

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2023-09

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

IN THE MATTER OF:

**SC 21-110; 21-T-193
OTP and cigarette tax**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter initially came for hearing pursuant to an Order to Show Cause and Notice of Pre-hearing Conference and Appointment of Hearing Officer (“Order to Show Cause”) issued on September 28, 2021 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). Division’s Exhibit 14. That matter was resolved by a Stipulation of Settlement and Dismissal (“Stipulation”) dated November 14, 2022. Division’s Exhibit 16. On September 21, 2023, the Division issued a notice of hearing to the Taxpayer based on the Division’s allegation that the Taxpayer breached the Stipulation. Division’s Exhibit 21. Said notice scheduled a hearing for October 23, 2023 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held on October 23, 2023 before the undersigned. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”), a default judgment may be entered against the party not appearing at hearing. The Department was represented by counsel who rested on the record.

¹As the Taxpayer is closed (see testimony below), the Division sent the September 21, 2023 notice to the Taxpayer’s treasurer’s home address. This individual corresponded with the Division on behalf of the Taxpayer. Division’s Exhibits 21 (said notice) and 20 (emails sent among the undersigned, the Division, and said individual). Notice of the October 23, 2023 hearing was also provided to the Taxpayer by electronic delivery. Division’s Exhibit 20.

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 Hearing Regulation.

III. ISSUE

Whether the Taxpayer breached its 2022 Stipulation with the Division, and if so, should any sanctions be imposed.

IV. MATERIAL FACTS

The November 14, 2022 Stipulation provided that on August 10, 2021, the Division inspected the Taxpayer's business (a convenience store) for compliance with tax laws and seized untaxed cigarettes and other tobacco products. On August 27, 2021, the Division issued a notice of deficiency determination of cigarette tax and penalties and a notice of deficiency determination of other tobacco products tax and penalties. Division's Exhibits 14 (Order to Show Cause) and Six (6) (notices of deficiency).

Principal Tax Auditor, testified on the Division's behalf. He testified the Taxpayer held a cigarette dealer's license and retail sales permit for 2021 to 2022. Division's Exhibits Three (3) and Four (4). He testified the Taxpayer was to pay the settlement amount in the Stipulation by monthly payments from January 1 to December 1, 2023 but only made some payments. He testified the Taxpayer had not made any payments since May, 2023. Division's Exhibit 17. He testified the Taxpayer was given notice that it missed its required payments. Division's Exhibits 18 (July 21, 2023 letter indicating June and July payments had not been received); and 19 (August 7, 2023 letter indicating the June, July, and August payments had not been received). He testified the Taxpayer's store is out of business.² He testified the Stipulation

² In its correspondence with the Division and the undersigned, the Taxpayer stated that the store is closed. Division's Exhibit 20.

provides that if the Taxpayer defaults in its payments, it will owe the entire amount of the two (2) deficiency assessments. He testified the Taxpayer owes _____ which represents the initial assessments minus the payments already made. Division’s Exhibits Six (6) and 17.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. **Relevant Statutes**

R.I. Gen. Laws § 44-20-12³ imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2 imposes tax on “other tobacco products.”⁴ Inspections of cigarette dealers are allowed by R.I. Gen.

³ R.I. Gen. Laws § 44-20-12 states as follows:

Tax imposed on cigarettes sold. – A tax is imposed on all cigarettes sold or held for sale in the state. The payment of the tax to be evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such cigarettes. Any cigarettes on which the proper amount of tax provided for in this chapter has been paid, payment being evidenced by the stamp, is not subject to a further tax under this chapter. The tax is at the rate of one hundred seventy-five (175) mills for each cigarette.

⁴ R.I. Gen. Laws § 44-20-13.2 provides in part as follows:

(a) A tax is imposed on all other tobacco products, smokeless tobacco, cigars, and pipe tobacco products sold, or held for sale in the state by any person, the payment of the tax to be accomplished

Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1⁵ provides for administrative penalties for the violation of the tax laws. In addition, R.I. Gen. Laws § 44-20-8 provides for the suspension or revocation of a cigarette dealer's license.

C. Stipulation

In order to settle the notices of deficiency issued on August 27, 2021 to the Taxpayer for tax owed for cigarettes and other tobacco products, the Taxpayer entered into the Stipulation and agreed to pay a reduced amount of the total amount of the deficiencies. However, the Taxpayer agreed to pay the full amount of the deficiencies if it defaulted on the Stipulation.

Paragraph 19 of said Stipulation provides as follows:

DEFAULT. Failure of Taxpayer to abide by any of the requirements of this Stipulation shall be in default under the Stipulation. In the event Taxpayer defaults under the Stipulation, Taxpayer agrees that the entire amount due pursuant to the Assessment Notice, as set forth herein, shall be immediately due, final, and payable. Upon breach by Taxpayer, the Tax Division may invoke any further remedies under Rhode law that it deems appropriate.

according to a mechanism established by the administrator, division of taxation, department of revenue. The tax imposed by this section shall be as follows:

(1) At the rate of eighty percent (80%) of the wholesale cost of other tobacco products, cigars, pipe tobacco products, and smokeless tobacco other than snuff.

(2) Notwithstanding the eighty percent (80%) rate in subsection (a) above, in the case of cigars, the tax shall not exceed fifty cents (\$.50) for each cigar.

(3) At the rate of one dollar (\$1.00) per ounce of snuff, and a proportionate tax at the like rate on all fractional parts of an ounce thereof. Such tax shall be computed based on the net weight as listed by the manufacturer; provided, however, that any product listed by the manufacturer as having a net weight of less than 1.2 ounces shall be taxed as if the product has a net weight of 1.2 ounces.

⁵ R.I. Gen. Laws § 44-20-51.1 provides as follows:

(a) Whoever omits, neglects, or refuses to comply with any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall, in addition to any other penalty provided in this chapter, be liable as follows:

(1) For a first offense in a twenty-four-month (24) period, a penalty of not more than ten (10) times the retail value of the cigarettes and/or other tobacco products involved; and

(2) For a second or subsequent offense in a twenty-four-month (24) period, a penalty of not more than twenty-five (25) times the retail value of the cigarettes and/or other tobacco products involved.

(b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this chapter, be liable for a penalty of one thousand dollars (\$1,000) or not more than five (5) times the tax due but unpaid, whichever is greater.

(c) When determining the amount of a penalty sought or imposed under this section, evidence of mitigating or aggravating factors, including history, severity, and intent, shall be considered.

D. Whether the Taxpayer Breached the Stipulation

The Taxpayer did not appear at hearing. The Taxpayer entered into the Stipulation to pay a reduced amount from what was assessed in the 2021 notices of deficiency in relation to the tax owed on cigarettes and other tobacco products. The testimony at hearing was the Taxpayer paid some but not all of the amount owed under the Stipulation. Division's Exhibit 16. The Taxpayer was to make payments by the first of the month for June, July, August, September, and October. It is undisputed that the Taxpayer has not made any payments since May so failed to pay five (5) monthly payments (June through October) as required by the Stipulation. It is undisputed that the Taxpayer breached the Stipulation by its nonpayment of those five (5) monthly payments after May, 2023. Thus, the Taxpayer breached the Stipulation.

E. What Does Taxpayer Owe

Pursuant to paragraph 19 of the Stipulation, the Taxpayer agreed that any default by the Taxpayer of the Stipulation would result in the original amount of the notices of deficiency being owed immediately. Therefore, the Taxpayer shall pay the remaining amount owed for the two (2) assessments for cigarettes and other tobacco products (tax and penalties) issued on August 27, 2023.

VI. FINDINGS OF FACT

1. On September 28, 2021, the Division issued the Order to Show Cause to the Taxpayer. The Order to Show Cause related to the seizure of untaxed cigarettes and other tobacco products from the Taxpayer by the Division. That matter was resolved by a Stipulation dated November 14, 2022.

2. On September 21, 2023, the Division issued a notice of hearing to the Taxpayer alleging that the Taxpayer breached the Stipulation.

3. A hearing was scheduled a hearing for October 23, 2023 at which time the Taxpayer did not appear. Since the Taxpayer was adequately noticed of hearing, a hearing was held on October 23, 2023 before the undersigned. The Taxpayer is in default for failing to appear at the hearing.

4. It is undisputed that the Taxpayer owed the tax assessed on the seized cigarettes and other tobacco products.

5. The Taxpayer failed to make five (5) monthly payments between June and October, 2023 as required by the Stipulation.

6. The facts contained in Section IV and V are incorporated 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.* and R.I. Gen. Laws § 44-20-1 *et seq.*

2. The Taxpayer violated the November 14, 2022 Stipulation.


3. The Taxpayer owes the full amount of taxes and penalties imposed in the two (2) August 27, 2021 notices of deficiency issued to the Taxpayer pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Laws § 44-20-12, R.I. Gen. Laws § 44-20-13, and R.I. Gen. Laws § 44-20-50.1.

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 § 44-20-51.1, R.I. Gen. Laws § 44-20-13, and R.I. Gen. Laws § 44-20-12, the Taxpayer is in breach of its 2022 Stipulation so now owes the tax and penalties assessed by the Division in its initial notices of deficiency minus any payments that it already made.

Date: November 27, 2023

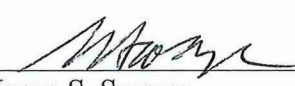

Catherine R. Warren
Hearing Officer

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: 12/11/23


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 12th day December, 2023 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, post prepaid and certified mail, receipt requested to the Taxpayer's address on record with the Division and by electronic delivery to Matthew Cate, Esquire and John Beretta, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Neil Belasco