

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-22

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

IN THE MATTER OF:

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**13-T-0046
SC 13-037
cigarette and sales tax**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to an Order to Show Cause, Notice of Pre-Hearing Conference and Appointment of Hearing Officer (“Notice”) issued on July 19, 2014 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). A hearing was held in this matter on September 11, 2014. Notice was given to the Taxpayer by first class and certified mail to its attorney’s address and the Taxpayer’s address. No one appeared at the hearing. None of the notices were returned to the Division as undeliverable. As adequate notice of hearing was given, the hearing was held.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures, Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer violated the stipulation entered into on July 2, 2013 and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

A notice of deficiency in the amount of _____ was issued to the Taxpayer on March 20, 2013 by the Division in relation to cigarette taxes owed by the Taxpayer. See Division's Exhibit Three (3) (notice of deficiency). The Taxpayer entered into a stipulation on July 2, 2013 which provided that the Taxpayer would pay the deficiency. The parties' stipulation provided that the Taxpayer would make five (5) payments to the Division in the amounts of _____ in order to pay the deficiency. The stipulation provided that each payment would be made in five (5) sequential payments by July 25, 2013 through November 25, 2013. The stipulation settled a matter the Division brought against the Taxpayer by Notice of License Suspension and Order to Show Cause issued March 20, 2103 and June 25, 2013 respectively to the Taxpayer because of untaxed little cigars found on the Taxpayer's premises. See Division's Exhibit One (1) (stipulation).

Senior Revenue Agent, testified on behalf of the Division. She testified that she is responsible for tracking payments for cigarette tax settlements. She testified that the Taxpayer made four (4) of its five (5) payments so there is an unpaid installment of _____ owed to the Division by the Taxpayer. See Division's Exhibit Four (4) (Taxpayer's payment records).

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). 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. Dept. of Environmental Management*, 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). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. **Whether the Taxpayer Violated the Stipulation**

The undisputed evidence is that the Taxpayer failed to make one (1) of the installment payments on the deficiency owed. Therefore, the Taxpayer violated the stipulation. The Division seeks an order that the Taxpayer make the final payment.

VI. FINDINGS OF FACT

1. The stipulation was entered into on July 2, 2013.
2. A hearing was held on September 11, 2014 at which time the Taxpayer did not appear. As the Taxpayer was adequately noticed, the hearing was held and the Division rested on the record.
3. The Taxpayer still owes _____ to the Division on its deficiency.
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 § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer violated the stipulation by not making one (1) of its payments.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

The Taxpayer violated the stipulation and pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*, the Taxpayer owes to be paid on the 31st day from the signing of the decision by the Tax Administrator.

Date: September 30, 2014

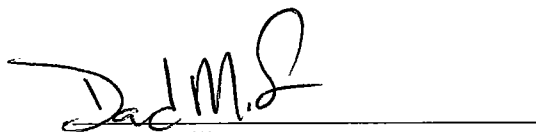

Catherine R. Warren
Hearing Officer

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: 10/3/14


David Sullivan
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 § 44-19-18 Appeals

Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this chapter is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

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 31st day October, 2014 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail to the Taxpayer's attorney's and Taxpayer's address on record with the Division and by hand delivery to Linda Riordan, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

