

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

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<b>IN THE MATTER OF</b>	:	
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	:	<b>SC 25-020; 25-T-046</b>
	:	<b>ENDS Products Tax</b>
<b>Taxpayer.</b>	:	

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**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”),<sup>1</sup> 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

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<sup>1</sup> 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.-C., VI., and VII.;
- ii) modifies Sections V. D. as discussed below; and
- iii) modifies Section VIII., the Recommendation; to order that

(the "Taxpayer") license shall be suspended for five (5) days to begin on the 31st day after the execution of this decision. The remaining terms of the Recommendation as to tax, interest, and penalties are not modified.

The Hearing Officer found that the Division properly seized and assessed the tax on the contraband flavored electronic nicotine-delivery system ("ENDS") products seized from the Taxpayer on January 2, 2025. However, the Hearing Officer determined that there was not enough evidence presented at the hearing on the Taxpayer's two prior violations to form an evidentiary basis for finding that a license suspension should be imposed, despite this being the Taxpayer's third violation within five years.

The Hearing Officer's decision in this case strays from the statutory standard in R.I. Gen.

Laws § 44-20-8 (“the suspension statute”) as she acknowledges that “[t]he suspension and revocation statute does not contain the same kind of mitigating and aggravating factors as those found in the administrative penalty statute[,]” and she acknowledges that R.I. Gen. Laws § 44-20-8 “also does not provide a look back of two (2) years when determining first or subsequent offen[s]es.” R.I. Gen. Laws § 44-20-35(b), the “administrative penalty statute,” specifically provides for a lookback period of two (2) years and further provides that “[w]hen determining the amount of a fine sought or imposed under [§ 44-20-35], evidence of mitigating factors, including history, severity, and intent shall be considered.” As R.I. Gen. Laws § 44-20-8 does not provide specific statutory authority to consider the mitigating factors of history, severity, and intent, and does not include a lookback period, the consideration of these elements in the application of the suspension statute is misguided because it effectively negates the suspension statute and prevents accountability and sanction for statutory violations. In this case, finding that a suspension is not supported by the evidence disregards the uncontested and established current statutory violation for holding flavored, untaxed ENDS products for sale and disregards the existing (whether negotiated down or otherwise) prior established violations. It is not in the best interest of the public, is not an effective regulation of the marketplace, and is inconsistent with the statutory mandates to disallow a progressive sanction for continued violations by the same taxpayer.

The Hearing Officer cites to *Jake & Ella's Inc. v. Dep't of Bus. Regulation*, NC01-461, 2002 R.I. Super. LEXIS 56 (R.I. Super. Ct. Apr. 22, 2002), for the proposition that the imposition of sanctions is not always a mechanical grid and that determinations should include consideration of a variety of factors, including the frequency of the violations, the real or potential danger to the public posed by the violation, the nature of any previous violations and sanction, and any other facts deemed relevant to fashioning an effective and appropriate sanction. However, this is not the

statutory standard for suspending a dealer's license under R.I. Gen. Laws § 44-20-8, nor is it the standard for imposing penalties under R.I. Gen. Laws §§ 44-20-51 or 44-20-51.1. For these reasons, a five (5) day license suspension is warranted and ordered.

Accordingly, it is hereby ORDERED that the Hearing Officer's Decision and Recommendation is modified. Pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Law § 44-20-13.2, and R.I. Gen. Laws § 44-20-51.1, the tax and penalty were properly assessed on the Taxpayer's ENDS products as set forth in the Division's Exhibit 6. Pursuant to R.I. Gen. Laws § 44-1-7, the Taxpayer owes any accrued interest. Pursuant to R.I. Gen. Laws 44-20-8, the Taxpayer's license shall be suspended for five (5) days to begin on the 31st day after the execution of this decision. The tax and penalty and any interest owed by the Taxpayer shall be due to the Division by the 31st day after the execution of this decision.

  
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Neena S. Savage  
Tax Administrator

Date: 4/24/26

ENTERED as Administrative Order No. 2026-07 on the 24<sup>th</sup> day of April 2026.

**CERTIFICATION**

I hereby certify that on this 24<sup>th</sup> 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.

  
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STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2026-07

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:

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: SC 25-020; 25-T-046  
: cigarette tax  
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Taxpayer.  
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**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 September 9, 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 November 13, 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**

Whether the Taxpayer owes the 2025 assessment and, if so, should sanctions be imposed.

**IV. MATERIAL FACTS**

Chief Revenue Agent (“Inspector”), testified on behalf of the Division. She testified that she works in the audit and investigations unit. She testified that she occasionally

conducts tobacco compliance inspections and on January 2, 2025, she and her supervisor conducted an inspection of the Taxpayer in relation to the new statutory requirements for Electronic Nicotine-Delivery System (“ENDS”) and for the floor inventory tax. She testified the inspection took place one (1) day after R.I. Gen. Laws § 44-20-13.2(a) came into effect, and that statute imposes tax on ENDS products sold or held for sale in Rhode Island. She testified the new statutes also requires dealers of other tobacco products (“OTP”) and non-flavored ENDS products to purchase those products from Rhode Island licensed distributors and provides that OTP and non-flavored ENDS products not so purchased are considered contraband subject to seizure. She testified the Division mailed information about the statutory changes to retailers and distributors and hand delivered that information to businesses including the Taxpayer on September 9, 2024.

The Inspector testified that when they went into the store for the inspection, they identified themselves. She testified there were ENDS products on display in the back and on the counter and there were ENDS products in an unlocked back room. She testified they completed a seizure report for open system and closed system ENDS products which they provided to the clerk. Division’s Exhibits Two (2) (compliance report) and Three (3) (seizure report).

On cross-examination, the Inspector testified she was conducting an inventory floor tax as well as a routine compliance (ENDS) check. She testified the Division always goes the day after New Year’s Day for inventory floor tax, and compliance checks are always random. She testified the seized products were flavored ENDS products which are prohibited in Rhode Island. She testified she went through two (2) unlocked doors to get to the back room, and in the room was a garbage bag full of flavored vapes. She testified that back room did not seem to be a retail area. She testified they found some flavored vapes in the store area, but she cannot say which were in

the garbage bag or in the store. She testified the inventory floor tax inspection was different from the seizure. She testified there were empty packages and no display cases in back room.

Principal Tax Auditor (“Auditor”), testified on behalf of the Division. He testified this was the Taxpayer’s third offense 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 the audit report states a factor of six (6) was used but it was five (5). He testified penalty (b) at \_\_\_\_\_ was imposed as the greater amount under the statute. He testified that for the ENDS tax owed, he calculated the tax under the statute so for open system, it was 10% of value and for closed system, it was 50 cents per milliliter. He testified the Taxpayer has accrued interest for non-payment of the assessment after 30 days. Division’s Exhibits Four (4) (audit report); Five (5) (notice of license suspension); and Six (6) (notice of assessment).

On cross-examination, the Auditor testified the Taxpayer had a prior violation in 2020 when it paid a \_\_\_\_\_ penalty and in 2021, there was a second violation when the Taxpayer paid \_\_\_\_\_ penalty for an OTP violation. He testified the Taxpayer did not serve a suspension for either violation. He testified that prior to January 1, 2025, it was illegal to sell flavored ENDS product, but the Division only was given the power to seize those illegal products by the change in statute effective January 1, 2025. He testified he has never been to the store and does not know where the flavored vapes were located in the store, but because they were in the store they were subject to seizure. He testified the Taxpayer knew in advance of the change of the law so everything should have been out of the store by January 1, 2025. He testified that a closed system is disposable. He testified the amount of the tax owed was \_\_\_\_\_ with the total assessment being \_\_\_\_\_.

\_\_\_\_\_ (“Manager”) testified on behalf of the Taxpayer. He testified he is the Taxpayer’s manager. He testified that as of January 1, 2025, no flavored ENDS products could be

sold in Rhode Island, so he took all the products out before that date to return. He testified the products seized were either expired or to be returned. He testified he put those products in the garbage bag in the back room to be returned, and he forgot to return them. He testified that no products were seized in the main store but only from the back room. He testified he planned to discard the products that he could not return and never intended to sell any of the products.

On cross-examination, the Manager testified he was aware of the new statutory prohibition starting January 1, 2025 and received notification from the Division to remove flavored vapes from the store by that date. He testified that all vapes on display were returned by January 1, 2025. He testified the only products left were in the back room, and he forgot to return them. He testified that it is 50-50 if a distributor accepts expired products for return.

## 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. Therefore, as testified to at hearing, what changed on January 1, 2025, was not the actual prohibition of flavored ENDS products but the licensing, taxing, and enforcement of ENDS products. Effective January 1, 2025, the authority for the licensing of ENDS sellers was moved to the Division. At the same time, the selling of flavored ENDS products was prohibited by statute. Furthermore, 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 § 44-20-13.2<sup>1</sup> was amended to impose

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<sup>1</sup>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:

tax on ENDS products. P.L. 2024, ch. 117, art. 6, § 16. R.I. Gen. Laws § 44-20-61<sup>2</sup> was enacted to prohibit the sale of flavored ENDS products. P.L. 2024, ch. 117, art. 6, § 17. R.I. Gen. Laws § 44-20-15<sup>3</sup> was amended to include that ENDS sold in violation of State law would be considered

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(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. \*\*\*

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(b) \*\*\*

(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.

<sup>2</sup> 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. \*\*\*

<sup>3</sup> 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

contraband and subject to confiscation; the definition of sale in R.I. Gen. Laws § 44-20-1(15)<sup>4</sup> was amended to include ENDS products; and the penalty statute, R.I. Gen. Laws § 44-20-51.1,<sup>5</sup> was amended to include ENDS products. P.L. 2024, ch. 117, art. 6, § 16. Inspections of ENDS dealers are now also allowed by R.I. Gen. Laws § 44-20-40.1. *Id.* In addition, R.I. Gen. Laws § 44-20-8<sup>6</sup> provides for the suspension or revocation of a dealer's license.

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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.

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

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

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

<sup>5</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 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

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(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.

<sup>6</sup> R.I. Gen. Laws § 44-20-8 provides in part as follows:

Suspension or revocation of license. The tax administrator may suspend or revoke any license under this chapter for failure of the licensee to comply with any provision of this chapter or with any provision of any other law or ordinance relative to the sale or purchase of cigarettes or other tobacco products. The tax administrator may also suspend or revoke any license for failure of the licensee to comply with any provision of chapter 19 of title 44 and chapter 13 of title 6, and, for the purpose of determining whether the licensee is complying with any provision of chapter 13 of title 6, the tax administrator and his or her authorized agents are empowered, in addition to authority conferred by § 44-20-40, to examine the books, papers, and records of any licensee. \*\*\* Any person aggrieved by the suspension or revocation may apply to the administrator for a hearing as provided in § 44-20-47, and may further appeal to the district court as provided in § 44-20-48.

**C. Whether Tax is Owed on the ENDS Products**

It was undisputed that on January 2, 2025, the Division seized flavored ENDS products from the Taxpayer for which tax had not been paid. The Inspector testified she seized the products from a garbage bag in the back room and from the store. The Manager testified there were no ENDS products in the retail area of the store but only in the back room, and that he had meant to either dispose of or return the seized products as they no longer could be sold but he had forgotten.

Based on the testimony, the back room sounded like a storage area. Items to be sold could be stored there prior to sale. Or items no longer being sold could be stored there. The flavored ENDS products found in the garbage bag on January 2, 2025 most likely were not about to be put out front for sale. Nonetheless, whether the products were all in the back room or some in front or some in back room, the statute presumes the act of holding, storing, or keeping ENDS products at a place of business for any purpose to be holding ENDS products for sale.

While the Taxpayer argued it was removing the flavored products because of the statutory change, it is noted that flavored ENDS products have been prohibited to be sold within Rhode Island since 2019; though, that prohibition was not under the purview of the Division. The change in statute also prohibited the sale of any ENDS products not bought from a Rhode Island licensed distributor. However, the Manager's testimony was he removed the seized products because they were flavored. By statute, the ENDS products were being stored, held, and kept in the Taxpayer's place of business so were subject to tax. R.I. Gen. Laws § 44-20-13.2 provides that tax is imposed on ENDS products. The Taxpayer did not dispute the calculation of the tax imposed on the seized ENDS products. Thus, the Division properly assessed tax on the seized ENDS products.

**D. What Sanctions Should be Imposed**

R.I. Gen. Laws § 44-20-51.1(a) provides that for a first offense in a 24 month period, a penalty of not more than ten (10) times the retail value of the cigarettes and/or other tobacco products involved shall be imposed. R.I. Gen. Laws § 44-20-51.1(b) provides that a penalty of not more than five (5) times of the tax or \$1,000 which 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.

The Division seeks monetary penalties for the unpaid ENDS tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b) for the seizure. The penalties imposed in the assessment were under (a) and (b) of R.I. Gen. Laws § 44-20-51.1. Penalty (a) was based on the retail value of the products and a factor of five (5) was applied for a first offense, and penalty (b) was \$1,000 as the greater amount pursuant to the statute. Division's Exhibits Four (4) (audit report) and Six (6) (notice of assessment). 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). As a consequence, the Taxpayer's violation justified the penalties imposed in the Division's notice of assessment for the seized ENDS products.

The Division requested a 20 day suspension for the Taxpayer's third offense. The Auditor testified that the Taxpayer paid [redacted] for its first offense and [redacted] for its second offense with no suspension for either violation. The first offense was on July 2, 2020 and was for cigarettes, and the original assessed amount was [redacted] with a Five (5) day suspension. The second offense was on July 6, 2021 for OTP with an assessed amount of [redacted] and a Ten (10) day suspension. For the first offense, the suspension was abated. For the second offense, two (2) days of suspension were held in abeyance, but no suspension was served. Division's Exhibit Four (4). Three-and-a-half years later, the Taxpayer was inspected, and flavored ENDS products were seized.

Along with the monetary penalties that “shall” be imposed under the statute, R.I. Gen. Laws § 44-20-8 provides the suspension or revocation of a dealer’s license “may” be imposed. R.I. Gen. Laws § 44-20-51.1(c) provides that when determining the administrative penalty to be imposed, mitigating and aggravating factors including severity, history, and intent shall be considered. The suspension and revocation statute does not contain the same kind of mitigating and aggravating factors as those found in the administrative penalty statute. *Supra*. It also does not provide a look back of two (2) years when determining first or subsequent offenses. Instead, it provides that a license may be suspended or revoked for failure to comply with that chapter or with any other law or ordinance relative to the sale or purchase of cigarettes or other tobacco products and for failure to comply with R.I. Gen. Laws § 44-19-1 *et seq.* or R.I. Gen. Laws § 6-13-1 *et seq.* Nonetheless, in considering whether a licensee’s violations merit either a suspension or a revocation in addition to the mandatory monetary penalties, an agency does not have unbridled discretion but rather must determine the appropriate penalty in light of the relevant facts. Not all violations merit a revocation, and not all violations merit a suspension of the same amount of time.

In *Chernov Enterprises, Inc. v. Sarkas*, 284 A.2d 61 (R.I. 1971), the Supreme Court construed a license renewal statute that did not provide specific statutory violations as grounds for denial but rather provided the license renewal could be denied for “cause.” In that situation, the Court found that in “establishing cause as the controlling standard, the Legislature obviously did not intend to confer upon the licensing authority a limitless control or to permit the exercise of an unbridled discretion.” *Chernov* at 287. The Court found that such administrative action needed to be based on legally competent evidence, and a review of such an action would only be “to ascertain whether the action being reviewed was so arbitrary or capricious as to constitute an abuse of discretion, whether there was any legal evidence to support it, and whether the licensing

proceeding was otherwise affected by an error of law.” *Id.* at 288. In other words, the Court would decide whether there was legally competent evidence to support the denial of a renewal application or whether the action was so arbitrary or capricious that it would be an abuse of discretion. The Superior Court has discussed the same kind of considerations for determining whether a suspension or revocation of a license is an appropriate sanction for a licensee’s violations.

Under *Rocha vs. Public Utilities Commission*, 694 A.2d 722 (R.I. 1997), a court cannot substitute its judgment for what should be an appropriate sanction but instead the Court will determine if there was legally competent evidence to support an agency’s decision. Thus, in *Rocha*, the Court upheld the revocation of license as there was legally competent evidence to support the finding of the violation that was a basis for revocation under the statute.

A Superior Court decision, *Jake and Ella’s Inc. v. Department of Business Regulation*, 2002 WL977812 (R.I. Super.), discussed *Rocha’s* holding that as long as there is an evidentiary basis for an agency’s finding, a court cannot overturn a sanction because it disagrees with the sanction. However, the Court discussed how in general hearing officers must apply concepts of proportionality to sanctions. The Court found that “[t]here are times when the sanction imposed by an agency, while permitted by law, is so arbitrary and extreme that it constitutes a clear abuse of discretion” so that under the arbitrary and capricious standard contained in R.I. Gen. Laws § 42-35-15 of the Administrative Procedures Act (“APA”), the Court can reverse the lower court’s decision. *Jake* at 5. The Court found there are two (2) components to administrative decision: 1) a determination of the merits of the case; and 2) determination of the sanction and while the former is mainly factual, the latter not only involves ascertainment of factual circumstances but the application of administrative judgment and discretion. The Court indicated that factors to be considered in weighing the severity of a violation should include the number and frequency of the

violations, the real and/or potential danger to the public posed by the violation(s), history of any prior violations and sanctions, and other relevant facts to determining an appropriate sanction.

In 2014, the Superior Court in reviewing a Department of Health's licensee's sanction on appeal cited to the factors considered in *Jake* for sanctions and discussed whether it had been properly applied by an agency director. *Blais v. Department of Health*, 2014 WL 7368789 (R.I.Super.). A more recent Superior Court case, *John Hope Settlement House, Inc. v. DCYF et al.*, 2017 WL 2021402 (R.I.Super.), also discussed *Rocha* and the applicability of *Jake* when determining administrative penalties for a licensee and what should be considered. In that case, the Superior Court discussed what would be the appropriate sanction by the Department of Children, Youth, and Families on a day care licensee for three (3) violations. The Court found there was not enough information in the record to make a determination about sanctions as the Court could not tell if the violations were intermittent technical violations or a "pattern of inability to comply with substantive Department policies." *John Hope* at 6. The Court remanded the matter so the record could be supplemented so the Court could make a determination on sanctions.<sup>7</sup>

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<sup>7</sup> *John Hope* at 6 found as follows:

Finally, the Center contends that despite the three violations found, the Hearing Officer erred by affirming DCYF's penalty—the revocation of its day care license. Specifically, John Hope argues that these three violations do not merit the "death sentence" that revocation would bring. . . . To that end, the Center points to *Jake & Ella's* . . . In *Jake & Ella's*, the Superior Court vacated the revocation of a liquor license because "the sanction imposed [was] excessive and disproportionate as a matter of law." *Id.* at \*5. There, the Court held that "implementation of that sanction [revocation] under the facts of this case was clearly an abuse of discretion, ignoring concepts of proportionality that hearing officers should be expected to apply." *Id.* at \*6.

On the other hand, the Court is mindful of *Rocha v. State Pub. Utils. Comm'n*, 694 A.2d 722 (R.I. 1997), heavily cited to in *Jake & Ella's*, which stated that "[t]he Superior Court is limited in its review of an agency decision to examining the record to determine whether it contains some or any legal evidence therein to support the finding made by the division." *Rocha*, 694 A.2d at 727. This Court cannot "merely disagree[] with the sanction decided upon by the division and reverse[] the division's decision." *Id.* at 726 (internal citations omitted).

Nevertheless, based solely on the three violations before the Court, the Court could find the revocation to be "so arbitrary and extreme that it constitutes a clear abuse of discretion" in the vein of *Jake & Ella's*, 2002 WL 977812 at \*5. This Court lacks a sufficiently-developed record to make such a conclusion. Of the three violations, two were technical and only one potentially could have threatened the safety and welfare of the children in John Hope's care. \*\*\*

If the Department's revocation was based on the cumulative effect of the violations which led

For an administrative appeal, the Division is not subject to the APA. When its decisions are appealed, its appeals are *de novo* to District Court. See R.I. Gen. Laws § 44-20-48. Thus, on appeal, the court would not be deciding whether a sanction was arbitrary and capricious, but rather the court, if it found violations after a *de novo* hearing, would determine the appropriate sanction. The suspension and revocation statute provides the statutory grounds for such an action but not every violation will merit a suspension of the same length of time or a revocation. There are several factors to be considered - even if they are not specifically delineated in the suspension and revocation statute - to assure that a sanction that is imposed is not disproportionate. The imposition of a suspension or revocation is not subject to unbridled discretion. Such a determination includes consideration of relevant facts to the licensee and its violations. Therefore, in determining the appropriate sanction for the Taxpayer's violation, it is relevant to consider the Taxpayer's disciplinary history, the seriousness of violations, the type of violations, and the effect on the public among the relevant factors to be considered.

The only evidence regarding the prior violations is the date and type of violation, and the total assessed amount and the settled amount, and that no suspensions were served. Thus, it is not known if the prior violations were due to purposely purchasing out of state lower taxed cigarettes for resale or erroneously taking delivery of an untaxed product, etc. The Division now seeks a 20 day suspension of the Taxpayer's uniform cigarette, tobacco, and ENDS dealer's license.

In *In the Matter of Taxpayer*, 2024 WL 47298216 (R.I. Div. Tax), the Division imposed a 30 day suspension of a cigarette dealer's license after a taxpayer had six (6) violations in ten (10)

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to the several probationary periods, the nature of John Hope's previous violations is unclear from the record. While the record hints at technical violations, see R. Ex. 9, there may be more substantive violations that were not mentioned. Whether the decision of the Department to revoke the license was arbitrary, capricious, or an abuse of discretion depends on whether John Hope has committed intermittent technical violations of DCYF regulations or has shown a pattern of inability to comply with substantive Department policies. The record here lacks the information needed for the Court to make such a determination.

years and previously had a suspension of license as well as prior violations including a recent violation and during the inspection at issue, that taxpayer interfered with the inspection. That decision found the purchase of the products were part of pattern of willful noncompliance by that taxpayer over several years, and it had failed to institute corrective measures after prior violations and failed to maintain records. There is no evidence here to find a pattern of noncompliance with tobacco taxing statutes. The evidence is the third offense occurred three-and-a-half years after the second offense which occurred one (1) year after the first offense. Nothing is known about the first two (2) offenses except the kind of offense and the sanction. The third offense arose out of a change in the law in the licensing and enforcement relating to ENDS products. There was no evidence of continuous record keeping issues in relation to the nonpayment of tobacco taxes.<sup>8</sup>

In light of the Taxpayer's history and past discipline and this violation and the administrative penalty being imposed, the undersigned recommends no suspension be imposed.

The imposition of interest after the nonpayment of a deficiency by its due date is authorized by R.I. Gen. Laws § 44-1-7.<sup>9</sup> The Auditor testified that interest has been accruing since the nonpayment of the assessment by the Taxpayer after payment was due. This is consistent with R.I. Gen. Laws § 44-1-7.

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<sup>8</sup> While the sale of flavored ENDS products was already prohibited in the State of Rhode prior to January 1, 2025, such a violation was not a violation of a tax statute.

<sup>9</sup> 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.

**VI. FINDINGS OF FACT**

1. ENDS products for which no tax was paid were seized from the Taxpayer on January 2, 2025.
2. The Order to Show Cause was issued on September 9, 2025.
3. A hearing was held on November 13, 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. The Taxpayer violated R.I. Gen. Laws § 44-20-13.2(a)(4) on January 2, 2025.

**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 § 44-20-13.2, 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 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, no suspension of license is imposed. Finally, the Taxpayer owes the accrued interest pursuant to R.I. Gen. Laws § 44-1-7.

Date: December 9, 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: 4/24/24

*Neena S. Savage*  
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 24<sup>th</sup> 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 electronic delivery to the Taxpayer's attorney'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.

*Sail Belarso*