (5) days to provide invoices, and no invoices were ever provided. Division's Exhibits Six (6) (compliance report) and Seven (7) (audit report).

On cross-examination, the Inspector testified the employee let them in and allowed them to look behind the counter for invoices. He testified the employee did not try to stop their inspection. He testified they wanted to get in the room because they knew from previous inspections, tobacco products were stored there. He testified that he did not remember if they previously found illegal tobacco in that room. He testified the employee did give them a key, but it was not the right key. He testified that he recognized the owner at the hearing, but he did not remember if she ever refused a prior inspection. He testified they told the employee that they needed the paperwork, and the store could provide the Division with the invoices within five (5) days. He testified they did not contact the owner about the invoices. He testified the invoices were not provided within five (5) days, so a notice of assessment was issued. He testified the key provided was not the correct key but there was no action taken by the employee to stop them from inspecting the store.

Principal Tax Auditor, testified on behalf of the Division. He testified a cigarette dealer's license was issued on October 20, 2023 to the Taxpayer so at the time of the inspection, the Taxpayer did not have a valid cigarette dealer's license. Division's Exhibit Three (3). He testified the inspectors were not able to complete a full inspection since they were unable to access the room and records as required. He testified that this is the Taxpayer's tenth offense, so a notice of revocation of dealer's license was sent to the Taxpayer. He testified a notice of assessment of        representing a penalty pursuant to R.I. Gen. Laws § 44-20-51.1(b) was issued to the Taxpayer. Division's Exhibits Four (4) (revocation) and Five (5) (assessment). He testified no interest accrued on the assessment as it is a penalty and not tax owed. He testified a temporary sales permit was issued to the Taxpayer on September 16, 2023 so the Taxpayer did not have a sales permit at the time of the inspection. Division's Exhibit Two (2). On cross-examination, he testified the Taxpayer's prior violations were resolved, the Taxpayer has not had a violation since 2019, and he does not believe any of the prior violations were for denials of inspection.

      testified on behalf of the Taxpayer. She testified she is the Taxpayer's owner. She testified the employee on duty was new at the time of the inspection and had been working there for about a month. She testified the key to the office is kept behind the counter, and she does not know why the employee did not find the key, and why she gave the wrong key to the inspectors. She testified that cigarettes are kept in said room, but they were legal cigarettes. She testified that after the inspection, her employee told her the inspectors had come but never mentioned providing the Division with invoices. She testified she never told the employee not to let the inspectors in. On cross-examination, she testified that after inspection, she made sure to tell all the employees where the key is located and to give it to any inspectors.

## 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 § 44-20-12 imposes a tax on cigarettes sold. R.I. Gen. Law § 44-20-13.2<sup>1</sup> imposes tax on other tobacco products and requires records to kept on premises. Inspections of

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<sup>1</sup> 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.

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(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 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.

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. In addition, R.I. Gen. Laws § 44-20-8<sup>3</sup> provides for the suspension or revocation of a cigarette dealer's license.

### **C. Arguments**

The Division argued the Taxpayer's cigarette dealer's license should be revoked due to the Taxpayer's noncompliance on September 14, 2023 when Division inspectors were unable to complete an inspection, and that was the Taxpayer's tenth offense. It argued that it is not alleging the Taxpayer intentionally tried to commit the offense, but the Taxpayer has had nine (9) prior offenses, and the Taxpayer has not learned its lesson and its cigarette dealer's license should be revoked and the penalty upheld.

The Taxpayer argued there was no attempt by the Taxpayer to prevent the inspection. It argued that no action was taken to stop the entry of the inspectors, and there was no obstruction of

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<sup>2</sup> 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.

<sup>3</sup> R.I. Gen. Laws § 44-20-8 provides in part 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.

the inspection. It argued the only problem was a new employee gave the inspectors the wrong key. It argued the employee might not have known or might not have been trained properly, but she did not try to stop the inspection, and the Taxpayer did not have a history of refusing inspections. It argued the inspectors were allowed in, and the Taxpayer just did not have the paperwork and the inspectors could not get into the room. The Taxpayer argued that it would pay the penalty and perhaps a suspension is merited but not a revocation.

**D. Whether the Taxpayer Violated the Statute, and if so, Whether it owes Penalty (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. 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. 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.

R.I. Gen. Laws § 44-20-40.1 authorizes the Division to conduct inspections. R.I. Gen. Laws § 44-20-51.1(a) authorizes that penalties can be imposed for anyone refusing to comply with a duty imposed upon him or her by the chapter. R.I. Gen. Laws § 44-20-13.2 provides that records are to be kept on the premises. The Taxpayer had a duty to keep the invoices on it premises. The Taxpayer had a duty to allow the inspectors access to the licensed premises. The Division’s inability to access the room during the inspection and the Taxpayer’s failure to have invoices that are to be kept on the premises are violations of R.I. Gen. Laws § 44-20-51.1(a). Therefore, the assessment for the inability of the inspectors to complete an inspection of the statutory minimum penalty of           pursuant to R.I. Gen. Laws § 44-20-51.1(b) was properly assessed.

### **E. 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 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.<sup>4</sup>

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<sup>4</sup> *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

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 2013, the Taxpayer was assessed \_\_\_\_\_ for a cigarette seizure and paid \_\_\_\_\_ and served no suspension.

Again in 2013, the Taxpayer was assessed \_\_\_\_\_ for a cigarette seizure and paid \_\_\_\_\_ and served no suspension.

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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 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.

In 2015, the Taxpayer was assessed for other tobacco products (“OTP”) and paid and served no suspension.

In 2017, the Taxpayer was assessed for a cigarette seizure and paid and served a 17 day suspension.

Again in 2017, the Taxpayer was assessed for an OTP seizure and paid and served a 17 day suspension.

Again, in 2017, the Taxpayer was assessed for an OTP seizure and paid and served a 17 day suspension.

In 2018, the Taxpayer was assessed for an OTP seizure and paid and served a 17 day suspension.

Again in 2018, the Taxpayer was assessed for an OTP seizure and paid and served a two (2) day suspension.

In 2019, the Taxpayer was assessed for an OTP seizure and paid and served no suspension as a 20 day suspension was held in abeyance. Division’s Exhibits Seven (7) (audit report).

The only evidence regarding the prior violations is the date and type of violation, e.g. whether cigarette or OTP, and the total assessed amount and the settled amount as well as if a suspension was imposed in addition to the mandatory monetary penalties. Thus, it is not known if the cigarette violations were due to purposely purchasing out of state lower taxed cigarettes for resale or erroneously taking delivery of an untaxed cigarette product. 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.

The Taxpayer had two (2) violations in 2013 and one in 2015 none of which merited a suspension. However, the Taxpayer had three (3) violations in 2017 all of which merited 17 day suspensions. The Taxpayer then had another violation in 2018 and served another 17 day suspension. The second 2018 violation merited a two (2) day suspension, and the 2019 violation merited no suspension as the 20 day suspension was held in abeyance. Certainly, the Taxpayer violations and frequency of violations between 2013 and 2017 are troubling and most likely contributed to the 17 day suspensions in 2017 and 2018.

Inspections are key statutory provision to ensure cigarette dealers' compliance with their tax obligations. In this matter, the Taxpayer did not refuse the inspectors entry. Indeed, the inspectors were allowed to look for the invoices even though the invoices were not on the premises. The inspectors were given the wrong key to the room by the Taxpayer's employee. Obviously, employees should be aware of where the invoices are as they are statutorily required to be kept on the premises. The cigarettes the inspectors found were legally taxed. The inspectors were not able to access the room and were not given invoices. It is troubling as well that the Taxpayer was selling tobacco products without a current cigarette dealer's license and permit to make sales at retail. The inspectors noted that those documents were not on display as required, but apparently did not realize that both were expired or else should have seized the cigarettes for sale. It is also true the Taxpayer rectified both omissions within a month of the inspection.

The inspectors were unable to complete their inspection. This is the Taxpayer's tenth offense. Ten (10) offenses certainly would seem to be evidence of incorrigibility; however, the Taxpayer has not had any violations since 2019. Indeed, it appears that after the Taxpayer had nine (9) violations in six (6) years (2013 to 2019) including three (3) in 2017, the Taxpayer

improved its ability to comply with the tax statutes. Nonetheless, the failed inspection is concerning since the Taxpayer was not vigilant in maintaining its improved compliance.

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 that taxpayer over several years, and it failed to institute corrective measures after prior violations, and failed to maintain records.

While the Taxpayer did not provide invoices after the inspection, it is unclear if that was the directive given to the Taxpayer. The testimony at first indicated the clerk was told that if the Division had seized the OTP, the Taxpayer would have had to provide invoices and none were provided. On cross-examination, the testimony was the Taxpayer was told to provide invoices within five (5) days. It is unclear from the testimony whether the clerk was told to provide invoices even though the OTP was not seized. Obviously, the invoices should have been on the premises. The evidence at hearing was not that the clerk purposely gave the inspectors the wrong key but that she did not know where the key was located. She allowed the inspectors to look for the invoices behind the counter. She did not refuse them entry. She did not block them. She did not tell them not to conduct the inspection. Rather, the inspectors were unable to complete the inspection because of the issue with the key and the missing invoices.

While ten (10) offenses are certainly a high number of offenses, this matter would look different if this was the tenth offense in two (2) or three (3) or four (4) years. In that situation, it could be inferred the Taxpayer was unable to come into compliance and that its continuous

repetitive noncompliance justified revocation. It would also be a different scenario if the Taxpayer refused the inspectors entry and prevented them from starting an inspection. Instead, there has been no violations for four (4) years, and this violation is not related to untaxed cigarettes but rather an inspection that could not be completed due more to a clerk's lack of knowledge than any attempt to stop the inspection. After the four (4) instances of 17 day suspensions in 2017 and 2018, the Taxpayer received a two (2) day suspension in 2018 and no suspension in 2019. Presumably, the 2018 and 2019 violations were not serious as they did not merit longer suspensions despite only being one (1) year and two (2) years after the three (3) serious 2017 violations and being the same year and one (1) year after the serious 2018 violation.

After four (4) years of no violations, and the violation being a failure to complete an inspection, it has not been shown that the Taxpayer failed to take corrective action regarding its records. A pattern of noncompliance has not been established. A revocation of dealer's license would be disproportionate to this violation. Nonetheless, this is the Taxpayer's tenth violation which merits the imposition of a suspension especially in light of its serious past violations.

Based on the foregoing, a seven (7) day suspension is imposed on the Taxpayer's cigarette dealer's license.

## **VI. FINDINGS OF FACT**

1. On September 14, 2023, the Division inspectors were unable to complete a compliance inspection at the Taxpayer's store.
2. An Amended Order to Show Cause was issued on October 24, 2023.
3. A hearing on this matter was held on December 12, 2024 with the parties both represented by counsel who rested on the record.
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.*, R.I. Gen. Laws § 44-20-1 *et seq.*, and the Hearing Regulation.
2. The Taxpayer violated R.I. Gen. Laws § 44-20-51.1(a) on September 14, 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 § 44-20-4, and R.I. Gen. Laws § 44-20-51.1, the Taxpayer owes the penalty assessed by the Division as set forth in the notice of assessment contained in Division's Exhibit Five (5). Payment shall be made by the 31<sup>st</sup> day from the date of execution of this decision.

Pursuant to R.I. Gen. Laws § 44-20-8, the License shall be suspended for seven (7) days to begin on the 31<sup>st</sup> day after the execution of this decision.

Date:

January 10, 2025

  
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:

January 14, 2025

  
Neena S. Savage  
Tax Administrator



### NOTICE OF APPELLATE RIGHTS

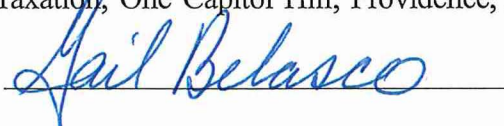
**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:**

**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 14<sup>th</sup> day of January, 2025 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 John Beretta, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

A handwritten signature in blue ink, reading "Gail Belasco", is written over a horizontal line.