

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

IN THE MATTER OF

Taxpayer.

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**SC 25-054; 25-T-049
ENDS Products Tax**

ORDER MODIFYING HEARING OFFICER’S DECISION AND RECOMMENDATION

The Tax Administrator of the Division of Taxation (the “Division”) has reviewed the Decision and Recommendation of the Hearing Officer (attached herein) in this matter and, as provided herein, modifies the Decision and rejects the Recommendation.

STANDARD FOR TAX ADMINISTRATOR’S REVIEW

The Department of Administration’s *Rules of Procedure for Administrative Hearings*, 220-RICR-50-10-2.17(A) (“DOA Hearing Regulation”),¹ state, “If required by law or by the delegation of authority, the decision of the Hearing Officer shall be reviewed by the Director of the Department [here, the Tax Administrator] who shall enter an order adopting, modifying or rejecting the decision of the Hearing Officer.”

In a two-tiered administrative process, the ultimate decision-maker’s standard of review of a hearing officer’s decision and recommendation is *de novo* unless the hearing officer’s recommendations are based on witness credibility, in which case the ultimate decision-maker owes

¹ The Division of Taxation’s regulation entitled *Administrative Hearing Procedures*, 280-RICR-20-00-2.6 (“Hearing Regulation”), states, “In the event that . . . other Rules of Practice and Procedure [promulgated by another agency board or office] address an issue not set forth herein, the hearing officer shall utilize these Rules of Practice and Procedure.”

deference to the recommendations of the first-tier decision-maker. *See Ret. Bd. of Emps. ' Ret. Sys. v. Corrente*, 174 A.3d 1221, 1237-38 (R.I. 2017) (citing *Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan*, 755 A.2d 799, 807 (R.I. 2000); *Envtl. Scientific Corp. v. Durfee*, 621 A.2d 200, 209 (R.I. 1993)).

In this matter, the Tax Administrator relies on the material facts as presented by the Hearing Officer and, as detailed below, submits the following analysis in modifying the Decision and rejecting the Recommendation of the Hearing Officer.

ORDER

After a careful review of the Hearing Officer's Decision and Recommendation, the Tax Administrator modifies the Hearing Officer's Decision and Recommendation, and:

- i) adopts Sections I.-IV., V. A.-D., and VI.;
- ii) modifies Sections V. E. as discussed below;
- iii) modifies Section VII. to remand the determination in subsection 2 of whether there is enough evidence in the record to making a finding pursuant to R.I. Gen. Laws § 44-20-61 that the seized electronic nicotine-delivery system ("ENDS") products were flavored ENDS products after the Division conducts further discovery on the seized products;
- iv) rejects Section VIII., the Recommendation; and,
- v) orders that the parties conduct discovery and supplement the record as indicated below.

In her decision, the Hearing Officer concluded that the seized products could not be determined to be contraband flavored ENDS products pursuant to R.I. Gen. Laws § 44-20-61 because there was no evidence presented as to "the taste, flavor, and aroma of these seized

products” other than the Division’s Exhibit 11,² which was “presented at hearing as a vape review website” without further evidence to allow it to “fall under the statutory definition of either a dealer or distributor.” However, the decision also reflects that “part of what seems to be Nexus Smoke’s advertising for its sales references that red tobacco ‘infuses rich tobacco notes with rejuvenating essence of mango.’” *See* Decision at 10 (citing Division’s Ex. 11). Nonetheless, the Hearing Officer did not accept, without more evidence presented by the Division, that Nexus Smoke’s advertising was evidence that the product at issue was a mango-flavored ENDS product, and she recommended that the matter be dismissed.

The Hearing Officer determined that evidence as to an ENDS product’s flavor could be presented in several ways, including: 1) evidence based on “anyone tasting or smelling the seized products;” 2) providing the seized products at the administrative hearing; 3) documentary evidence as to product packaging or labeling; and/or 4) statements or claims made by a dealer, distributor or manufacturer as defined in R.I. Gen. Laws § 44-20-1 “directed to consumers or the public about such flavor, whether expressed or implied, that [the product] has a distinguishable taste or aroma;”

Given the persistent efforts of those within the ENDS industry to evade restrictions on flavored ENDS products the Division has observed since the flavored ENDS ban took effect on January 1, 2025, meeting the Hearing Officer’s strict evidentiary standard is a high bar. Many ENDS products currently circulating have not received FDA authorization and lack reliable labeling. As a result, product packaging may omit ingredient information, use ambiguous naming conventions, or otherwise provide incomplete or misleading information regarding flavor.

Because labeling alone may not accurately reflect the nature of the product, agents must evaluate a range of available information when determining whether an ENDS product has a

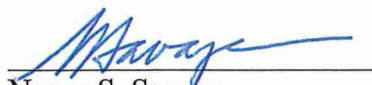
² The Division’s Exhibit 11 consisted of pages from nexusssmoke.com containing content about Brixz products, including the product at issue in this matter.

prohibited “characterizing flavor.” Consistent with R.I. Gen. Laws § 44-20-61(a)(1), this determination may include consideration of product packaging, marketing materials, online advertising by dealers, distributors or manufacturers, and statements made by sellers regarding the product’s taste or aroma. The prevalence of non-FDA-authorized ENDS products in the marketplace makes such contextual review necessary. These products lack reliable documentation regarding ingredients or manufacturing. Therefore, the Division relies on all reasonably available information to determine whether a product imparts a characterizing flavor other than tobacco or menthol.

In addition, manufacturers and distributors have adopted a variety of methods to signal flavor characteristics without explicitly labeling a product as flavored. These practices include the use of abbreviations or coded product names that correspond to flavor profiles (for example, acronyms that reference flavor combinations), the use of color schemes or imagery commonly associated with particular flavors, and the use of “concept” or stylized flavor names that imply a taste or aroma without directly stating it. In some instances, the same product may be marketed online with explicit flavor descriptions while the physical packaging omits those details. These strategies allow flavored products to be recognizable to consumers while attempting to obscure the presence of a characterizing flavor on the product label itself.

When such practices are present, the Division must evaluate the product in context rather than relying solely on the wording printed on the package. As noted above, the Division agents may review online retailer descriptions, distributor websites, advertising materials, and other publicly available information describing the product’s taste or aroma. These sources often reveal how the product is actually perceived by consumers and therefore provide relevant evidence when determining whether the product imparts a prohibited characterizing flavor.

Based on the Hearing Officer's decision, the Tax Administrator finds that further discovery is necessary to establish that the Brixz ENDS product at issue here is a contraband flavored ENDS product in violation of R.I. Gen. Laws § 44-20-61. Therefore, it is hereby ORDERED that the Hearing Officer's Decision is modified, her Recommendation is rejected, the matter is remanded for further administrative proceedings, and the parties are directed to conduct discovery in accordance with this Order.



Neena S. Savage
Tax Administrator

Date: 4/22/26

ENTERED as Administrative Order No. 2026-05 on the 22nd day of April 2026.

CERTIFICATION

I hereby certify that on this 22nd day of April 2026, a copy of the above Order Modifying Hearing Officer's Decision and Recommendation was sent by first class mail and electronic delivery to the Taxpayer's attorney's address on record with the Division and by electronic delivery to Matthew R. Williamson, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, R.I. 02908.



STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2026-05

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

IN THE MATTER OF:

**SC 25-054; 25-T-049
ENDS tax**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to an Order to Show Cause, Notice of Administrative Hearing, and Appointment of Hearing Officer (“Order to Show Cause”) issued on October 30, 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 December 1, 2025. 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

The parties agreed the issue is whether the seized Electronic Nicotine-Delivery System (“ENDS”) products were flavored or not, and if flavored, should sanctions (penalties and/or license suspension) be imposed, and if so, what sanctions should be imposed.

IV. MATERIAL FACTS

The parties stipulated to the following facts:

1. The Taxpayer was inspected on February 21, 2025 by the Division, and the Division seized Brixz ENDS products.
2. The Taxpayer paid tax on the seized ENDS products prior to the inspection.
3. Apart from the seized ENDS products, all other tobacco products, including cigarettes and other tobacco products, were in statutory compliance.
4. The seized products were purchased by the Taxpayer from a Rhode Island licensed distributor.

(“Inspector”), Tax Inspector, testified on behalf of the Division. He testified he conducted the inspection, and he and his partner seized the “Brixz red tobacco.” He testified he thought it was a mango flavored product. He testified the invoices were provided by the Taxpayer during the inspection, and items were purchased from a Rhode Island distributor and tax had been paid on the ENDS products. He testified the products had been purchased on January 3, 2025 which was two (2) days after the change in law prohibiting the sale of flavored ENDS products. Division’s Exhibits Two (2) (compliance report); Three (3) (seizure report); and Four (4) (invoice).

On cross-examination, the Inspector testified that during his inspection he observed several hundred tobacco products, and everything was in compliance except the seized products (11 units). He testified he reviewed the invoices and none of them listed the Brixz red tobacco products as flavored. He testified there are so many different types of vapes so when he is not familiar with a vape product, he googles it. He testified when he googled red tobacco it was described as a mango flavor on the “reviews.” He testified that information is reflected in Division’s Exhibit 11 and that is the extent of his knowledge of these products.

Principal Tax Auditor (“Auditor”), testified on behalf of the Division. He testified that Division’s Exhibit 11 is from “nexusmoke.com” and “[t]hey are review of

products that Brixz sells,” and a vendor described Brixz red tobacco as “[c]ombines rich tobacco notes with refreshing mango ice.” Division’s Exhibit 11 (nexusmoke.com print out, last page). He testified that mango ice is considered a characterizing flavor under the state statute. He testified this was the Taxpayer’s third offence so a notice of license suspension for 20 days and a notice of assessment were issued. He testified for penalty (a) a factor of five (5) was applied as it was the first offense in 24 months. He testified penalty (b) at _____ was imposed as the greater amount under the statute. He testified that all ENDS products are taxed whether flavored or not. He testified the assessment was only for penalties as tax had already been paid. He testified that penalties do not change even though tax was already paid. He testified the Taxpayer had two (2) prior offenses. Division’s Exhibits Five (5) (audit report); Six (6) (license suspension); and Seven (7) (notice of assessment).

On cross-examination, the Auditor testified he printed Division’s Exhibit 11 out the week before because he knew the Inspector had previously printed it out. He testified the Division did not have the nexusmoke.com report at time of seizure. He testified there are thousands of vape products. He testified that licenseholders are responsible for what they purchase.

On redirect examination, the Auditor testified he pulled the product reviews in Division’s Exhibit 11. He testified that nine (9) of the seized products say red tobacco. He testified that one product (the two (2) units) says unflavored, but the back of box says artificial and natural flavoring which raised question of whether it was flavored or not. He testified the term artificial flavored suggests a flavored product

On further cross-examination, the Auditor testified that if a product says artificial flavor, they will take it for further investigation. He testified there is a lot of misidentification and fraudulent definitions of vape products. He testified the seized two (2) units of red tobacco said

“red tobacco unflavored” on the front of the product and “natural and artificial flavoring” on the back. He testified the seized red tobacco of nine (9) units said “red tobacco” on front of the product and “natural and artificial flavoring” on the back. He testified the term artificial flavor means that flavor has been put in the products, but the Division will determine from further research if the product is flavored. On redirect examination, he testified the term, artificial flavor, suggests the product could be flavored but it is not dispositive, and the determination is subject to further review.

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 and History of the Sale of Flavored ENDS Products**

R.I. Gen. Laws § 23-1-55 through R.I. Gen. Laws § 23-1-58 were effective on January 1, 2015, and provided the Department of Health (“DOH”) with authority over the licensing of ENDS sellers. P.L. 2014, ch. 182, § 2 and P.L. 2014, ch. 223, § 2. Pursuant to those statutes, DOH

issued *Rules and Regulations for Licensing of Electronic Nicotine-Delivery System Distributors and Dealers* effective May, 2015. On October 4, 2019, DOH promulgated an emergency regulation amending said regulation to prohibit the sale of flavored ENDS products. 216-RICR-50-15-6, *Licensing of Electronic Nicotine-Delivery System Distributors and Dealers*. That ban became permanent by the promulgation of the amended DOH regulation on March 26, 2020.

Thus, the sale of flavored ENDS products has been prohibited in Rhode Island since October 4, 2019. Effective January 1, 2025, the licensing, taxing, and enforcement of ENDS products was moved to the Division. The Division now has the authority for the licensing of ENDS sellers. The selling of flavored ENDS products was prohibited by statute. ENDS products are now also taxed, and the Division has the authority to seize any ENDS products that are in violation of tax laws and the statutory prohibition of flavored ENDS products. As a result, R.I. Gen. Laws § 23-1-55 through § R.I. Gen. Laws § 23-1-58 were repealed by P.L. 2024, ch. 117, art. 6, § 5, effective January 1, 2025.

These new legislative changes made many amendments to R.I. Gen. Laws § 44-20-1 *et seq.* that were effective January 1, 2025. R.I. Gen. Laws § 44-20-13.2¹ was amended to impose

¹ R.I. Gen. Laws § 44-20-13.2 now provides in part as follows:

Tax imposed on other tobacco products, smokeless tobacco, cigars, pipe tobacco products, and electronic nicotine-delivery products.

(a) A tax is imposed on all other tobacco products, smokeless tobacco, cigars, pipe tobacco products, and electronic nicotine-delivery system 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:

(4) Effective January 1, 2025:

(i) For electronic nicotine-delivery system products that are prefilled, sealed by the manufacturer, and not refillable, at the rate of fifty cents per milliliter (\$0.50/mL) of the e-liquid and/or e-liquid products contained therein; and

(ii) For any other electronic nicotine-delivery system products, at the rate of ten percent (10%) of the wholesale cost of such products, whether or not sold at wholesale, and if not sold, then at the same rate upon the use by the wholesaler.

(iii) Existing Inventory Floor Tax. ***

(b) ***

tax on ENDS products. P.L. 2024, ch. 117, art. 6, § 16. R.I. Gen. Laws § 44-20-61² was enacted to prohibit the sale of flavored ENDS products. P.L. 2024, ch. 117, art. 6, § 17. R.I. Gen. Laws § 44-20-15³ was amended to include that ENDS sold in violation of State law would be considered contraband and subject to confiscation; the definition of sale in R.I. Gen. Laws § 44-20-1(15)⁴ was

(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.

² R.I. Gen. Laws § 44-20-61 provides in part as follows:

Product restrictions on electronic nicotine-delivery system products.

(a) For purposes of this section, the following terms shall have the following meanings:

(1) “Characterizing flavor” means a distinguishable taste or aroma, other than the taste or aroma of tobacco or menthol, distinguishable by an ordinary consumer, imparted either prior to, or during, consumption of an electronic nicotine-delivery system product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, mint, wintergreen, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice or which impart a cooling or numbing sensation. The determination of whether an electronic nicotine-delivery system product has a characterizing flavor shall not be based solely on the use of additives, flavorings, or particular ingredients, but shall instead consider all aspects of a final product including, but not limited to, taste, flavor and aroma, product labeling, and advertising statements. A flavor shall be presumed to be a characterizing flavor if a dealer, manufacturer, or distributor has made a statement or claim directed to consumers or the public about such flavor, whether expressed or implied, that it has a distinguishable taste or aroma (other than the taste or aroma of tobacco or menthol).

(2) “Flavored electronic nicotine-delivery system product” means any electronic nicotine-delivery system product that imparts a characterizing flavor.

(b) The sale, or offer for sale of, or the possession with intent to sell or to offer for sale, flavored electronic nicotine-delivery system products to consumers within the state of Rhode Island is hereby prohibited. ***

³ R.I. Gen. Laws § 44-20-15 provides in part as follows:

Confiscation of contraband cigarettes, other tobacco products, electronic nicotine-delivery system products, and other property. (a) All cigarettes, other tobacco products, and/or electronic nicotine-delivery system products that are held for sale or distribution within the borders of this state in violation of the requirements of this chapter or federal law are declared to be contraband goods and may be seized by the tax administrator or the tax administrator’s agents, or employees, or by any sheriff, or the sheriff’s 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.

⁴ R.I. Gen. Laws § 44-20-1(15) provides as follows:

Whenever used in this chapter, unless the context requires otherwise:

(15) “Sale” or “sell” means gifts, exchanges, and barter of cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products. The act of holding, storing, or keeping cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products at a place of business for any purpose shall be presumed to be holding the cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products for sale. Furthermore, any sale of cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products by the servants, employees,

amended to include ENDS products; and the penalty statute, R.I. Gen. Laws § 44-20-51.1,⁵ was amended to include ENDS products. P.L. 2024, ch. 117, art. 6, § 16. Inspections of ENDS dealers are now allowed by R.I. Gen. Laws § 44-20-40.1. *Id.* In addition, R.I. Gen. Laws § 44-20-8⁶ provides for the suspension or revocation of a dealer's license.

C. Arguments

The Taxpayer argued the products were purchased from a Rhode Island licensed distributor and tax paid. It argued the product by its own definition does not recite any flavors. It argued even if there was a hint of an enhanced flavor, that was not the intent of the statute.

The Division argued the Taxpayer had products there were identified as flavored vapes in its store so the products were seized, and the full assessment and suspension should be upheld.

or agents of the licensed dealer during business hours at the place of business shall be presumed to be a sale by the licensee.

⁵ 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 them 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, other tobacco products, and/or electronic nicotine-delivery system products involved; and

(b) Whoever omits, neglects, or refuses to comply with any duty imposed upon them 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 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.

⁶ 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.

D. Whether Tax is Owed on the ENDS Products

It was agreed that on February 21, 2025, the Division seized ENDS products from the Taxpayer for which tax had already been paid so no tax assessment was issued.

E. Whether the Seized Products are Flavored

R.I. Gen. Laws § 44-20-61 defines “characterizing flavor” and provides how to determine whether an ENDS product contains a characterizing flavor. A characterizing flavor “means a distinguishable taste or aroma, other than the taste or aroma of tobacco or menthol, distinguishable by an ordinary consumer, imparted either prior to, or during, consumption of an electronic nicotine-delivery system product or component part thereof.” It includes “fruit,” “tastes,” or “aromas.”

The statute further provides the determination of whether there is a characterizing flavor:

shall not be based solely on the use of additives, flavorings, or particular ingredients, but shall instead consider all aspects of a final product including, but not limited to, taste, flavor and aroma, product labeling, and advertising statements. A flavor shall be presumed to be a characterizing flavor if a dealer, manufacturer, or distributor has made a statement or claim directed to consumers or the public about such flavor, whether expressed or implied, that it has a distinguishable taste or aroma (other than the taste or aroma of tobacco or menthol).

Thus, the statute provides the determination of whether a vape is flavored cannot be based solely on the use of additives, flavorings, or particular ingredients. Instead, all aspects of a final product including, but not limited to taste, flavor and aroma, product labeling, and advertising statements shall be considered.

At hearing, there was no evidence as to the taste, flavor, and aroma of these seized products. Certainly, an inspector is not necessarily going to open vapes in a store to try or to smell them. In this matter, there was some online indication the seized products could be mango flavored, so they were seized for further investigation. However, there was no evidence to taste, flavor, or aroma by anyone tasting or smelling the seized products or providing the seized products at hearing.

At hearing, there was no documentary evidence as to the packaging or labeling. The testimony was that two (2) units stated they were unflavored red tobacco with natural and artificial ingredients and the other nine (9) units indicated they were red tobacco with natural and artificial ingredients. By statute, the Division cannot solely rely on the ingredients in this matter to prove the seized products contain a characterizing flavor. At hearing, the testimony was that ingredients were not dispositive for the Division in determining whether an ENDS product was flavored but artificial flavoring could lead to further investigation.

The statute further provides that “flavor shall be presumed to be a characterizing flavor if a dealer, manufacturer, or distributor has made a statement or claim directed to consumers or the public about such flavor, whether expressed or implied, that it has a distinguishable taste or aroma (other than the taste or aroma of tobacco or menthol).”

Dealer, manufacturer, and distributor are all defined by R.I. Gen. Laws § 44-20-1.⁷ They are all required to be licensed by the Division. R.I. Gen. Laws § 44-20-1 defines these terms as

⁷ R.I. Gen. Laws § 44-20-1 provides in part as follows:

Definitions. Whenever used in this chapter, unless the context requires otherwise.

(3) “Dealer” means any person whether located within or outside of this state, who sells or distributes cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products to a consumer in this state.

(4) “Distributor” means any person:

(i) Whether located within or outside of this state, other than a dealer, who sells or distributes cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products within or into this state. Such term shall not include any cigarette or other tobacco product manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. § 5712, if such person sells or distributes cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products in this state only to licensed distributors, or to an export warehouse proprietor or another manufacturer with a valid permit under 26 U.S.C. § 5712;

(ii) Selling cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products directly to purchasers in this state by means of at least twenty-five (25) vending machines;

(iii) Engaged in this state in the business of manufacturing cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products or any person engaged in the business of selling cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products to dealers, or to other persons, for the purpose of resale only; provided, that seventy-five percent (75%) of all cigarettes and/or other tobacco products and/or electronic

“[w]henever used in this chapter, unless the context requires otherwise.” Thus, those definitions apply to the statutory proof needed to prove an ENDS products has a characterizing flavor.

The Division’s Exhibit 11 consists of pages from nexussmoke.com. It contains content about Brixz products. The testimony represented that said exhibit contained reviews of Brixz products. The second page of said exhibit states, “[b]ut the true magic of BRIXZ NYC lies in its taste. Nexus Smoke, a trusted retailer known for its dedication to quality vaping products, brings you the full spectrum of BRIXZ’s delectable e-liquid options.” A part of what seems to be Nexus Smoke’s advertising for its sales references that red tobacco “infuses rich tobacco notes with rejuvenating essence of mango.” *Id.*, third page.

Division’s Exhibit 11 also includes a reference to “red tobacco” being tobacco with “refreshing mango ice.” Division’s Exhibit 11, last page. Division’s 11 also includes a page about red tobacco products that can be purchased. That page lists “Flavor: Red Tobacco” and under that over 30 different types of items are listed that can be purchased that fall under red tobacco. Some types listed include “classic clear” and “ultra clear” which are listed as unflavored. Other types listed are “frozen grape” and “strawberry chill.” “Mango ice” is listed as a new flavor. One type listed under red tobacco is also just called red tobacco. To purchase the listed red tobacco products, the customers are to purchase them via nexussmoke.com.

nicotine-delivery system products sold by that person in this state are sold to dealers or other persons for resale and selling cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products directly to at least forty (40) dealers or other persons for resale; or

(iv) Maintaining one or more regular places of business in this state for that purpose; provided, that seventy-five percent (75%) of the sold cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products are purchased directly from the manufacturer and selling cigarettes and/or other tobacco products and/or electronic nicotine-delivery system products directly to at least forty (40) dealers or other persons for resale.

(10) “Manufacturer” means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette and/or other tobacco products and/or electronic nicotine-delivery system products.

Nexussmoke.com is not a manufacturer in that its website states it is a retailer. It could be a dealer in that it could be selling or distributing cigarettes and/or other tobacco products and/or ENDS products to a consumer in this state. It could be a distributor in that if it is not a dealer it is selling or distributing cigarettes and/or other tobacco products and/or ENDS products to a consumer in this state.

The testimony at hearing about nexussmoke.com was that Exhibit 11 was product reviews. There was testimony about a vendor statement. However, it is unclear who was making the claims on nexussmoke. Some content appears to be written by nexussmoke.com to advertise. Other content might have been written by customers or taken from Brixz's website. The testimony at hearing called them all product reviews.

By statute, it cannot be determined the seized ENDS products are flavored based solely on a particular ingredient. The testimony was that two (2) units said unflavored. Division's Exhibit 11 including a list of many types of red tobacco. Some were clearly listed as fruit flavor. It also indicated that red tobacco was mango flavored. It also indicated there were several kinds of red tobacco flavors including unflavored and red tobacco itself.

Evidence about taste or flavor or aroma is not needed in certain circumstances to prove a vape has a characterizing flavor. Under the statute, a flavor shall be presumed to be a characterizing flavor if a dealer, manufacturer, or distributor has made a statement or claim directed to consumers or the public about such flavor, whether expressed or implied, that it has a distinguishable taste or aroma.

For example, if there was evidence from Brixz' (manufacturer) website that said red tobacco was flavored that would be enough evidence under the statute. If there was evidence the Taxpayer (dealer) had advertised in its store or elsewhere that Brixz red tobacco was flavored that

would be enough evidence under the statute. If there was evidence that a licensed distributor labeled Brixz red tobacco as flavored that would be enough under the statute.⁸

Division's Exhibit 11 was presented at hearing as a vape review website. It included flavored and unflavored red tobacco descriptions. This exhibit was not presented as a claim by the dealer, manufacturer, or distributor. It is unclear if nexussmoke.com would fall under the statutory definition of either dealer or distributor as more evidence would be needed to make such a determination.

Based on the foregoing, there is not enough evidence to make a finding pursuant to R.I. Gen. Laws § 44-20-61 that the seized products were flavored ENDS products.

VI. FINDINGS OF FACT

1. ENDS products for which tax was paid were seized from the Taxpayer on February 21, 2025.
2. The Order to Show Cause was issued on October 30, 2025.
3. A hearing was held on December 1, 2025 with the parties 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. There is not enough evidence to make a finding pursuant to R.I. Gen. Laws § 44-20-61 that the seized products were flavored ENDS products

⁸ The distributor invoice did not indicate the red tobacco was flavored. For the red tobacco, it listed one as unflavored and the other red tobacco was not listed as either flavored or unflavored. Division's Exhibit Four (4)

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 § 44-20-61, the notice of assessment and license suspension should be dismissed as there is not enough evidence to make a finding pursuant to R.I. Gen. Laws § 44-20-61 that the seized products were flavored ENDS products.

Date: January 6, 2026

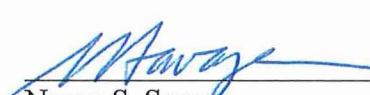

Catherine R. Warren
Hearing Officer

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: 4/22/24


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 22nd day of April, 2026 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 Mathew Williamson, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Neil Belasco