STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-18

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

IN THE MATTER OF:	:	**cigarette tax and dealer's license**
	:	**SC 15-048; 15-T-0074**
Taxpayer.	:	

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 issued on July 15, 2015 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was held on January 21 and February 26, 2016. The parties were represented by counsel. The Division timely filed a written closing argument by April 25, 2016. The Taxpayer relied on its oral closing.

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 seized tobacco products (other tobacco products) are taxable, and if so, were taxes paid, and if not should any sanctions be imposed.

IV. MATERIAL FACTS AND TESTIMONY

, Tax Investigator, Special Investigation Unit, testified on behalf of the Division. He testified that on March 21, 2015, he inspected the Taxpayer's store and found other tobacco products ("OTP") that were not taxed. He testified that the cigarettes were properly taxed. He testified that he compared the OTP in the store with the invoices that the Taxpayer had in the store, but the invoices did not match all of the OTP in the store. He testified that the OTP that did not match the invoices was seized and a seizure report prepared. See Division's Exhibit D (seizure report). He testified that after the seizure the Taxpayer produced more invoices so that certain products were returned to the Taxpayer that had been seized. See Division's Exhibit E (memorandum on the new invoices). He testified that this seizure was the fifth seizure from the Taxpayer. See Division's Exhibits F (audit report) and L (prior audit reports on prior seizures).

On cross-examination, testified that it is his belief that the items seized were not old products based on the fact that prior to the March 21, 2015 seizure, the Taxpayer made four (4) small OTP purchases from January 1 to March 18, 2015 that totaled $ and that after the seizure, the Taxpayer purchased $ worth of OTP products on March 25, 2015 to restock the store with the seized products including eight (8) items (blunt wraps XXL naked, cigarillo grape, zig zag apple, zig zag blueberry, zig zag mango, zig zag pineapple, zig zag straight up, and zig zag vanilla) that the Taxpayer claimed did not sell. He testified that in April, the Taxpayer further purchased more products of the type that had been seized in March, 2015 and that he purchased such products seized like game blue and game pineapple in June, 2015. He testified that the Taxpayer made further purchases of OTP in the months after the seizure worth $ on April 8, 2015, $ on April 27, 2015, and $ on May 6, 2015 Thus, he testified the Taxpayer purchased the same kind of items that had been seized in greater monetary amounts. He testified

that based on the frequency of the products being purchased compared to what the Taxpayer represented were old, the conclusion was that the products seized were not old. He testified that he had no evidence of what was selling in the store. He testified that the Division will review the last six (6) months of a taxpayer's invoices, because that is what is mandated to be kept in the store, but will initially only look at the last three (3) months. He testified that it could be a taxpayer has products in a store that are older than six (6) months that have not sold and that is determined based on the taxpayer's records, other stores in the neighborhood, and inspection of the store, etc.

On re-direct examination, testified that a taxpayer cannot purchase zig zags from a Rhode Island tobacco distributer without paying Rhode Island OTP tax. On re-cross examination, he testified that based on the seizure, the Taxpayer had not filed an OTP-4 tax form to show he had paid the taxes on the OTP purchased.

Revenue Officer II, Special Investigation Unit, testified on behalf of the Division. She testified that she prepared the audit report which was based on the seizure report. See Division's Exhibits F (audit report) and D (seizure report). She testified that she taxed the OTP at 80¢ and cigars at 50¢. See Division's Exhibit G (tax computation worksheet). She testified that a penalty was imposed pursuant to R.I. Gen. Laws § 44-20-51.1 and a notice of deficiency issued with the tax and penalty totaling $[1] See Division's Exhibit H (notice of deficiency). She testified that a 120 day suspension was issued based on the fact that this was the Taxpayer's fifth offence since there had been previous seizures from the Taxpayer. See Division's Exhibit I (notice of license suspension).

On cross-examination, testified that the Division policy/internal guidelines state that a fifth offence merits a 120 day suspension of cigarette dealer's license ("License") and a fourth

[1] The tax totaled $ and the penalty was $

offence would be a 90 day suspension of License. She testified that the Taxpayer's second consent order imposed a three (3) day suspension of the License. She testified that the penalty being sought against the Taxpayer is five (5) times the amount of tax and she did not look at aggravating factors for the 120 day suspension. On questioning from the undersigned, she testified that if the Taxpayer was shown not to owe as much tax as originally thought, the Division still would impose a 120 day suspension of the License. She testified that in general if a fifth offence was a $200 tax liability or a $20,000 tax liability, the suspension of License would still be 120 days.

The Taxpayer testified on his behalf. He testified that based on the tax worksheet (Division's Exhibit G), he purchased those items from except for the cigars. He testified that he purchased the cigars from a retailer and thought he had paid tax at the time of purchase so he understands now that he should not have done that. He testified that he does not believe that you can feel a tobacco wrap to see if it is old and there is no expiration on the cigar wraps. See Taxpayer's Exhibit Two (2) (example of a cigar wrap). He testified that for the January 31, 2013 seizure, the inspectors told him to get rid of the " " and the " " little cigars, but he did not. He testified that the inspectors returned on February 5, 2013 and seized the " " and then returned on February 12, 2013 and seized the " ." He testified that he agreed to a 30 day suspension of his License for those three (3) instances as he was going to be out of the country. He testified on November 30, 2013, the inspectors returned and seized the little cigars that had still been on the premises during January, 2013 inspection. He testified that he agreed to a three (3) day suspension of his License for that violation. See Taxpayer's Exhibit One (1) (invoices from).

On cross-examination, the Taxpayer testified that the invoices that were not available during the inspection were from June 11, 2014, November 12, 2014 and December 12, 2014, nine

(9), four (4), and three (3) months before the seizure. He testified that the invoices for June 11, 2014 indicated a purchase of one (1) box of with 25 packs, but Division's Exhibit G showed that 31 packs were seized of . He testified that the June 11, 2014 invoice showed a purchase of of one (1) box of 25 packs but Division Exhibit G showed 34 packs seized of On redirect examination, the Taxpayer testified that prior to June 11, 2014, he purchased supplies from

It was agreed by the parties that in July 2012, little cigars began to be taxed and the Division gave some time for licensees to come into compliance.

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 § 44-20-12 imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2 imposes tax on "other tobacco products" and provides as follows:

Tax imposed on smokeless tobacco, cigars, and pipe tobacco products. – (a) A tax is imposed on all 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 according to a mechanism established by the administrator, division of taxation, department of administration. Any tobacco product on which the proper amount of tax provided for in this chapter has been paid, payment being evidenced by a stamp, is not subject to a further tax under this chapter. The tax imposed by this section shall be as follows:

(1) At the rate of eighty percent (80%) of the wholesale cost of 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.

(b) Any dealer having in his or her possession any tobacco, cigars, and pipe tobacco products with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after coming into possession of the tobacco, cigars, and pipe tobacco in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due. Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

(c) The proceeds collected are paid into the general fund.

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.

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.

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 does, 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 one thousand dollars ($1,000), or not more than five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action;

(2) For a second or subsequent offense in a twenty-four-month (24) period, a penalty of not more than five thousand dollars ($5,000), or not more than twenty-five (25) 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 for a penalty of not more than five (5) times the tax due but unpaid.

(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.

Rule 5 of the Division of Taxation's *Tax on Other Tobacco Products Regulation* – OTP 14-01 ("OTP 14-01") defines other tobacco products as follows:

> (h) "Other Tobacco Product/s" (OTP) means any cigars (excluding Little Cigars which are subject to cigarette tax), cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or otherwise), chewing tobacco (including Cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), any and all forms of hookah and shisha tobacco, snuff, and shall include any other articles or products made of tobacco or any substitute therefore, except cigarettes.

C. Arguments

The Taxpayer argued that the taxing of the OTP is not supported by statute, but agreed tax was owed on the cigars. The Taxpayer argued that (cigar wraps) and cigarillos are not taxable under the statute. The Taxpayer argued that he only bought from and , and there was no evidence of anything else and that all four (4) offences really should have been taken care of in January, 2013. The Taxpayer argued that while the Division gave the Taxpayer extra time, the items were seized. The Taxpayer argued that the penalty of five (5) times the amount of tax owed was excessive. The Taxpayer also argued this was not really the fifth offense and suggested that a penalty of paying the tax and a six (6) day suspension would be appropriate.

The Division argued that the evidence showed that the Taxpayer's invoices did not show that he purchased the seized items from a distributor. The Division argued that the invoices showed purchases for smaller amounts than the amount seized or did not show a purchase of the items seized. The Division argued that Taxpayer restocked its store with the same kind of items that had been seized which does not support the claim that the products were old and not selling. The Division argued that the Taxpayer spent much more money to stock its store after the seizure than prior to the seizure indicating that the Taxpayer was not properly purchasing product prior to the seizure. The Division argued that OTP is taxable under the statute as the statute taxes any tobacco product and there is no dispute that the products seized contain tobacco and the statute encompasses any product with tobacco. The Division argued that as this matter is a fifth offense, its internal guidelines mandate an imposition of a 120 day suspension of License. The Division argued that the Taxpayer was warned to get rid of the cigars and since he did not, they were seized for the third and fourth offenses. The Division argued that as this is the fifth offense, the imposition of the maximum penalty of five (5) times the amount of tax due is reasonable and warranted.

D. Whether Other Tobacco Products are Taxable

As stated above, R.I. Gen. Laws § 44-20-13.2 begins "[t]ax imposed on smokeless tobacco, cigars, and pipe tobacco products." The statute then provides that "[a] tax is imposed on all smokeless tobacco, cigars, and pipe tobacco products sold or held for sale." As stated above, if a statute is clear and unambiguous, the words of a statute must be given their plain and ordinary meaning. Here, the statute speaks of "all smokeless tobacco." For example, cigars wraps contain tobacco but only are smoked when tobacco is placed in the wrap in order to "roll your own cigars." See Taxpayer's Exhibit Two (2) (example of a cigar wrap). Thus, a cigar wrap is a tobacco product but not one that is smoked by itself.

In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.*, at 674. As 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. "All" is defined by the *Oxford* dictionary to mean "[u]sed to refer to the whole quantity or extent of a particular group or thing."[2] "All" is defined by *Mirriam-Webster* dictionary as "the whole, entire, total amount, quantity, or extent of[,] every member or part of[,] the whole number or sum of."[3] Clearly, the statute envisioned a broad and encompassing definition of smokeless tobacco by referring to all smokeless tobacco. The statute includes all kinds of smokeless tobacco (the extent of or total amount) so does not need to list the specific kinds of smokeless tobacco as the statute includes them all.[4] Therefore, the products seized by the Division from the Taxpayer fall under the statute as they are smokeless tobacco products.

E. Whether the Taxpayer Violated R.I. Gen. Laws § 44-20-13.2

The Taxpayer admitted that he owed tax on the cigars seized on March 21, 2015. Therefore, he violated R.I. 44-20-13.2 by possessing the untaxed cigars.

The Taxpayer argued that the wraps and cigarillos seized by the Division had been properly purchased. The Taxpayer argued that they either were on the 2014 invoices or were purchased from (but the Taxpayer did not provide those invoices) prior to the purchases from The Taxpayer's invoices showed that he made purchases of the items seized in lesser quantities than the quantities of the items seized by the Division. The Division provided

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[2] http://www.oxforddictionaries.com/us/definition/american_english/all.
[3] http://www.merriam-webster.com/dictionary/all.
[4] The term "all" is clear and unambiguous. However, if the statute was found to be silent or ambiguous then deference must be given to the reasonable statutory construction by an agency charged with the statute's implementation. *Labor Ready Northeast, Inc. v. McConaghy*, 849 A.2d 340 (R.I. 2004).

evidence that the Taxpayer replaced the items seized immediately after they were seized which would not support the claim that they had sat on the shelf since prior to June 2014 since if they were such bad sellers, there would be no reason to buy them immediately. Additionally, the Division provided evidence that the amount of money spent on OTP by the Taxpayer increased after the seizures indicating that all OTP was now being bought from licensed distributors. Based on that evidence, the wraps and cigarillos seized by the Division were not purchased from licensed distributors and tax is owed on them.

F. What Sanctions Should be Imposed

R.I. Gen. Laws § 44-20-51.1 was amended effective June 23, 2014. The amendment changed penalties from specific amounts to be "not more than five (5) times" a certain amount. R.I. Gen. Laws § 44-20-51.1 provides for a penalty in sections (a) and (b), but the only penalty applied to the other tobacco products like this matter is pursuant to R.I. Gen. Laws § 44-20-51.1(b). See Rule 11 of OTP 14-01. Since the new statute is now providing that penalties be calculated as "not more than" rather than the old statute that mandated a specific penalty, the new law added subsection (c) which provides that when determining the penalty to be imposed, mitigating and aggravating factors such as history, severity, and intent shall be considered. Thus, the statute envisions some kind of progressive discipline based on the history of offenses with the penalties becoming greater based on aggravating factors.

In this matter, the Taxpayer has agreed that it owes tax of $ for the cigars. He disputes that he owes $ in tax for the wraps and cigarillos. For this, the Division wants to impose an administrative penalty of five (5) times the total amount of tax owed which would $ for a total assessment of $. See Division's Exhibits G and H (notice of deficiency).

Since the statute requires that mitigating and aggravating factors be included in the calculation of penalties, it follows that the maximum penalty is not to be automatically applied. If the severity is to be considered,[5] it would also follow that the higher the tax owed, the higher the penalty imposed. Of course, if it was a taxpayer's second or third offense than the amount of tax owed would not be such a mitigating factor since it would be offset by the history of the taxpayer and the intent in that it would not be a first offense. If the tax owed was extremely high that might offset mitigation for a first offense as it might be that such a taxpayer was well aware of the statute and egregiously flouting the law. Nonetheless, the statute calls for a consideration of aggravating and mitigating factors. The tax here owed is less than $ However, the Taxpayer has a history of selling untaxed tobacco products and has had previous seizures of untaxed products and warnings about cigars and seizures of untaxed cigars. Therefore, despite the amount of tax owed, the maximum penalty of five (5) times the tax owed should be imposed.

In addition to the administrative penalty, the Division seeks to impose a 120 day suspension of License. Suspension or revocation of license is allowed pursuant to R.I. Gen. Laws § 44-20-8.

The Taxpayer testified that there were cigars in the store on January, 2013, but they were seized in February and March, 2013. However, the Division's seizure reports show that in February, 2013, untaxed cigarettes were seized from the store. The March 12, 2013 seizure report shows cigars being seized and noted that the Taxpayer had been warned on two (2) prior occasions that little cigars were now taxable. The seizure report for the October, 2013 indicated that cigars were seized and that they appeared to have been in the store a long time and were being seized as now being taxable. See Division's Exhibit L (prior seizure reports) and F (June 1, 2015 audit report for March 21, 2015 seizure indicating prior inspections and seizures). The little cigars were

[5] The term "severe" in the statute is not defined and could apply not only to the amount of tax owed, but the method used by a taxpayer to avoid paying the statutory tax.

seized in March and October of 2013 and not February and March of 2013. However, the Taxpayer testified that said cigars had been there in January and the October, 2013 seizure report indicates that they appeared to have been there for a while. Nonetheless, the Taxpayer had been warned that those cigars were taxable and he failed to either remove them or pay the tax.

What the Division considers the Taxpayer's third and fourth offenses were for little cigars that the Taxpayer had been warned and apparently possessed in January, 2013. If the Division had seized everything at the time of the warning, this would be the third offense. If the Division had seized everything in March, 2013, this would be the fourth offense. The seizures of January 31, February 5, and March 12, 2013 resulted in a settlement that included a 30 day suspension. The October 30, 2013 seizure resulted in a settlement that included a three (3) day suspension. However, the offenses are counted, the Taxpayer has a history of noncompliance with the taxing statute even after the seizures of tobacco products and warnings regarding taxed tobacco products.

The issue comes down to what is the appropriate suspension of License for this violation. While the suspension statute does not contain the same kind of mitigating and aggravating factors as those found in the administrative penalty statute, the same kind of considerations of history, severity, and proportionality should be at play.[6]

While the Division uses its internal guidelines to ensure consistency among various taxpayer violations, the suspension is not a mandated sanction. A hearing allows parties to present

[6] For a good discussion of what should be considered in considering a sanction by an administrative agency, see *Jake and Ella's Inc. v. Department of Business Regulation*, 2002 WL977812 (R.I. Super.). In that case, the Court found there are two (2) components to an administrative decision: 1) a determination of the merits of the case; and 2) determination of the sanction and while the former is mainly factual, the latter not only involves ascertainment of factual circumstances but the application of administrative judgment and discretion. *Jake and Ella*'s concluded that the facts to be considered in weighing the severity of the violation should include the frequency of the violations, the real or potential danger to the public posed by the violation, the nature of any previous violations and sanctions, and any other facts deemed relevant to fashioning an effective and appropriate sanction. In other words, the imposition of sanctions is not always a mechanical grid and the determination of sanctions should include a consideration of a variety of factors.

evidence regarding the alleged violation and to argue if there is a violation why or why not the sanction requested is appropriate.[7]

In this situation, the Taxpayer has previously had series of small seizures. The tax owed on the January 31, 2013 seizure was $81.20. The tax owed on the February 5, 2013 seizure was $. The tax owed on the March 12, 2013 seizure was $ The tax owed on the October 30, 2013 seizure was $70.35. The tax owed for this seizure is $ . . . The Taxpayer has previously had its License suspended for 30 days and three (3) days. The history of violations justify the maximum administrative penalty. The history of violations also justify a suspension of License as the Taxpayer has continually failed to comply with the taxing statute. In light of the prior violations and the fact that the maximum administrative penalty is being imposed, a suspension of 18 days is warranted.

VI. FINDINGS OF FACT

1. Other tobacco products were seized from the Taxpayer on March 21, 2015.

2. A hearing was held on January 21 and February 26, 2016. The parties were represented by counsel. The Taxpayer relied on the record. The Division timely submitted a written closing by April 25, 2015.

3. The facts contained in Section IV and V are reincorporated by reference herein.

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[7] In its brief, the Division rejected the idea of progressive discipline (despite its own guidelines calling for longer suspensions of licenses based on the number of offenses) arguing that the purpose of the sanction is not to reform but to punish tax evaders. Whether the sanction imposed is "progressive" or not, the purpose should not only be to punish a tax evader and ensure payment of the taxes owed, but to ensure future compliance with the tax law. In the context of a liquor licensing issue, the Superior Court found the purpose of progressive discipline by the local liquor licensing authority was to impose a reasonable sanction that would deter the licensee from repeatedly violating the law and when after the imposition of progressive discipline, the licensee failed to conform with the law, revocation was justified. *Pakse Market Corp. v. McConaghy;* 2003 WL 1880122 (R.I. Super.). Similarly, in the cigarette licensing situation, the Division wants to ensure that its licensees comply with the taxing statute by paying the appropriate taxes and to ensure tax evasion is not rewarded. Therefore, licensees that violate the tobacco tax statutes must pay any taxes owed, but also must pay a penalty on those taxes owed and a suspension of license may be imposed as well. If a licensee continually fails to pay the appropriate tobacco taxes after the imposition of discipline, then revocation of license would be appropriate.

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 § 44-20-13.2 on March 21, 2015.

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 § 44-20-13.2, R.I. Gen. Laws § 44-20-8, the tax owed and penalties were properly assessed on the Taxpayer's other tobacco products as set forth in Division's Exhibit H. The Taxpayer's cigarette dealer's license shall be suspended for 18 days beginning on the 31st day from the execution of this decision.

Date: MAY 17, 2016

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: July 21, 2016

Neena S. Savage
Acting 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 25th day July 2016 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 Ann Marie Maccarone, Esquire, and Meaghan Kelly, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Paul Belasco