

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-05

**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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**SC 13-114; SC 13-115
13-T-0117; 13-T-0018
cigarette tax**

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 November 28, 2014 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). The Taxpayer originally came for hearing pursuant to two (2) Orders to Show Cause, Notice of Pre-Hearing Conference and Appointment of Hearing Officer that both were issued on May 29, 2013. Prior to hearings on either 2013 matter, the parties consolidated both matters and settled them by stipulation (“Stipulation”) dated November 21, 2013. In the Notice, the Division alleged that the Respondent violated said Stipulation and a hearing was held on January 14, 2105. The Taxpayer did not appear at the hearing. The Taxpayer was notified of the hearing at its last known address. See Division’s Exhibit Five (5). As the Taxpayer had adequate notice of hearing, the hearing was held with the Division resting 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.*, *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 said Stipulation entered into on November 21, 2013 and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

Senior Revenue Agent, Excise Division, testified on behalf of the Division. She testified that the Taxpayer owed a total of _____ pursuant to the Notices of Deficiency issued to the Taxpayer. See Division's Exhibit One (1) (the three (3) Notices of Deficiency issued to the Taxpayer for cigarette tax and other tobacco tax). She testified that pursuant to the Stipulation, the deficiency was reduced to _____ which was to be paid in 12 installments of _____ each. See Division's Exhibit Two (2) (Stipulation). She testified that the Taxpayer made four (4) payments of _____ each for a total of _____ but stopped making the payments. See Division's Exhibit Three (3) (copies of payment checks made by Taxpayer). She testified that the Division seeks the total of the deficiency minus the _____ already paid.

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. 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).

B. Whether the Taxpayer Violated the Stipulation

The three (3) Notices of Deficiency issued to the Taxpayer represented the tax and penalties owed on cigarettes for which tax had not been paid.¹ The Stipulation provided that 12 payments of _____ each be made with the first to be made prior to December 5, 2013 and continued thereafter for each month until November 5, 2014. The Taxpayer made the first four (4) payments (December, January, February, and March) but has not made any more payments. The undisputed evidence is that the Taxpayer failed to complete its payments pursuant to the Stipulation. Therefore, the Taxpayer violated the Stipulation.² The Division seeks a decision that the Taxpayer owes the complete tax and penalty liability minus the _____ already paid.

¹ See R.I. Gen. Laws § 44-20-12 (cigarette tax) and R.I. Gen. Laws §44-20-51.1 (cigarette tax penalty).

² The Stipulation provides that the Division may proceed to hearing for the full deficiency if need be. See paragraphs Three (3) and Seven (7) of Stipulation.

VI. FINDINGS OF FACT

1. The total amount of tax and penalties owed pursuant to the Notices of Deficiencies was . The Taxpayer entered into a Stipulation.
2. The Taxpayer only made four (4) of its twelve (12) payments pursuant to the Stipulation for a total payment of \ of the owed under the Stipulation.
3. A hearing was held on January 14, 2015 at which the Taxpayer did not appear. As the Taxpayer had been adequately notified of hearing, the hearing was held with the Division resting on the record.
4. The Taxpayer still owes the entire tax and penalty liability (minus) as set forth in the Notices of Deficiency.
5. 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.* and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer violated the Stipulation by failing to make all the payments owed.

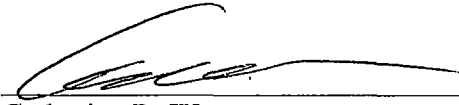
VIII. RECOMMENDATION

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

The Taxpayer violated the Stipulation and pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, the Taxpayer owes the three (3) Notices of Deficiencies for cigarette tax and

penalties as set forth in Division's Exhibit One (1) (minus the already paid) to be paid on the 31st day from the signing of the decision by the Tax Administrator.

Date: 2/12/15

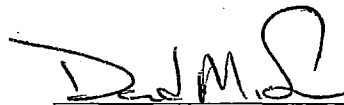

Catherine R. Warren
Hearing Officer

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:

X ADOPT
 REJECT
 MODIFY

Dated: 3/5/15


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 § 44-20-48 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 5th day March, 2015 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail to the 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.

Paul Belasco