

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-01

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

IN THE MATTER OF:

Taxpayer.

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

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer (“Notice”) issued on September 19, 2014 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). A hearing was held in this matter on December 12, 2014. The Division was represented by counsel and the Taxpayer was *pro se*. The parties 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 § 44-18-1 *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 August 6, 2014 and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

Supervisor, Special Investigations Unit, testified on behalf of the Division. He testified that two (2) Notices of Deficiency related to cigarette tax and sales tax were issued to the Taxpayer and in order to settle said deficiencies, the Taxpayer entered into a settlement stipulation with the Division on August 6, 2014. See Tax Division's Exhibit D (stipulation). He testified that in order to settle the matter, the Division reduced the Taxpayer's liability to _____ and the stipulation provided that the _____ would be paid in 12 equal monthly installments. He testified that the Taxpayer did not pay either the first or second installment or any installment. See Division's Exhibits C (Notices of Deficiency) and E (Division's mainframe records indicating the Division did not receive any payments toward the settlement from the Taxpayer).

The Taxpayer testified on his behalf. He testified that he is unemployed and owes back rent. See Taxpayer's Exhibit One (1) (invoice of overdue rent). He testified that he would be able to make payments of _____ a month.¹

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

¹ The Division indicated that it could not accept _____ a month as payment since that would extend the payment plan over too long a period but could credit _____ in seized funds to the Taxpayer's tax liability.

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 Taxpayer had been arrested for possession of 50 cartons and two (2) packs of unstamped cigarettes. The Notices of Deficiency issued to the Taxpayer represented the cigarette and sales tax owed and penalties owed on these cigarettes for which tax had not been paid.² See Division's Exhibits C (Notices of Deficiency) and D (stipulation). The undisputed evidence is that the Taxpayer failed to make any payments pursuant to the stipulation. Therefore, the Taxpayer violated the stipulation. The Division seeks a decision that the Taxpayer owes the complete tax and penalty liability. Unfortunately for the Taxpayer, he was unable to comply with the stipulation. As a result, the Notices of Deficiency are outstanding.

VI. FINDINGS OF FACT

1. The stipulation was entered into on August 6, 2014 and the Taxpayer failed to make any payments pursuant to the stipulation.
2. A hearing was held on December 12, 2014 with the parties resting on the record.
3. The Taxpayer still owes the entire tax and penalty liability as set forth in the Notices of Deficiency.
4. The facts contained in Section IV and V are reincorporated by reference herein.

² See R.I. Gen. Laws § 44-18-18 (sales tax), R.I. Gen. Laws § 44-20-12 (cigarette tax), R.I. Gen. Laws §44-20-51.1 (cigarette tax penalty), and R.I. Gen. Laws §44-19-12 (sales tax penalty).

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

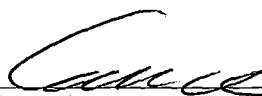
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer violated the stipulation by not making any payments.

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 the two (2) Notices of Deficiencies for cigarette tax and sales tax as set forth in Division's Exhibit C³ to be paid on the 31st day from the signing of the decision by the Tax Administrator.

Date: 1/22/15

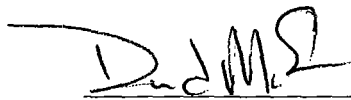

Catherine R. Warren
Hearing Officer

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: 1/23/15


David Sullivan
Tax Administrator

³ The liability can be reduced by the credit.

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

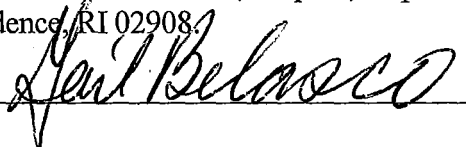
Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this chapter is expressly made conditional upon prepayment of all taxes, interest, and 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 23rd day January, 2015 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 Bernard Lemos, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.



Neil Belasco