

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2025-12

**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 24-048; 25-T-023  
cigarette dealer's license**

**Taxpayer.**

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**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 March 6, 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 April 7, 2025. The parties were represented by counsel and 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 tobacco products seized by the Division shall be returned by the Division.

**IV. MATERIAL FACTS**

The parties agreed the Taxpayer had a cigarette dealer's license ("License") that expired on June 30, 2024. The parties agreed the Taxpayer did not renew the License, and the Division

sent several notifications to the Taxpayer that it had failed to renew its License. The parties agreed that after the Division's fourth notification to the Taxpayer that it had failed to renew its License, on October 30, 2024, the Division inspected the Taxpayer and seized tobacco products. It was agreed that most of the seized tobacco products were in compliance with tax statutes as they were properly stamped, and those products were only seized because the Taxpayer did not have a valid License at the time of the seizure.<sup>1</sup> The Taxpayer renewed its License on October 31, 2024.

The Division issued the Taxpayer a notice of assessment and notice of License suspension due to the Taxpayer's failure to renew License. The Taxpayer agreed to pay the assessed administrative penalty and serve the assessed five (5) day suspension but requested the return of the seized the properly stamped tobacco products as the Taxpayer now has a valid License. The Division objected to the return of the tobacco products.

Division's Exhibits One (1) (Taxpayer's 2021 articles of organization); Three (3) and Four (4) (sales permit and License valid July 1, 2024 to June 30, 2025 issued on October 31, 2024); Five (5) (notice of license suspension); Six (6) (notice of assessment); Seven (7) (compliance report); Eight (8) (seizure report); Nine (9) (audit report); and Ten (10) (renewal notifications).

## **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 Omust interpret the statute literally and must give the words of the statute their plain and

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<sup>1</sup> It was agreed that a couple of the seized products were not in compliance with the tax statute as the appropriate taxes had not been paid, and those seizures are not issue in this matter. It was agreed that in a separate matter the Taxpayer paid those taxes owed. Those products are listed and circled on the seizure reports entered in this matter as Division's Exhibit Eight (8). Those products were also noted in the compliance report entered as Division's Exhibit Seven (7).

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<sup>2</sup> imposes a tax on cigarettes sold and R.I. Gen. Law § 44-20-13.2 imposes tax on other tobacco products (“OTP”). Inspections of cigarette dealers are allowed by R.I. Gen. Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1<sup>3</sup> provides for administrative penalties for the violation of the tax laws. In addition, R.I. Gen. Laws § 44-20-8<sup>4</sup> provides for the suspension or revocation of a cigarette dealer’s license.

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<sup>2</sup> 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.

<sup>3</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>4</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

R.I. Gen. Laws § 44-20-2<sup>5</sup> provides as follows:

Importer, distributor, and dealer licenses required — Licenses required. Each person engaging in the business of selling cigarette and/or any tobacco products in this state, including any distributor or dealer, shall secure a license from the administrator before engaging in that business, or continuing to engage in it. \*\*\* A separate license is required for each class of business if the applicant is engaged in more than one of the activities required to be licensed by this section. \*\*\*

R.I. Gen. Laws § 44-20-5<sup>6</sup> provides as follows:

Duration of importer's and dealer's licenses — Renewal. (a) Any importer license and any license issued by the tax administrator authorizing a dealer to sell cigarettes in this state shall expire at midnight on June 30 next succeeding the date of issuance unless (1) suspended or revoked by the tax administrator, (2) the business with respect to which the license was issued changes ownership, (3) the importer or dealer ceases to transact the business for which the license was issued, or (4) after a period of time set by the administrator; provided such period of time shall not be longer than three (3) years, in any of which cases the license shall expire and terminate and the holder shall immediately return the license to the tax administrator.

(b) Every holder of a dealer's license shall annually, on or before February 1 of each year, renew its license by filing an application for renewal along with a twenty-five dollar (\$25.00) renewal fee. The renewal license is valid for the period July 1 of that calendar year through June 30 of the subsequent calendar year.

R.I. Gen. Laws § 44-20-8.2<sup>7</sup> provides as follows:

Transactions only with licensed manufacturers, importers, distributors, and dealers. A manufacturer or importer may sell or distribute cigarettes to a person located or doing business within this state, only if such person is a licensed importer or distributor. An importer may obtain cigarettes only from a licensed manufacturer. A distributor may sell or distribute cigarettes to a person located or doing business within this state, only if such person is a licensed distributor or dealer. A distributor may obtain cigarettes only from a licensed manufacturer, importer, or distributor. A dealer may obtain cigarettes only from a licensed distributor.

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provision of any other law or ordinance relative to the sale or purchase of cigarettes or other tobacco products. \*\*\* 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.

<sup>5</sup> This statute was effective until January 1, 2025 so is applicable to this matter.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

R.I. Gen. Laws § 44-20-15<sup>8</sup> provides in part as follows:

Confiscation of contraband cigarettes, other tobacco products, and other property. (a) All cigarettes and other tobacco products that are held for sale or distribution within the borders of this state in violation of the requirements of this chapter are declared to be contraband goods and may be seized by the tax administrator or his or her agents, or employees, or by any sheriff, or his or her deputy, or any police officer when directed by the tax administrator to do so, without a warrant. All contraband goods seized by the state under this chapter shall be destroyed.

(b) All fixtures, equipment, and all other materials and personal property on the premises of any distributor or dealer who, with the intent to defraud the state, fails to keep or make any record, return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or inventory required by this chapter; refuses to pay any tax imposed by this chapter; or attempts in any manner to evade or defeat the requirements of this chapter shall be forfeited to the state.

R.I. Gen. Laws § 44-20-12.2 provides in part as follows:

Prohibited acts — Penalty. (a) No person or other legal entity shall sell or distribute in the state; acquire, hold, own, possess, or transport for sale or distribution in this state; or import, or cause to be imported, into the state for sale or distribution in this state; nor shall tax stamps be affixed to any cigarette package:

(1) That bears any label or notice prescribed by the United States Department of Treasury to identify cigarettes exempt from tax by the United States pursuant to section 5704 of title 26 of the United States Code, 26 U.S.C. § 5704(b) \*\*\*;

(2) That is not labeled in conformity with the provisions of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., \*\*\*;

(3) The packaging of which has been modified or altered by a person other than the original manufacturer of the cigarettes, including by the placement of a sticker to cover information on the package. \*\*\*;

(4) Imported into the United States in violation of 26 U.S.C. § 5754 or any other federal law, or implementing federal regulations;

(5) That the person otherwise knows, or has reason to know, the manufacturer did not intend to be sold, distributed, or used in the United States; or

(6) That has not been submitted to the secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of those cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1335a.

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(d) Any cigarettes found in violation of this section shall be declared to be contraband goods and may be seized by the tax administrator, or his or her agents, or by any sheriff, or his or her deputy, or any police officer, without a warrant. The tax administrator may promulgate rules and regulations for the destruction of contraband goods pursuant to this section, including the administrator's right to allow the true

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<sup>8</sup> *Id.*

holder of the trademark rights in a cigarette brand to inspect contraband cigarettes prior to their destruction.

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R.I. Gen. Laws § 44-20-37 provides as follows:

Seizure and destruction of unstamped cigarettes. Any cigarettes found at any place in this state without stamps affixed as required by this chapter are declared to be contraband goods and may be seized by the tax administrator, his or her agents, or employees, or by any deputy sheriff, or police officer when directed by the tax administrator to do so, without a warrant. Any cigarettes seized under the provisions of this chapter shall be destroyed. The seizure and/or destruction of any cigarettes under the provisions of this section does not relieve any person from a fine or other penalty for violation of this chapter.

R.I. Gen. Laws § 44-20-38 provides as follows:

Hearing on cigarettes seized. When any cigarettes are seized under the provisions of § 44-20-37, any person claiming an interest in the cigarettes may make written application to the tax administrator for a hearing, stating his or her interest in the cigarettes and his or her reasons why they should not be forfeited. \*\*\* No destruction of any cigarettes under the provisions of § 44-20-37 shall be carried out while an application for a hearing is pending before the tax administrator, but the pendency of an appeal under the provisions of § 44-20-48 shall not prevent the destruction unless the appellant posts a satisfactory bond, with surety, in an amount double the estimated value of the cigarettes, conditioned upon the successful termination of the appeal.

The *Cigarette Tax* regulation (“Cigarette Regulation”), 280-RICR-20-15-1, provides in part as follows:

#### Section 1.20 Seizures

All cigarettes and/or other tobacco products which are possessed, stored, retained, or otherwise brought into the state in contradiction to R.I. Gen. Laws § 44-20-13.2 and these Regulations shall be considered untaxed contraband by the Tax Administrator and his or her agents. The cigarettes and/or other tobacco products may be seized by the Tax Administrator or his or her agents or employees or by any sheriff or his or her deputy or any police officer when directed by the Tax Administrator to do so, without a warrant.

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#### Section 1.22 Seizure and Destruction of Unstamped Cigarettes

Any cigarettes found at any place in this state without stamps affixed as required R.I. Gen. Laws Chapter 44-20 are declared to be contraband goods and may be seized by the Tax Administrator, his or her agents, or employees, or by any deputy sheriff, or police officer when directed by the Tax Administrator to do so, without a warrant. Any

cigarettes seized under the provisions of R.I. Gen. Laws Chapter 44-20 shall be destroyed. The seizure and/or destruction of any cigarettes under the provisions of this R.I. Gen. Laws § 44-20-37 does not relieve any person from a fine or other penalty for violation of R.I. Gen. Laws Chapter 44-20.

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#### Section 1.23 Appeals

A. Any person aggrieved by a Notice of Deficiency issued by the Tax Administrator is entitled to an administrative hearing. In order to request this hearing, the taxpayer must notify the Tax Administrator in writing within thirty (30) days from the date of the Notice of Deficiency. The Tax Administrator shall, as soon as is practicable, set a time and place for hearing, and shall render a final decision. The administrative hearing is the taxpayer's opportunity to present valid records/invoices, as detailed above in Sub-part 8 of this regulation, evidencing tax paid on the seized items. \*\*\*

#### **C. Arguments**

The Division argued the seized products were contraband as they were not allowed to be sold at the time that they were seized since the Taxpayer did not have a valid cigarette dealer's license. The Division argued that pursuant to R.I. Gen. Laws § 44-20-15, all seized contraband shall be destroyed, and the seized tobacco was contraband so must be destroyed.

The Taxpayer argued it had a valid cigarette dealer's license that expired and had not been renewed but it had purchased and properly paid taxes on the seized products. It argued it legally bought the products as it had a cigarette dealer's license as opposed to someone who had never had a license and in the latter situation, it would not argue for the return of the cigarettes. The Taxpayer argued the seized taxed tobacco products should be returned since the License was reinstated so the seized products were no longer contraband. It argued a court would grant a writ of replevin for the return of the seized products.

#### **D. The Renewal Process and the Taxpayer's Renewal**

Pursuant to R.I. Gen. Laws § 44-20-5, cigarette dealer's licenses expire on June 30 in the year following the issuance year, and said licensees shall file their renewal applications by February 1, 2025. R.I. Gen. Laws § 44-19-1 provides the same expiration date for retail sales



permits. While that statute does not provide that sales permit holders file renewals by February 1, 2025, the Division sent a retail sales permit renewal application to the Taxpayer dated January 3, 2024 for renewal by February 1, 2025. By same date, the Division sent a cigarette dealer's renewal application requiring the renewal be filed by February 1, 2024. The Division sent the Taxpayer a sales license block dated April 15, 2024 indicating that taxes were owed which if unpaid could lead to a block of its sales permit and cigarette dealer's license. By letter dated May 20, 2024, the Division informed the Taxpayer that since it did not respond to the April 15, 2024 letter, the Division would not renew the Taxpayer's sales permit and cigarette dealer's license effective July 1, 2024. By letter dated June 18, 2024, the Taxpayer was notified the Division had not received its cigarette dealer's renewal so the Taxpayer's cigarette dealer's license would not be renewed effective July 1, 2024. By letter of the same date, the Division notified the Taxpayer that it had outstanding taxes owed, and this was the final notice that the sales permit and cigarette dealer's license would not be renewed effect July 1, 2024. By letter dated July 10, 2024, the Taxpayer was notified that it was conducting business without a sales permit so could not operate and that a sales permit was a condition of holding a cigarette dealer's license. Division's Exhibit Ten (10).<sup>9</sup> According to the compliance report, the Division conducted in person inspections three (3) times over the Summer of 2024 and orally informed the Taxpayer that it was operating without a sales permit and cigarette dealer's license. Division's Exhibit Seven (7) (compliance report).

**E. What Sanctions Should be Imposed for the Failure to Renew License**

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 by the chapter. The Taxpayer had a duty to keep its License current. The Taxpayer's

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<sup>9</sup> At hearing, the Taxpayer represented its owner was out of the country during the cigarette renewal period so that was why there was a delay in the renewal. However, there was no testimony and no agreement as to this representation.

failure to keep its License current was a violation of R.I. Gen. Laws § 44-20-51.1(a). Therefore, the assessment for failing to maintain its cigarette dealer's license for the statutory minimum of \$1,000 pursuant to R.I. Gen. Laws § 44-20-51.1(b) was properly assessed. In addition, R.I. Gen. Laws § 44-20-8 provides that a cigarette dealer's license may be suspended or revoked for failure of licensee to comply with any provision of this chapter. Therefore, the Division had the authority to issue the five (5) day suspension of License which the Taxpayer has agreed to serve.

#### **F. The Seized Cigarettes**

The cigarettes seized here are stamped and compliant with the tax statute since tax had been paid on them.<sup>10</sup> The cigarettes were purchased from a Rhode Island licensed distributor. Division's Exhibits Seven (7) (compliance report) and Nine (9) (audit report).

No evidence was introduced to show the Taxpayer purchased the seized products when its License was still in effect or when it had expired. The Taxpayer represented that it purchased the cigarettes when it was licensed. By statute, licensed distributors are only to sell to those with cigarette dealer's licenses. R.I. Gen. Laws § 44-20-8.2. Therefore, in the absence of any evidence to the contrary, for the purposes of this decision and analysis, the assumption is the seized products were purchased pursuant to statute in that not only were they purchased from a licensed distributor and tax paid on the products, but the Taxpayer was licensed as a cigarette dealer at the time of the purchases as provided by statute.

R.I. Gen. Laws § 44-20-12.2 lists prohibited acts in regard to cigarettes and any cigarettes found in violation of this section is declared contraband and may be seized. This section also provides the Division may promulgate a regulation for the destruction of contraband good pursuant

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<sup>10</sup> The Taxpayer represented that the seized tobacco products were worth about \$1,000. While the parties did not agree to the amount, the Division did not dispute that estimated amount.

While the parties did not

to this section. The cigarettes seized in this matter do not fall under this statutory provision as they were not in violation of this section.

R.I. Gen. Laws § 44-20-37 provides that any cigarettes found without tax stamps are contraband and any cigarettes seized under the provisions of this chapter shall be destroyed. R.I. Gen. Laws § 44-20-38 provides that a hearing may be held on cigarettes seized pursuant to R.I. Gen. Laws § 44-20-37 for any person claiming an interest in the cigarettes that requests the cigarettes should not be forfeited. The seized cigarettes in this matter had tax stamps and do not fall under the provision of R.I. Gen. Laws § 44-20-37. It is interesting to note that while R.I. Gen. Laws § 44-20-37 provides the contraband cigarettes “shall be destroyed,” R.I. Gen. Laws § 44-20-38 allows a hearing to be held for an argument the cigarettes shall not be destroyed.

In terms of the seizure of cigarettes, the Cigarette Regulation in § 1.20 and § 1.22 authorizes that unstamped cigarettes are contraband and shall be destroyed. *Supra*. Section 1.20 provides that any OTP and/or cigarettes possessed, stored, retained or brought into the state in contradiction of R.I. Gen. Laws § 44-20-13.2 – the OTP tax provision<sup>11</sup> - and the regulations shall be considered untaxed contraband. That section authorizes that such contraband may be seized. Section 1.22 entitled the “Seizure and Destruction of Unstamped Cigarettes” provides that any unstamped cigarettes are contraband goods and may be seized and shall be destroyed and that any seizure and/or destruction of any cigarettes under the provisions of this R.I. Gen. Laws § 44-20-37 does not relieve any person from a fine or other penalty for violations of the taxing law.<sup>12</sup> The Cigarette

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<sup>11</sup> The Cigarette Regulation most likely meant to cite R.I. Gen. Laws § 44-20-12, the cigarette tax statute. While § 1.20 refers to both cigarettes and OTP, OTP is subject to its own regulation, *Other Tobacco Products*, 280-RICR-20-15-2, and that regulation’s § 2.10 speaks of the seizure of OTP in violation of R.I. Gen. Laws § 44-20-13.2.

<sup>12</sup> This matter revolves around stamped cigarettes. But similarly to the Cigarette Regulation, the OTP regulation provides that seized untaxed OTP are contraband and shall be destroyed unless the taxpayer can provide invoices to show that tax has been paid on the OTP. Section 2.12 of *Other Tobacco Products*, 280-RICR-20-15-2.

Regulation in § 1.23 (*supra*) further envisions appeals of notices of deficiency to address whether tax was paid on the seized items.

The statute authorizes the seizure of contraband goods to ensure that tax is being properly paid.<sup>13</sup> Indeed, it would be illogical to allow businesses to benefit from the selling of untaxed tobacco products which is a reason that untaxed tobacco products may be seized. *Division Administrative Decision*, 2024 WL 5207176 (R.I.Div.Tax.) (12/17/24). In contrast, the seized tobacco products here are not products for which no tax has been paid. They are not unstamped. Nor are the tobacco products those that were purchased by an unlicensed cigarette dealer. *Division Administrative Decision*, 2025 WL 540248 (R.I.Div.Tax.) (2/12/25) (taxpayer did not hold a cigarette dealer's license, and tax had not been paid on the products).

Neither R.I. Gen. Laws § 44-20-12.2 nor R.I. Gen. Laws § 44-20-37 apply to these seized cigarettes. Instead, the Division relied on R.I. Gen. Laws § 44-20-15 to argue these seized cigarettes are contraband and cannot be returned. The Taxpayer argued that in these narrow circumstances where the cigarettes were stamped and tax properly paid and were purchased with a cigarette's dealer license that then subsequently expired, the cigarettes were no longer contraband after the Taxpayer renewed its cigarette dealer's license.

R.I. Gen. Laws 44-20-15 is a broader statute than the other contraband statutes. When this law was initially enacted in 1948, it only applied to cigarettes. It provided that cigarettes for which the tax had not been paid were contraband that could be seized but that nothing required seizure if there was reason to believe the owner was not willfully or intentionally evading tax. P.L. 1948, ch. 2092, § 4. When the statute was amended for the first time in 1991, the title "confiscation of

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<sup>13</sup> Indeed, the criminal statute applies to importation of cigarettes and/or other tobacco products with intent to evade tax. That statute provides that the shipping of contraband cigarettes and/or contraband other tobacco products on which the tax imposed by this chapter has not been paid and for the purpose and intention of violating the provisions of this chapter or to avoid payment of the tax imposed in this chapter is a felony. R.I. Gen. Laws § 44-20-45.

contraband cigarettes” was added, and police officers were added to those allowed to seize contraband cigarettes. P.L. 1991, ch. 6, art. 27, § 1.

In 2007, the law was amended again and at this time the title was changed to “confiscation of contraband cigarettes and other property.” P.L. 2007, ch. 246, § 3, eff. Oct. 1, 2007; P.L. 2007, ch. 250, § 3, eff. Oct. 1, 2007. The statute was amended as follows where the strike outs show the parts deleted and the bolded, underlined parts are those added.

~~44-20-15. Confiscation of contraband cigarettes.~~ **Confiscation of contraband cigarettes and other property. —(a) All cigarettes which are held for sale or distribution within the borders of this state in violation of the requirements of this chapter** ~~with respect to the storage or use of which the tax imposed in section 44-20-13 is not paid, as provided in this chapter,~~ are declared to be contraband goods and may be seized by the tax administrator or his or her agents, or employees, or by any sheriff or his or her deputy or any police officer when directed by the tax administrator to do so, without a warrant ; ~~provided, that nothing in this chapter shall be construed to require the tax administrator to confiscate unstamped cigarettes when the administrator has reason to believe that the owner of the cigarettes is not willfully or intentionally evading the tax imposed by section 44-20-13.~~ **All cigarettes seized by the state under this chapter shall be destroyed.**

**(b) All fixtures, equipment, and all other materials and personal property on the premises of any distributor or dealer who, with the intent to defraud the state, fails to keep or make any record, return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or inventory required by this chapter; refuses to pay any tax imposed by this chapter; or attempts in any manner to evade or defeat the requirements of this chapter shall be forfeited to the state.**

This 2007 amendment added the provision that cigarettes held in violation of the chapter were contraband that may be seized and deleted the provision about not seizing untaxed cigarettes if it was believed the tax evasion was not intentional or willful and added instead that all seized cigarettes shall be destroyed. It also added subsection (b) regarding when fixtures, equipment, and personal property may be seized and forfeited. In 2017, the statute was further amended to add “other tobacco products” to the first line in subsection (a) and to change in the last sentence of subsection (a) the word, “cigarettes” to “contraband goods.” P.L. 2017, ch. 302, art. 8, § 15.

R.I. Gen. Laws § 44-20-37 was enacted in 1939. P.L. 1939, ch. 663 § 18. It already addressed unstamped cigarettes so over time the provisions of R.I. Gen. Laws § 44-20-15 were expanded to cover other statutory violations. Along with the requirements about tax and the licensing of tobacco dealers, distributors, and manufacturers and the purchasing from licensees, chapter 20 also covers vending machines, affixing tax stamps, and sales of tax stamps. The statute provides that cigarettes held for sale in violation of the requirements of the chapter are contraband. R.I. Gen. Laws § 44-20-2 requires that a seller of tobacco at retail hold a cigarette dealer's license. The Taxpayer was holding its cigarettes for sale after its cigarette dealer's license expired which is a violation of a chapter.

Despite R.I. Gen. Laws § 44-20-15, the Cigarette Regulation only details the destruction of untaxed contraband cigarettes seized pursuant to R.I. Gen. Laws § 44-20-37. A review of R.I. Gen. Laws § 44-20-1 *et seq.* and the corresponding regulations demonstrate that the driving force behind the destruction of tobacco products is the untaxed contraband tobacco products. Interestingly, R.I. Gen. Laws § 44-20-13.2 has been amended effective January 1, 2025 to address the new legal requirements on electronic nicotine-delivery products that were effective on January 1, 2025. The new amended statute, R.I. Gen. Laws § 44-20-13.2(b)(2), now includes as follows:

(2) Effective January 1, 2025, all other tobacco products, except for cigars, and electronic nicotine-delivery system products sold at wholesale in Rhode Island must be sold by a Rhode Island licensed distributor, manufacturer, or importer, and purchases of other tobacco products, except for cigars, and/or electronic nicotine-delivery system products, from an unlicensed distributor, manufacturer, or importer are prohibited. Any other tobacco products, except for cigars, and/or electronic nicotine-delivery system products purchased and/or obtained from an unlicensed person shall be subject to the terms of this chapter including, but not limited to, § 44-20-15 and shall be taxed pursuant to this section.

In other words, the amended statute explicitly applies R.I. Gen. Laws § 44-20-15 to purchasing products from unlicensed entities. Of course, in this situation, the seized products were not purchased from an unlicensed dealer. They were purchased by a licensed cigarette dealer from a licensed cigarette distributor.

The Division conducted in person inspections three (3) times over the Summer of 2024 and orally informed the Taxpayer that it was operating without a sales permit and cigarette dealer's license. Division's Exhibit Seven (7) (compliance report). It was only at the fourth inspection that the Division seized the tobacco products. The Taxpayer was then able to renew its License on October 31, 2024, the day after the seizure, without resolving any potential penalties and/or suspension since both were later noticed in November, 2024. Thus, the day after the seizure, the Taxpayer was able to sell tobacco.

It would appear the Division should consider issuing regulations that address this type of situation which is different from the seizure of untaxed contraband tobacco. New regulations would serve to clarify what is considered contraband tobacco and its destruction pursuant to R.I. Gen. Laws § 44-20-15. Nonetheless, R.I. Gen. Laws § 44-20-15 deems the seized tobacco contraband subject to destruction and despite the tobacco being properly taxed and properly purchased, and the statutes and regulations involved, the undersigned cannot conclude the tobacco should be returned.

## **VI. FINDINGS OF FACT**

1. Cigarettes for which tax was paid were seized on October 30, 2024 as the Taxpayer cigarette dealer's license had expired.
2. The Taxpayer held a cigarette dealer's license at the time that it purchased the seized cigarettes from a licensed distributor.

3. The Taxpayer renewed its cigarette dealer's license on October 31, 2024.
4. An Order to Show Cause was issued on March 6, 2025.
5. A hearing on this matter was held on April 7, 2025. The parties rested on the record.
6. 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. On October 30, 2024, the Taxpayer violated R.I. Gen. Laws § 44-20-15 by violating R.I. Gen. Laws § 44-20-2 by having tobacco for sale when its cigarette dealer's license had expired.

## **VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends as follows: Pursuant to R.I. Gen. Laws § 44-20-1 *et seq.* 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 Six (6). 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 five (5) days to begin on the 31<sup>st</sup> day after the execution of this decision. Pursuant to R.I. Gen. Laws § 44-20-2 and R.I. Gen. Laws § 44-20-15, the seized tobacco shall not be returned to the Taxpayer.

Date: MAY 7, 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: 5/14/25

  
\_\_\_\_\_  
Neena S. Savage  
Tax Administrator

**NOTICE OF APPELLATE RIGHTS**

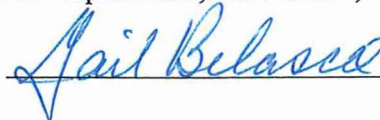
**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:**

**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 15<sup>th</sup> day of May, 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.

  
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