

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-16

**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 14-016**
: **sales permit**
:
Taxpayer. :
:

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer dated May 14, 2014 and issued to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing filed by the Taxpayer on May 1, 2014. A hearing was held on June 17, 2014. The Taxpayer did not appear. As the Taxpayer had been adequately notified of the hearing,¹ the hearing went forward. The Division was represented by counsel and 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 § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-0*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

¹ The Order of Show Cause was sent by first class and certified mail to the Taxpayer to the Taxpayer’s address on record with the Division.

III. ISSUE

Whether the Taxpayer's application for sales permit, cigarette dealer's license, and litter permit should be denied pursuant to R.I. Gen. Laws § 44-20-4.1.

IV. MATERIAL FACTS AND TESTIMONY

Special Investigator, testified on behalf of the Division. He testified that on November 12, 2013, the Division received a business application and registration ("BAR") for a sales permit, cigarette dealer's license, and litter permit from the Taxpayer signed by ("Wife") as the Taxpayer's owner. Division's Exhibit H. He testified that the Taxpayer's BAR was delivered to the Division by ("Husband"). He testified that the Husband owns another business, ("Business One").² Division's Exhibit B (Secretary of State records). He testified that Business One has been caught with contraband tobacco and assessed and has not made its full payment and has gone out of business but still owes taxes.

testified that the Husband is married to the Wife which he knows because the Husband told him and property records show they own property together. He testified that the Husband called him about the BAR and he told the Husband that he needed to speak to the Wife as she was the Taxpayer's owner but when he spoke to the Wife she said that her English was not very good and to speak to her Husband about the business. He testified that the Division determined that the Wife was being used as an applicant because if the Husband filed a BAR for a sales permit, cigarette dealer's license, and litter permit, the Husband would be denied because he owes outstanding taxes. He testified that the Division denied the Taxpayer's BAR pursuant to R.I. Gen. Laws § 44-20-4.1. Division's Exhibit I (March 10, 2104 denial).

testified that the Taxpayer filed a second BAR on March 14, 2014 which was signed by

² The Taxpayer is the same type of business as Business One, a convenience store. Division's Exhibits B and F.

the Wife as owner and a denial of the BAR was issued by the Division to the Taxpayer on April 18, 2104. Division's Exhibits J and K respectively.

Chief of Compliance and Collections, testified on behalf of the Division. He testified that because of the relationship between the Taxpayer and Business One, he reviewed Business One's tax status. He testified that the Husband also owned another entity, ("Business Two").³ Division's Exhibit E (Secretary of State records). He testified that Business One had not filed withholding tax this year and last year. Division's Exhibit M (Division records for withholding tax). He testified that Business One had an outstanding sales tax balance of dollars but that it owed the 2013 annual sales tax reconciliation and was delinquent in its sales tax filing requirements so it is unknown what other sales tax it could owe. He testified that Business One also had outstanding balances for litter permits. Division's Exhibit N (Division records for sales tax and litter permits).

also testified that Business One did not file a corporate tax return in 2012 though it paid the corporate tax but in 2013, Business One did not file a corporate tax return nor pay the corporate tax. Division's Exhibit O (Division corporate tax records). He testified that Business One still owed on an assessment issued to it for other tobacco products on January 27, 2014. Division's Exhibit P. He testified that Business One received a Notice of Deficiency dated March 20, 2013 relating to seized contraband cigarettes and still owed on that assessment. Division's Exhibit Q. He also testified that Business Two owed sales tax of Division's Exhibit R. He testified that the Division records show that the Husband and Wife filed joint tax returns from 2004 through 2012.

³ Business Two is also a convenience store. Division's Exhibit E.

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 (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 would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (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 § 44-20-4.1(a) speaks of licenses issued under R.I. Gen. Laws § 44-20-1 *et seq.* (cigarette tax) but R.I. Gen. Laws § 44-20-4.1(b) includes licenses and permits defined by R.I. Gen. Laws § 44-19-1. R.I. Gen. Laws § 44-20-4.1 states in part as follows:

License availability. – (a) No license under this chapter may be granted, maintained or renewed if the applicant, or any combination of persons owning directly or indirectly any interests in the applicant:

- (1) Owes five hundred dollars (\$500) or more in delinquent cigarette taxes;
- (2) Is delinquent in any tax filings for one month or more;

(b)(1) No person shall apply for a new license or permit (as defined in § 44-19-1) or renewal of a license or permit, and no license or permit shall be issued or renewed for any person, unless all outstanding fines, fees or other charges relating to any license or permit held by that person have been paid.

R.I. Gen. Laws § 44-19-1 states in part as follows:

Annual permit required – Retail business subject to sales tax – Promotion of shows – Revocation of show permit. – (a) Every person desiring to engage in or conduct within this state a business of making sales at retail, or engage in a business of renting living quarters in any hotel, rooming house, or tourist camp, the gross receipts from which sales or rental charges are required to be included in the measure of the tax imposed under chapter 18 of this title, shall file with the tax administrator an application for a permit for each place of business. The application shall be in a form, include information, and bear any signatures that the tax administrator may require. At the time of making an application, the applicant shall pay to the tax administrator a permit fee of ten dollars (\$10.00) for each permit. Every permit issued under this chapter expires on June 30 of each year.

C. Whether the BAR should be Granted or Denied

In closing, the Division argued that the Husband had outstanding tax liabilities for various entities and if he had applied as the Taxpayer's owner for a sales permit, litter permit, and cigarette dealer's license, he would have been denied because of those outstanding filings and tax liabilities and he was using his wife as a straw owner to avoid paying his tax liabilities.

The undisputed evidence was that the Husband owned Business One. The undisputed evidence was that Business One owes more than [redacted] in cigarette taxes in that it has not paid its assessments related to other tobacco products and contraband cigarettes. The undisputed evidence is that Business One is delinquent in making various tax filings and paying various taxes (withholding, corporate, sales) and permits (litter). The undisputed evidence is that the Wife directed all questions about the Taxpayer to the Husband as he had the knowledge to run the Taxpayer business (convenience store). Thus, the Husband has a direct and indirect interest in the applicant (Taxpayer). As the Husband owes via Business One more than [redacted] in cigarette taxes and is delinquent in tax filings for one month or more, the cigarette dealer's license cannot issue.

Following from the determination in R.I. Gen. Laws § 44-20-4.1 that the Husband has a direct and indirect interest in the BAR application, the sales permit and litter permit cannot issue pursuant to R.I. Gen. Laws § 44-20-4.1(b)(1) since the Husband had outstanding fees and taxes relating to a license (cigarette) and permits (litter and sales) held with the Division.

VI. FINDINGS OF FACT

1. On or about May 14, 2014, the Division issued an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer to the Taxpayer.
2. The Taxpayer was adequately notified of the hearing but did not appear at the hearing. A hearing was held on June 17, 2014 with the Division resting on the record.
3. The Husband has a direct and indirect interest in the Taxpayer. The Husband owns two (2) entities that together have failed to make various tax filings with the Division and also owe cigarette, sales, and corporate taxes as well as litter permit fees.

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 § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer's BAR is denied pursuant to R.I. Gen. Laws § 44-20-4.1.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-20-4.1, the Taxpayer's application for sales permit, litter permit, and cigarette dealer's license shall be denied.

Date: June 23, 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:

 X ADOPT
 REJECT
 MODIFY

Dated: June 25, 2014

David Sullivan
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 R.I. Gen. Laws § 44-20-48 WHICH STATES AS FOLLOWS:

§ 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 25th day of June, 2014 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco