STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-19

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 15-082**
	:	**16-T-005**
	:	**cigarette and sales tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter initially came for hearing pursuant to an Order to Show Cause, Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Order to Show Cause") issued on January 6, 2016 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing. A hearing was held on March 25 and May 5, 2016.[1] The parties were represented by counsel. 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 § 44-20-1 *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] During the hearing, the Taxpayer orally moved to dismiss this matter to which the Division objected. The undersigned denied said motion.

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

, Investigator, Special Investigation Unit, testified on behalf of the Division. He testified that he has been an investigator for three (3) years and previously was a police officer in the Providence Police Department for 20 years. He testified that he was trained by Division staff and has conducted around 2,000 tobacco compliance checks to ensure compliance with the tobacco tax law. He testified that about 15% to 20% of his inspections relate to obliterated tax stamps. He testified that he performs compliance checks on tobacco licensees and on September 17, 2015, he went to the Taxpayer's store. He testified that while there, he found four (4) packs of cigarettes that did not have tax stamps affixed to the bottoms of the packs. He testified that cigarettes were beneath the counter and were not visible to patrons. He testified that the packs did not have readable tax stamps. He testified that at one point there had been a valid stamp affixed to packs, but not anymore. He testified that there were no readable numbers on the stamps to determine where the stamps came from. He testified that all tax stamps for any state have a chemical, tagent, in them, and he and the other inspectors use a device, a tagent reader, to verify if stamps have that chemical. He testified that the four (4) packs tested positive for tagent which showed that at some time tax stamps had been affixed. He testified that he seized the four (4) packs as contraband. He testified that he had never seen stamps removed in this fashion. He testified that he prepared a seizure report regarding the four (4) packs that he seized and asked the clerk on duty to sign the report, but the clerk refused. He testified that he made a seizure report. See Division's Exhibit E. He testified that there were at least 200 to 300 packs in the store. He

testified that hypothetically, a store may keep a small number of illegitimate cigarettes to limit its tax liability exposure if its illegitimate cigarettes are seized. He testified that he reviewed the Taxpayer's invoices, but the issue was the readability of the Rhode Island tax stamps. He testified that he inspected all other cigarette cartons in the store, and they all appeared to be purchased from a valid distributer. He testified that he has seen packs that have not been stamped properly by the distributor but has never seen packs like these where the numbers were totally unreadable. He testified that he thought it was not a distributor error because he has viewed cigarettes being stamped by the machine. He testified that he has previously found cigarette packs that have stamping errors in that half the stamp will be missing but the number will still be readable. He testified that sometimes the stamp will be on the edge or go over the edge but all the cartons will have that same type of error because of being stamped in sequence and the number will be readable. He testified that these stamps were unreadable.

On cross examination, testified that three (3) of the four (4) packs did not have a readable number and one (1) pack had a readable number. He testified that a Rhode Island stamp has an anchor and he believed that these four (4) packs originally had Rhode Island stamps.

testified on behalf of the Division. He testified that he is the supervisor of the Special Investigation Unit and has been with the Division for almost ten (10) years and previously was with the Providence Police Department for 22 years. He testified that he has been performing compliance checks for ten (10) years and received training from the Federation of Tax Administrators as well as from the stamp manufacturer, Cipco Mycroft. He testified that the stamp manufacturer sells them to the Division in rolls of 30,000 and the licensed distributers buy the stamps from the Division to affix to the cigarette packages. He testified that the tagent reader is obtained from the manufacturer, and it is one of the ways to check the stamps

which have several security features on them. He testified that the device is part of the field test to verify the stamps. He testified that he never has had an experience of a false positive and the stamps can be matched with the distributer based on the number on the stamp. He testified that if a stamp is obliterated then the number cannot be read and the stamp cannot be tracked back to the distributer. He testified that the tagent reader does not need to be calibrated since it either lights up or not, but if the battery is dead, then it will not work.

On cross-examination, testified that if one cannot read the number on the stamp, then one cannot tell which distributer it came from. He testified that the four (4) packs originally had stamps on them and the remnants of the stamps were red. He testified that the Rhode Island stamps are red, but other states are too. When asked if he agreed with that the stamps had been Rhode Island stamps, he testified that he only concurred that that they were red stamps.

testified on behalf of the Taxpayer. He testified that he is the regional sales manager for a licensed tobacco distributer, , and has been there for six (6) years, but has a total of 20 years working in the cigarette distribution business. He testified that his company is the distributer for the Taxpayer and that he knows the owner. He testified that all cigarettes are stamped by assembly line in New York. He testified that the cartons come to the distributor open and then the machine stamps each individual pack and the machine then seals the carton. See Taxpayer's Exhibit One (1) (video of the stamping machine stamping cigarettes). He testified that since the cartons are closed after stamping, they are not inspected at the factory before delivery. He testified that there are stamping errors on rare occasions and it could be that stamps are smudged or not directly centered on a pack. He testified that stamping errors can be randomly affixed.

On cross-examination, testified that he saw a photograph of a couple of the stamps at issue, but had not seen them in person. He testified that the stamps were smudged and the stamps were torn a bit to the center, but one could tell they were Rhode Island stamps. He testified that if their customers receive misstamped packs, they are told to set them aside and the salesperson will pick them up. He testified that he is not aware of any calls being made to by the Taxpayer about these four (4) packs.

The Taxpayer's owner ("Owner") testified that he has owned the store for three (3) years. He testified that on November 23, 2015, he returned 19 cartons to the distributer because they were not stamped correctly. See Taxpayer's Exhibit 2 (return invoice). He testified that he usually orders approximately 62 cartons per week and that in November, 2015, he inspected all the cartons when delivered because he is now more aware of the issue because of what happened during the Division's September, 2015 inspection. He testified that prior to the inspection, the cartons were opened as needed to stock the store. He testified that he is not in the store all the time so that he would not have been there every time that the cigarettes would have been stocked onto shelves. He testified that at the time of the inspection, there were approximately 60 cartons (10 packs each carton) of cigarettes in the store.

On cross-examination, the Owner testified that he had not returned the four (4) packs before they were seized because he knew that sometimes stamps happen like that and he knew that he bought them from a legitimate distributer, so he had not thought it was an issue, but now he pays attention because of what happened. He testified that he told distributer that he thought it was at fault which is why the distributor wrote a letter to the Division and why testified. He testified that when the inspector seized the cigarettes he did not think there would be an issue because he knew the cigarette packs were ok.

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 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[2] imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13[3] provides that a tax at the same rate as R.I. Gen. Laws § 44-20-12 is imposed on unstamped

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[2] 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.

[3] R.I. Gen. Laws § 44-20-13 states 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.

cigarettes. R.I. Gen. Laws § 44-20-33 provides that the sale of unstamped cigarettes is prohibited. Said statute provides as follow:

> 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.

In order to ensure proof that the cigarette tax has been paid on cigarettes, a tax "stamp"[4] is affixed to each pack prior to sale. The statute sets forth the requirements for the securing the stamps including the requirement that the stamps contain serial numbers that shall be legible at the point of sale. R.I. Gen. Laws § 44-20-18 provides as follows.

> Securing stamps. – The tax administrator shall secure stamps, of those designs, types, and denominations as the tax administrator prescribes, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by § 44-20-12. Each roll of stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point of sale. The administrator shall keep records of which distributor purchases each roll or group of sheets identified by serial number. If the administrator permits distributors to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one distributor. The remainder of the roll or sheet, if any, shall either be retained for later purchases by the same distributor or destroyed. The tax administrator is the custodian of the stamps and of the dies, plates, and other materials and things used in the manufacture of the stamps.

R.I. Gen. Laws § 44-20-12.2 provides in part as follows:

> Prohibited acts – Penalty. – (a) No person or other legal entity shall sell or distribute in the state; acquire, hold, own, possess, or transport for sale or distribution in this state; or import, or cause to be imported, into the state for sale or distribution in this state; nor shall tax stamps be affixed to any cigarette package:
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> ***
>
> (3) The packaging of which has been modified or altered by a person other than the original manufacturer of the cigarettes, including by the placement of a sticker to cover information on the package. For purposes of this subsection, a cigarette package shall not be construed to have been modified or altered by a person other than the

[4] R.I. Gen. Laws § 44-20-1(11) defines stamp as follows:

> "Stamp" means the impression, device, stamp, label, or print manufactured, printed, or made as prescribed by the administrator to be affixed to packages of cigarettes, as evidence of the payment of the tax provided by this chapter or to indicate that the cigarettes are intended for a sale or distribution in this state that is exempt from state tax under the provisions of state law; and also includes impressions made by metering machines authorized to be used under the provisions of this chapter.

manufacturer if the most recent modification to, or alteration of, the package was by the manufacturer or by a person authorized by the manufacturer;

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(d) Any cigarettes found in violation of this section shall be declared to be contraband goods and may be seized by the tax administrator, or his or her agents, or by any sheriff, or his or her deputy, or any police officer, without a warrant. The tax administrator may promulgate rules and regulations for the destruction of contraband goods pursuant to this section, including the administrator's right to allow the true holder of the trademark rights in a cigarette brand to inspect contraband cigarettes prior to their destruction.

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 § 44-20-51.1 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.

C. Arguments

The Division argued that the four (4) packs had obliterated and/or tampered tax stamps. The Division argued that the stamps had some traces of tagent and it was possible that they were Rhode Island stamps, but the stamps could not be read, and stamps are supposed to be able to be

read so the numbers can be traced back to the licensed distributer. The Division argued that since the stamps cannot be traced back to the distributor that is a violation. The Division argued that the stamps were intentionally obliterated and were not the result of a stamping error. The Division requested that the tax liability and penalties and a 30 day suspension be imposed. The Division argued that penalty "b" (see below) represents ten (10) times the value of the tax and an additional $ was imposed for the aggravating factors in that the clerk did not cooperate (did not sign seizure report) and the packs were blended in with other packs (not separated).

The Taxpayer argued that the stamps were Rhode Island stamps based on and testimony. The Taxpayer argued that there was no evidence of tampering but there was evidence that it could have been a stamping error. The Taxpayer argued that there was no evidence that the cigarettes were being blended in for sale. The Taxpayer argued that at the time of inspection, cigarette cartons were opened as needed and the Owner was not at the store all the time so a clerk could have stocked the packs and not noticed the misstamping. Instead, the Taxpayer argued that the evidence was the packs had Rhode Island stamps with traces of tagent so why would anyone use this method to phony up the stamps. Therefore, the Taxpayer argued that the only reasonable conclusion would be that the packs were misstamped. The Taxpayer argued the sanctions requested are draconian for four (4) packs with stamping errors. Finally, the Taxpayer argued that the cigarette packs were not produced at hearing so it is speculation over the tampering. The Taxpayer requested that there be no penalty or suspension since it was a good faith error.

D. Whether the Taxpayer Violated R.I. Gen. Laws § 44-20-1 *et seq.*

It was undisputed that the four (4) stamps at issue were illegible and thus somehow damaged. testified that the stamps he saw in the photographs were smudged and torn. testified that the serial numbers could not be read on three (3) of the four (4) packs. While

the pack themselves were not introduced into evidence, based on the testimony, the four (4) packs contained damaged or remnants of or partial stamps. While did not agree that they were Rhode Island stamps, he did agree that they were red, the color of Rhode Island stamps. and both testified that they were Rhode Island stamps.

The Taxpayer argued that the damaged stamps were due to a stamping error. The Division argued that the stamps had been tampered with or obliterated.

The seizure report that was entered into evidence mentions that a stamp number was reversed which can be the result of scotch tape being used to peel off a proper tax stamp and affix it to an unstamped pack. In addition, the report indicated that another stamp appeared to be under cellophane wrap and could not be scratched off. See Division's Exhibit E. However, none of this was testified to at hearing. If this was testified to, the investigator would have been subject to cross-examination. In addition, none of the packs in question were produced at hearing where the investigator could have explained why in his opinion based on the evidence that these four (4) stamps were deliberately tampered with and/or obliterated, and testify to why someone would tamper with Rhode Island stamps as opposed to out-of-state stamps. During the argument on the motion to dismiss, the Division indicated that it could be that the Rhode Island stamps were taken off the packs and used on unstamped packs so that the stamps could have been transferred to unstamped packs. However, there was no testimony or evidence that was subject to cross-examination that these packs either had Rhode Island stamps transferred onto them or from them.

The only evidence at hearing from all witnesses was that the stamps were illegible and thus somehow damaged. The serial numbers which are required by R.I. Gen. Laws § 44-20-18 to be legible at the point of sale could not be read on three (3) of the four (4) packs according to Salzillo. The Division argued that since the stamps could not be read then they must have been somehow

altered or modified. However, there is an expectation that stamps can be damaged while being affixed to packs since R.I. Gen. Laws § 44-20-22[5] allows for distributors to be reimbursed by the Tax Administrator for stamps that they purchased that became torn, mutilated, or unfit for use.

There was no dispute that stamping errors occur. testified that the stamps did not look like the result of stamping errors. testified that the photographs showed a ripped and a smudged stamp. He did not testify that based on the photographs of the stamps that he saw, the illegible stamps were due to a manufacturing error. Rather he testified that stamping errors can cause illegible stamps. However, there was also no evidence about how the stamps could have been obliterated or tampered with by a person and/or why that would be.

After the close of hearing, the undersigned inquired of the Division whether it was relying on R.I. Gen. Laws § 44-20-12.2(a)(3), *supra*,[6] in terms of its allegations regarding the stamps. R.I. Gen. Laws § 44-20-12.2(a)(3) speaks of the altering or modifying a cigarette pack's packaging (which presumably includes the stamp). The Division responded that its civil penalty assessment, R.I. Gen. Laws § 44-20-51.1 (penalty to be imposed if a taxpayer does anything prohibited by this chapter), was based on the Taxpayer's violation of R.I. Gen. Laws § 44-20-39 which the Division pointed out was a criminal penalty statute. R.I. Gen. Laws § 44-20-39 provides as follows:

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[5] R.I. Gen. Laws § 44-20-22 provides as follows:

> Reimbursement for mutilated and other stamps – Claims. – The distributor shall be reimbursed, at a price equal to ninety-eight and three-fourths percent (98.75%) of their face value, for stamps purchased by the distributor which, in the process of affixing to packages, have become torn, mutilated, or unfit for use, or which, after affixing, have become detached, or in cases of the withdrawal from the market in this state by a manufacturer, of cigarettes upon which stamps have been impressed, or in those cases that the tax administrator, with the approval of the attorney general, after proof satisfactory to the tax administrator, determines that the distributor ought equitably to be reimbursed. All claims for reimbursement shall be made under oath to the tax administrator upon forms to be obtained by the tax administrator, and contain the information and proof the tax administrator may require. Claims for reimbursement shall be paid by the general treasurer from the general fund, upon certification by the tax administrator and with approval of the controller.

[6] The undersigned erroneously referred to the statute in email as R.I. Gen. Laws § 44-20-12.2(c) but it is R.I. Gen. Laws § 44-20-12.2(a)(3) that prohibits the sale or possession of altered or modified cigarette packs.

> Forgery and counterfeiting – Tampering with meters – Reuse of stamps or containers. – Any person who fraudulently makes or utters or forges or counterfeits any stamp, disc, license, or marker, prescribed by the tax administrator under the provisions of this chapter, or who causes or procures this to be done; or who willfully utters, publishes, passes or renders as true, any false, altered, forged, or counterfeited stamp, license, disc, or marker; or who knowingly possesses more than twenty (20) packs of cigarettes containing any false, altered, forged, or counterfeited stamp, license, disc, or marker; or who tampers with, or causes to be tampered with, any metering machine authorized to be used under the provisions of this chapter; or who removes or prepares any stamp with intent to use, or cause that stamp to be used, after it has already been used; or who buys, sells, offers for sale, or gives away any washed or removed or restored stamp to any person; or who has in his or her possession any washed or restored or removed or altered stamp that was removed from the article to which it was affixed, or who reuses or refills with cigarettes any package, box, or container required to be stamped under this chapter from which cigarettes have been removed, is deemed guilty of a felony, and, upon conviction, shall be fined one hundred thousand dollars ($100,000), or be imprisoned for not more than fifteen (15) years, or both.

The Order to Show Cause alleged that the Taxpayer was in possession of "said items [that] were unstamped or untaxed or bearing altered/defaced/counterfeit tax stamps in violation of the provisions of RIGL (sic) §§ 44-20-1 *et seq*. and/or RIGL (sic) §§ 44-20.2-1 *et seq*."[7] There was no evidence that the stamps were reused or forged or counterfeited (as provided for in R.I. Gen. Laws § 4-20-39).

The evidence was that the stamps were somehow damaged. How is not clear. The stamps were not legible. Whether the stamps were defaced or altered by accident or on purpose, the possession of such illegible stamps is a violation of R.I. Gen. Laws § 44-20-12.2(a)(3). The evidence was that these four (4) packs had Rhode Island stamps. However, the Division's position is that an obliterated tax stamp means that the packs are unstamped so that the Taxpayer was in possession of unstamped cigarettes.[8] A tax stamp verifies payment of tax and if the stamp is obliterated or illegible (at the point of sale), it cannot be verified that tax was paid. Thus, while the

[7] R.I. Gen. Laws § 33-20.2-1 *et seq*. refers to little cigars so is not relevant to this matter.

[8] See R.I. Gen. Laws § 44-20-12.. See undersigned's request to the parties and their response.

evidence was the tax stamps were Rhode Island stamps, since they were obliterated and/or illegible then the packs are considered unstamped as the stamps cannot be read. To interpret the statute otherwise could lead to the absurd result of taxpayers being able to claim tax was paid on illegible stamps (that they could have even made illegible) which runs counter to the statutory provision that stamps must be legible in order to confirm payment of tax.

E. What Sanction 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). 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.

There was no dispute that the Taxpayer had a prior offense.[9] Here the evidence is that the Taxpayer possessed illegible Rhode Island stamps. There was no other evidence that allowed for a conclusion on how or why the stamps were illegible. Thus, the only violation is that possession of such stamps is prohibited by R.I. Gen. Laws § 44-20-12(a)(3). Since this is a second offense, a higher penalty is allowed pursuant to R.I. Gen. Laws § 44-20-51.1(a)(2). Therefore, a penalty of twice the amount of the retail value of the cigarette is imposed. R.I. Gen. Laws § 44-20-51.1(b) imposes a penalty for non-payment of tax and since the packs are considered unstamped, tax is considered not to have been paid. Therefore, since this is a second offense, pursuant to R.I. Gen.

[9] The date of this prior offense was not established on the record, but absent any argument otherwise, it is assumed that this second offense is within 24 months of the first offense.

Laws § 44-40-51.1(b), a penalty of twice the amount of tax due on the four (4) packs is imposed. There has been no showing that a suspension of License is warranted under R.I. Gen. Laws § 44-20-8.

VI. FINDINGS OF FACT

1. This matter arose out of an Order to Show Cause issued by the Division on January 16, 2016 to the Taxpayer in response to a request for hearing. A hearing was held on March 25 and May 5, 2016. The parties were represented by counsel and rested on the record.

2. The Division conducted a tobacco compliance check of the Taxpayer store on September 17, 2015.

3. Four (4) packs of cigarettes with illegible Rhode Island tax stamps were seized from the Taxpayer on September 17, 2015.

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 § 44-20-12.2(a)(3).

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-20-1 *et seq*. and R.I. Gen. Laws § 44-20-51.1(a)(2) and (b), a penalty of twice the retail amount of the four (4) packs of cigarettes and a penalty of twice the amount of tax owed for the four (4) packs of cigarettes is imposed. Payment is due on the 31st day after the execution of this decision.

Date: June 1, 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: 7/25/16

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 Anne Marie Maccarone, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.