

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2025-11

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

IN THE MATTER OF:	:	
	:	
	:	SC 24-046; -047; 24-T-009
	:	cigarette tax and 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 (“Order to Show Cause”) issued on February 5, 2025 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was held on March 17, 2025. The Division was represented by counsel, and the Taxpayer was *pro se*. The parties 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*.

III. ISSUE

Whether the Taxpayer owes the 2024 assessments for tobacco products.

IV. MATERIAL FACTS

Tax Investigator, testified on behalf of the Division. He testified he conducted a random inspection of the Taxpayer on November 12, 2024 along with an inspector. He testified they identified themselves to the clerk and found rolling papers

and cones without tax stamps when they are statutorily defined as cigarettes and require tax stamps. He testified they also found a tobacco leaf product that fell under the definition of other tobacco products (“OTP”) and OTP invoices are required to be kept on site. He testified they asked the clerk for the invoices, but she did not have any. He testified the clerk telephoned the Taxpayer’s owner, and his partner then spoke to the owner, _____, and the owner said he had invoices but the rolling papers and tobacco leaves were purchased out of a car trunk. He testified that cigarettes are required to be purchased from licensed distributors. He testified he and his partner prepared a seizure report of the items they seized. He testified the Taxpayer was given an opportunity to produce invoices to the Division, but never did. Division’s Exhibits One (1) (secretary of state’s office records for Taxpayer); Two (2) (Taxpayer’s retail sales’ permit for July 1, 2024 to June 30, 2025); Three (3) (Taxpayer’s cigarette dealer’s license for July 1, 2024 to June 30, 2025); and Five (5) (seizure report dated November 12, 2024 signed by clerk).

_____ (“Investigator”), Tax Investigator, testified on behalf of the Division. He testified that during the inspection of the Taxpayer on November 12, 2024, the clerk telephoned the owner and handed him the telephone, and he spoke to someone on the telephone who identified himself as _____, an owner, who said he did not know rolling papers needed tax stamps and that he owned a store in Massachusetts and did not need to have tax stamps on rolling papers in Massachusetts. He testified the owner said he bought the rolling papers and tobacco leaves out of the car trunk, but also bought OTP from _____.

_____ (“Auditor”), Principal Tax Auditor, testified on behalf of the Division. He testified he is familiar with the Taxpayer, and this was its first offense. He testified separate notices of assessment were sent for the seized cigarettes and seized OTP and that for both assessments, the statutory tax was calculated, and penalties assessed. He testified that penalty (a) was calculated

using a factor of six (6) with five (5) being for the first offense and one (1) aggravating factor of no invoices. He testified that penalty (b) was calculated using a factor of one (1) for the first offense or the statutory minimum of \$1,000. He testified that a notice of suspension was also sent but could not be hand delivered as the Taxpayer was now closed. Division's Exhibits Six (6) (OTP audit report); Seven (7) (OTP notice of assessment); Nine (9) (cigarette audit report); Ten (10) (cigarette notice of assessment); and Eight (8) and 11 (notice of license suspension). He testified that interest starts to accrue 30 days after the nonpayment of assessments.

The Taxpayer's manager/ owner testified on the Taxpayer's behalf. He testified that it was a genuine mistake to sell those unstamped products, but he believed the administrative penalties were exorbitant. He testified he did not dispute that the papers were there but felt that he was misinformed, and the Division should be helping new businesses and not smoking them with fines.

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 § 44-20-12¹ imposes a tax on cigarettes sold and R.I. Gen. Law § 44-20-13.2² 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 § 44-20-51.1³ provides for administrative penalties for the violation of the tax laws.

¹ 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.

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.

(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.

³ 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

(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.

C. Whether the Taxpayer Owes the Tax Assessments on Seized Products

The Taxpayer did not dispute the seized products were in the store, and that it was a mistake to have them there. The testimony was the applicable statutory tax for OTP and cigarettes was applied to the seized OTP and cigarette products. The Taxpayer did not challenge the calculation of the taxes owed. The Taxpayer did not provide any evidence that it paid tax on any of the seized tobacco products. Thus, the Taxpayer owes the applicable tobacco taxes for the seized tobacco products.

D. What Sanctions Should be Imposed for the Various Seizures

The Taxpayer argued the administrative penalties were exorbitant, and the Division should be doing more to help small businesses. It is assumed when people go into business, they research and conduct due diligence of the type of business they are choosing to operate and the requirements for such a business. The requirements for selling tobacco are set forth in statute and regulation.⁴ The undersigned also takes administrative notice that the Division summarizes statutory requirements for cigarette and OTP taxes on its website.⁵ The undisputed testimony was the Taxpayer purchased tobacco products out of a car trunk which does not lend itself to a finding that the Taxpayer was trying to comply with statutory requirements. Selling products from a car trunk is usually a giveaway that such products are not legitimate. Nonetheless, the testimony was the Division applied the penalty factors as provided for by statute to calculate the appropriate penalties.

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

⁴ See R.I. Gen. Laws § 44-20-1 *et seq.*, 280-RICR-20-15-1 *Cigarette Tax* regulation, and 280-RICR-20-15-2 *Other Tobacco Products* regulation.

⁵ E.g. <https://tax.ri.gov/tax-sections/sales-excise-taxes/cigarette-tax> (retrieved March 17, 2025); and <https://tax.ri.gov/tax-sections/sales-excise-taxes/tobacco-products-tax> (retrieved March 17, 2025).

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. 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 when imposing penalties (a) and (b).

The Division seeks monetary penalties for the nonpayment of tax on the seized cigarettes pursuant to R.I. Gen. Laws § 44-20-51.1. The testimony was that penalty (a) used a factor of six (6) times the retail value representing a factor of five (5) for a first offense and a factor of one (1) for the aggravating factor of no invoices. The testimony was that penalty (b) was calculated as a factor of one (1) of the tax owed as the greater amount as provided by statute. Division’s Exhibit Nine (9) (cigarette audit report).

The Division seeks monetary penalties for the nonpayment of tax on the seized OTP pursuant to R.I. Gen. Laws § 44-20-51.1. The testimony was that penalty (a) used a factor of six (6) times the retail value representing a factor of five (5) for a first offense and a factor of one (1) for the aggravating factor of no invoices. The testimony was that penalty (b) was calculated as a statutory minimum of \$1,000 as the greater amount as provided by statute. Division’s Exhibit Six (6) (OTP audit report).

The penalties imposed are in line with the statutory penalties for a first offense for penalty (a) in the last 24 months and for penalty (b). While the Taxpayer argued the penalties were too high, the Division took into consideration that this was the Taxpayer’s first offense. The factors used represented a first offense with one (1) aggravating factor. Thus, the penalties imposed were less than that allowed by statute for the first offense. As a consequence, the Taxpayer’s violations

justified the penalties imposed in the Division's notices of assessment for the seized cigarettes and OTP.⁶

The imposition of interest after the nonpayment of a deficiency by its due date is authorized by R.I. Gen. Laws § 44-1-7.⁷

VI. FINDINGS OF FACT

1. Cigarettes for which no tax was paid and OTP for which no tax was paid were seized by the Division from the Taxpayer on November 12, 2024.
2. An Order to Show Cause was issued on February 5, 2025.
3. A hearing on this matter was held on March 17, 2025. The parties 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 280-RICR-20-00-2 *Administrative Hearing Procedures*.
2. The Taxpayer violated R.I. Gen. Laws § 44-20-12 and R.I. Gen. Laws § 44-20-13.2 on November 12, 2024.

⁶ As the Taxpayer is no longer operating, the notice of license suspension is moot so is not addressed in this decision.

⁷ 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 § 44-20-12, R.I. Gen. Laws § 44-20-13.2, 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 Seven (7) and Ten (10). Additionally, the Taxpayer owes any 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: April 1, 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: 4.2.25


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 2nd day of April, 2025 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by certified mail, return receipt requested and electronic delivery to the Taxpayer's address on record with the Division and by electronic delivery to Matthew Williamson, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.


