STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-05

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

IN THE MATTER OF:	:	
	:	**SC 13-015**
	:	**13-T-017**
	:	**cigarette and sales tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer ("Notice") issued on February 6, 2013 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing. The Taxpayer is incorporated in the State of Rhode Island and holds a cigarette dealer's permit ("License").[1] A hearing was held on September 27, 2013 at which the parties were represented by counsel. The parties timely filed briefs by December 30, 2013.

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*.

[1] See Division's Exhibits A through D (Taxpayer's incorporation papers and copies of cigarette dealer permits and application).

III. ISSUE

Whether the Taxpayer violated R.I. Gen. Laws § 44-20-1 *et seq.* and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

Special Investigation Unit Supervisor, testified on behalf of the Department. He testified that he has been employed by the Division for seven (7) years and prior to that was a Police Officer for 22 years. He testified that he oversees the inspection unit for tobacco compliance and those investigators perform site visits to ensure compliance and seize contraband. He testified that when contraband is seized, it is brought back to the Division and recounted, locked in the vault for which there are only three (3) keys, and held in a chain of custody. He testified that in this matter, Senior Revenue Agent, performed the second verification count of the seized property.

On cross-examination, testified that he did not know what day the seized property in this matter was inventoried and was not present at the re-count or when it was placed in the evidence locker. He testified that the seizure report is a triplicate form and a copy is given to the storeowner or whoever the investigator interacts with and a copy is also stored with the seized evidence. He testified that assesses penalties.

Tax Investigator, testified on behalf of the Division. He testified he has been an investigator with the Division for almost a year and prior to that he was with the Police Department for almost 26 years with the last 2½ years there as Deputy Chief. He testified that he is a tobacco compliance investigator so that for licensed retail stores, he inspects inventory, reviews documents, and speaks to the

proprietor or employee. He testified that on being hired by the Division, he received two (2) weeks of training including identifying tax stamps. He testified that this seizure was made on November 1, 2012.

. testified that during the inspection of Taxpayer's premises, the clerk was present and he spoke to the clerk and the clerk did not impede the inspection. He testified that there was a display case behind the clerk for tobacco products which contained legitimately taxed cigarettes as well as the seized items including two (2) cans. He testified that the American Spirit papers were on the right side of the case with the cans on top of the display case. He testified that contraband tobacco products were seized. He testified that he counted the products in front of the clerk and explained why the products were being seized and the clerk signed the seizure report and a seizure report was left with the store. See Division's Exhibit E (seizure report). He testified that the items were seized, put in bags, and put in his car. He testified that the next day, he went to the office where the count was verified by and the items were put in the evidence locker. He testified that the locker is organized by Rhode Island community.

On cross-examination, testified that he wrote the seizure report. He testified that this inspection was made during his third week of employment with the Division. He testified that he told the clerk which items they were taking and why and the clerk confirmed the items they were taking and why. He testified that he put the seized property in his car which was at his house overnight and the next day, Friday, he brought it to the Division. He testified there were no written policies regarding site inspections.

On redirect, testified that his car was not broken into that night and he told the clerk why the tobacco was seized and the clerk signed the form. On re-cross

examination, testified that plastic bags were used to carry the seized items and they were tied.

testified on behalf of the Division. She testified that she computes the cigarette taxes and penalties owed. She testified that she verified this count using the seizure report. She testified that the penalties imposed were A) five (5) times the average retail value of what was seized; and B) five (5) times the tax due. See Division's Exhibits F (seizure worksheet) and G (notice of deficiency). The Taxpayer represented that there was no dispute with the calculations.[2]

On cross-examination testified that she probably verified the count on November 2, 2012 and she verified the count in the evidence room on the floor but there were no other items there and she put it either in a box or bag and the bag was labeled.[3]

Principal Revenue Agent, testified on the Division's behalf. He testified that the request for a 30 day License suspension is based on the seizure's dollar value being over On cross-examination, he testified the investigators are trained for two (2) weeks which includes classroom time and reviewing statutes and forms.

testified on behalf of the Taxpayer. He testified he was the clerk[4] at the time the product was seized. He testified that the investigators were there about 45 minutes and he spoke to them and waited on customers. He testified that he did not see the product taken off the shelf but the seizure report has his signature. He testified that he was told that products were being seized but he did not know they were illegal. He testified he does not precisely remember all the seized items but does remember the two (2) cans of tobacco listed because he got them from a store that had

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[2] See transcript of hearing, p. 98.
[3] This is different from who testified that recount was at a desk (his or).
[4] Thus, when testified about the clerk at the store, was the clerk there.

closed in Warwick. He testified that the Taxpayer's store carries inventory of the cigarettes and groceries that it purchases for sale to customers. He testified that the seizure report has inaccuracies.

On cross-examination, testified that the store owner orders inventory for the store and he runs the store. He testified that he was not able to read the seizure report because customers were coming in the store. He testified that the two (2) cans of tobacco seized were in the store. He testified that he saw the evidence before the hearing but did not verify it.

V. DISCUSSION

A. Relevant Statutes

R.I. Gen. Laws § 44-20-1(2) includes rolling papers in the definition of cigarettes as follows:

> (2) "Cigarettes" means and includes any cigarettes suitable for smoking in cigarette form, and each sheet of cigarette rolling paper.

R.I. Gen. Laws § 44-20-12[5] imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13 provides that a tax at the same rate as R.I. Gen. Laws § 44-20-12 is imposed on unstamped cigarettes as follows:

> Tax imposed on unstamped cigarettes. – A tax is imposed at the rate of one hundred seventy-five (175) mills for each cigarette upon the storage or use within this state of any cigarettes not stamped in accordance with the provisions of this chapter in the possession of any consumer within this state.

[5] 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.

R.I. Gen. Laws § 44-20-33 provides as follows:

> Sale of unstamped cigarettes prohibited. – No distributor shall sell, and no other person shall sell, offer for sale, display for sale, or possess with intent to sell any cigarettes, the packages or boxes containing which do not bear stamps evidencing the payment of the tax imposed by this chapter.

R.I. Gen. Laws § 44-20-37 provides as follows:

> Seizure and destruction of unstamped cigarettes. – Any cigarettes found at any place in this state without stamps affixed as required by this chapter are declared to be contraband goods and may be seized by the tax administrator, his or her agents, or employees, or by any deputy sheriff, or police officer when directed by the tax administrator to do so, without a warrant. Any cigarettes seized under the provisions of this chapter shall be destroyed. The seizure and/or destruction of any cigarettes under the provisions of this section does not relieve any person from a fine or other penalty for violation of this chapter.

R.I. Gen. Laws § 44-20-40.1 provides in part as follows:

> Inspections. – (a) The administrator or his or her duly authorized agent shall have authority to enter and inspect, without a warrant during normal business hours, and with a warrant during nonbusiness hours, the facilities and records of any manufacturer, importer, distributor or dealer.

The text of R.I. Gen. Laws § 44-20-51.1 (civil penalties) and R.I. Gen. Laws § 44-20-8 (revocation and suspension) are in the pertinent sections below.

B. Arguments

The Taxpayer argued that the Division failed to accurately inventory and maintain the seized tobacco products. The Taxpayer argued that the investigators only had two (2) weeks of training, there were no written rules for inspections, the seized product was kept in the investigator's personal car, the evidence could have been commingled with other seized items, and there were no procedures for safe keeping the seized merchandise at the Division. The Taxpayer argued that the evidentiary chain of custody is a necessary component of the tax assessment and since the Taxpayer raised the accuracy and custody

issues of the products, the burden of proof shifted to the Division and the Division did not show that no one had tampered with the evidence and did not offer any testimony regarding the accuracy of the seizure report and did not introduce the seized merchandise into evidence. The Taxpayer also argued that there is no statutory authority in R.I. Gen. Laws § 44-20-51.1(a) for an administrative penalty as it provides for a penalty to be imposed by civil action in court. The Taxpayer argued that the request for a license suspension is based on the total assessment but should only be based on the tax and the tax is under so there should be no suspension.

The Division argued that it had reasonable procedures regarding seizing contraband. The Division argued that physical evidence is permissible upon a showing that in all reasonable probability the evidence has not been subject to tampering or changed in material respect. The Division argued it only had to satisfy the undersigned that no tampering of the evidence occurred and the record has many descriptions of how the evidence was seized, counted, recounted, and safe-guarded in a limited access evidence locker until it was removed the morning of the hearing where it was available to the Taxpayer. The Division argued that this is not a criminal prosecution. The Division argued that Alves admitted to possessing the seized product and his testimony about not being aware of the taxability of tobacco rolling paper is irrelevant as ignorance of the law is not an excuse. The Division argued that there is authority for it to suspend a license for any violation of R.I. Gen. Laws § 44-20-8 and a reading of R.I. Gen. Laws § 44-20-51.1 and the statute as a whole shows it is a civil assessment that does not require going to court.

C. Whether the Taxpayer Owes the Tax Assessment and Assessed Penalties

1. Chain of Custody

Both the Taxpayer and Division rely on criminal cases regarding the chain of custody. Pursuant to R.I. Gen. Laws § 42-35-10, administrative hearings follow the rules of evidence in civil cases in the Superior Court except that those rules are relaxed so that evidence that would not be admissible in civil court can be admitted in an administrative hearing if it is the type commonly relied on by reasonably prudent people. The admissibility of evidence rests on the sound discretion of a trial justice or in this matter, the hearing officer. *New Hampshire Inc. Co. v. Rousselle*, 732 A.2d 111 (R.I. 1999).

The evidence demonstrates that the investigators received two (2) weeks of training regarding cigarette compliance. The Taxpayer argued that the training was insufficient and that there are no written procedures; however, the two (2) investigators who testified are retired police officers and the investigator who seized the product had 26 years experience in law enforcement and had received training by the Division about cigarette tax laws and the Division's protocols for seizing and storing products.

The evidence established that located untaxed rolling papers in the Taxpayer store, seized them, wrote a seizure report detailing the items seized, and the clerk on duty, signed the seizure report. testified that it was his signature on the seizure report. testified that he told why the items were being seized. testified he did not review what he signed; however, he did testify that he knew the two (2) cans were in the store and he was not aware that the seized items should be taxed.

The product was counted at the store and recounted at the Division.[6] testified that there are inaccuracies in the report but gave no specifics. The Taxpayer did not point to any items on the seizure report and challenge any listed items. The seized product was put in bags with a copy of the seizure report and the bags were tied. The product stayed overnight in the investigator's car which was not broken into. The Taxpayer apparently believes that if the State provided the investigators with State vehicles that the chain would be secure. However, any vehicle is subject to break-in. The product was stored in a limited access evidence locker.

The seized product was brought to hearing to allow the Taxpayer to review it but was not put into evidence. The Taxpayer argued the chain of custody issues shifted the burden to the Division which would then need more than oral testimony to account for the seized merchandize.[7] However, the Taxpayer did not demonstrate that there was a problem with the chain of custody. Instead, there was enough evidence to find that the seizure report on which the deficiency is based is accurate. testified that he found legitimately taxed tobacco items and untaxed tobacco products in the store. The untaxed tobacco products were rolling papers which testified he listed on the seizure report. signed the seizure report. The product was secured by and recounted at the Division and stored in a limited access locker. There was no evidence that the items listed on the seizure report were not items that were seized. Thus, the

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[6] and testified differently as to the actual physical location of the recount. However, the issue is that part of the seizure protocol was that the evidence was recounted after seizure at the Division and verified by a staff member who was not an investigator. recounted the seized items and initialed the seizure report. initials are in the lower right hand side of the seizure report. Both and testified that those were initials on the seizure report. See Division's Exhibit Four (4).

[7] For this argument, the Taxpayer relies on R.I. Gen. Laws § 8-8-28 which covers appeals of administrative tax decisions to District Court.

seizure report reflects the untaxed tobacco products that were found in the Taxpayer's store. The Taxpayer's argument is without merit.

2. Statutory Interpretation of R.I. Gen. Laws § 44-20-51.1

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). 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.*

However, in regards to applying the plain meaning, the Supreme Court in *Generation Realty, LLC v. Catanzaro,* 21 A.3d 253, 259 (R.I. 2011) held as follows:

> The plain meaning approach, however, 'is not the equivalent of myopic literalism,' and 'it is entirely proper for us to look to 'the sense and meaning fairly deducible from the context.''(internal citations omitted). Therefore, we must 'consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.' (internal citations omitted). Finally, under no circumstances will this Court 'construe a statute to reach an absurd result.' (internal citation omitted).

And in construing a statute, the Court has held

> Further, we must presume that the General Assembly 'intended each word or provision of a statute to express a significant meaning,' and, as such, we 'will give effect to every word, clause, or sentence, whenever possible.' (internal citation omitted). *In Re Estate of May Manchester*, 66 A.3d 426, 430 (R.I. 2013).

In *In re: Brown*, 903 A.2d 147, 149-150 (R.I. 2006), the Court summarized statutory construction as follows:

> It is an equally fundamental maxim of statutory construction that statutory language should not be viewed in isolation. (internal citations omitted). When performing our duty of statutory interpretation, this Court 'consider[s] the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.' (internal citation omitted). Therefore, we examine § 17–5–2 in light of the broader statutory scheme concerning ballot issues—title 17 of the General Laws: Elections. (footnote omitted).
>
> In reading this statute in this manner, we are in no sense retreating from our adherence to the 'plain meaning' approach to statutory construction. In our view, however, the 'plain meaning' approach is not the equivalent of myopic literalism. When we determine the true import of statutory language, it is entirely proper for us to look to 'the sense and meaning fairly deducible from the context.' (internal citation omitted). In the instant situation, it would indeed be a foolish and myopic literalism to focus narrowly on § 17–5–2 without regard for the broader context.

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 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 to a penalty of one thousand dollars ($1,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.
>
> (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 to a penalty of five (5) times the tax due but unpaid.

The Taxpayer argued that the Division does not have the legal authority to impose the penalty under R.I. Gen. Laws § 44-20-51.1(a) ("Penalty A") since the statute requires a civil action be brought in court in order to impose said penalty. The Division argued that the statute would be rendered meaningless by insisting that Penalty A only be pursued in court.

Black's Law Dictionary (9th ed. 2009) defines[8] civil action as follows:

> civil action. (16c) An action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation. — Also termed (if brought by a private person) *private action*; (if brought by a government) *public action*.[9] (italics in orginal).

The Taxpayer argues that the term "civil action" means a civil action in State court and that this is supported by a reading of R.I. Gen. Laws § 44-20-1 *et seq.* which only uses civil action in the context of referring to court. Additionally, the Taxpayer points to the statutory language that the costs of a suit may be recovered under Penalty A and nowhere else in the statute is such a provision made for the Division to carry forth its duties. The Taxpayer's conclusion is that recovery for the cost of a suit is because the suit is being brought in court. The Division argues that civil action should not be narrowly interpreted to mean a court action since otherwise, the Division would have to bring two (2) identical actions against a taxpayer in order to collect Penalty A in court and the penalty in R.I. Gen. Laws § 44-20-51.1(b) ("Penalty B") by administrative hearing on the same set of facts. Instead, the Division argued that Penalty A can be pursued in an administrative hearing since a civil action, by definition, can include non-

[8] The Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543.

[9] The definition also explains how the distinction between an action at law and a suit in equity was abolished by most states and replaced by one form of action for the enforcement or protection of private rights and the redress of private wrongs called a civil action.

criminal administrative proceedings. The Taxpayer argues that the Division may choose to pursue Penalty B and not A in some cases but when it pursues Penalty A, it must go to court. The Taxpayer implies that Penalty A is most likely to be used with limited application to the worst offenders.

The language of Penalty A does not limit it to the worst offenders since it may be applied to contraband cigarettes that are valued at less than , as the penalty is five (5) times the average retail value of the seized cigarettes or a minimum of . Arguably, if the legislature believed that the Division must go to court to collect the penalty, it could have passed a law similar to R.I. Gen. Laws § 19-28.1-18(c)(3) which specifically authorizes the Department of Business Regulation to bring an action on the behalf of the State in any court of competent jurisdiction against any officer, director, trustee of a franchisor, etc. to recover a penalty not to exceed **per** violation of R.I. Gen. Laws § 19-28.1-1 *et seq*. The statute further provides a statute of limitations of four (4) years from the commission of the act on which it is based for the filing of such a suit.[10] R.I. Gen. Laws § 19-28.1(d) limits that administrative assessment to per violation so less than the penalties specifically provided for by a court action.

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[10] This statue provides in part as follows:

§ 19-28.1-18 Enforcement. – (c) When it appears to the director that any person has violated or is about to violate a provision of this act or a rule or order under this Act, the director may do any or all of the following:

(1) Issue an order directing the person to cease and desist from continuing the act or practice;

(2) Bring an action in a court of competent jurisdiction to enjoin the act or practice and to enforce compliance with this act or a rule or order under this act. *** or

(3) Bring an action on behalf of the state in any court of competent jurisdiction against any officer . . . of the franchisor or against a franchisor to recover a penalty in a sum not to exceed fifty thousand dollars ($50,000) per violation of this Act. The action must be brought within four (4) years after the commission of the act or practice on which it is based.

(d) The director may impose an administrative assessment against a person named in an order issued under § 19-28.1-18(a) or (c) or 19-28.1-19. The amount of the administrative assessment may not exceed five thousand dollars ($5,000) for each act or omission that constitutes a basis for issuing the order. ***

Owners-Operator Independent Driver's Association of America v. Rhode Island, 541 A.2d 69 (R.I. 1988) found that the District Court has exclusive jurisdiction for tax disputes so that all appeals from Division administrative decisions are heard in District Court. *Owners-Operators* also found that such exclusive jurisdiction advanced the legislature's statutory goal of eliminating duplicative proceedings. Thus, the idea of the Division having to pursue a Taxpayer twice on the same set of facts – in court and administrative hearing – does not advance of the statutory goals of eliminating duplicative proceedings even if the Division recovers the costs of the court action. While the term civil action is usually associated with a court action, it can include non-criminal proceedings and while arguably any court action would be in District Court, the statute is vague as to court, the method of recovery, and statute of limitations.

Thus, in construing the statute, the plain language of the statute must be applied, myopic literalism avoided, the intent of the legislature taken into consideration if the statute is vague, the statute read in its entirety with every word, clause, sentence given effect if possible, and the statute not construed to reach an absurd result. See also *Peloquin v. New Haven Health Center*, 61 A.3d 419 (R.I. 2013).

With those admonitions in mind, Penalty A can be imposed at the administrative hearing level. It would be myopic literalism to force Penalty A only to be collected by a court civil action and to construe the statute as such would be an absurd result and be in contradiction to the statutory goal of streamlined proceedings. However, in order to construe the statute so that all words and phrases are given meaning, the Division also has the right to resort to a court action (District Court) to recover the Penalty A as well as the

costs of a suit. Such enforcement would be in addition to (or instead of) the other methods of recovery that the Division has to enforce an administrative decision.

The Taxpayer did not challenge the application of Penalty B to the seized cigarettes. The Division properly applied Penalty A and B to the seized cigarettes.

3. Suspension

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 of cigarettes; and the tax administrator may also suspend or revoke any license for failure of the licensee to comply with any provision of chapter 13 of title 6.

The Tax Administrator may suspend or revoke any license for failure to comply with any provision of this chapter. Thus, any violation of any provision of R.I. Gen. Laws § 44-20-1 *et seq.* may be a basis for revocation or suspension. In light of this, the testimony was that the Division decided to request a 30 day suspension for any licensee with a deficiency in excess of The Taxpayer attacks this request on the basis that the tax assessment without penalties is below However, the Division has the right to suspend a cigarette dealer's permit for any violation and has made the determination to request a 30 day suspension for an aggregate total deficiency above *Rocha v. PUC*, 694 A.2d 722 (R.I. 1997). The Taxpayer provided no reason that a 30 day suspension would not be appropriate. The Taxpayer violated said statute so a suspension is appropriate.

VI. FINDINGS OF FACT

1. On or about February 6, 2013, a Notice was issued to the Taxpayer in response to the Taxpayer's request for hearing. A hearing was held on September 27,

2013 at which the parties were represented by counsel. The parties timely filed briefs by December 30, 2013.

2. The Taxpayer is incorporated in the State of Rhode Island and holds a cigarette dealer's permit.

3. The Taxpayer offered for sale and had on display for sale in its store, the seized unstamped cigarettes, to wit, rolling papers (Division's Exhibit E).

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*. and R.I. Gen. Laws § 44-20-1 *et seq*.

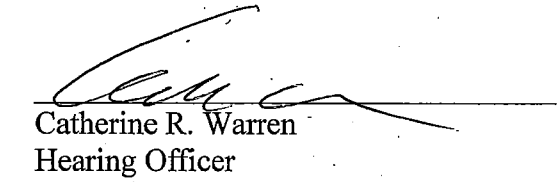
2. The Taxpayer violated R.I. Gen. Laws § 44-20-33.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-1-1 *et seq*., R.I. Gen. Laws § 44-20-1 *et seq*., R.I. Gen. Laws § 44-20-13, and R.I. Gen. Laws § 44-20-51.1(a) and (b), the Division properly assessed the Taxpayer for tax owed and penalties on the assessment as set forth in the notice of deficiency. See Division's Exhibit G. Pursuant to R.I. Gen. Laws § 44-20-8, the Taxpayer's License shall be suspended for 30 days to be effective 30 days after the signing of this decision.

Date: January 28, 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:

__C__ ADOPT
_____ REJECT
_____ MODIFY

Dated: 1/30/2014

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 30th day January, 2014 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail to the Taxpayer's attorney's address on record with the Division and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.