STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-20

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 15-069; 15-T-0103
	cigarette tax and dealer's license
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 October 20, 2015 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was held on May 17, 2016. The Division was represented by counsel. No one appeared for the Taxpayer. The Taxpayer did not contact either the undersigned or the Division. The Taxpayer received notice of the hearing.[1] As the Taxpayer received notice of the hearing, the undersigned held the hearing. 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 § 44-20-1 *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] Letters were sent to Taxpayer on April 20, 2016 notifying the Taxpayer of the hearing date after the Taxpayer's attorney withdrew from representation. The letters were sent to the Taxpayer's address on record with the Division and an address provided by the former attorney. The Division represented that the letters were not returned to the Division and the Taxpayer did not contact the Division.

III. ISSUE

Whether the Taxpayer owes the assessment issued by the Division in relation to cigarette tax and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

Tax Investigator, Special Investigation Unit, testified on behalf of the Division. He testified that on July 10, 2015, he seized untaxed rolling papers from the Taxpayer's store. See Division's Exhibits C and D (Taxpayer's current sales tax permit and current cigarette dealer's license) and H and I (July 10, 2015 compliance and seizure report). He testified that the store is currently closed and closed sometime after Christmas and prior to January 1, 2016.

Revenue Agent, Special Investigation Unit, testified on behalf of the Division. She testified that the Taxpayer has a prior seizure and entered into a stipulation for that prior offense. She testified that the July 10, 2015 seizure was the Taxpayer's second offence. She testified that Division's Exhibit O (calculation worksheet) reflects the tax owed by the Taxpayer rather than the Notice of Deficiency. She testified that since this was a second offense, the Division imposed a penalty of ten (10) times the retail value of the papers and a penalty of five (5) times the tax due and a 30 day suspension of the cigarette's dealer license.

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[2] imposes a tax on cigarettes[3] sold. R.I. Gen. Laws § 44-20-13[4] provides that a tax at the same rate as R.I. Gen. Laws § 44-20-12 is imposed on unstamped cigarettes. R.I. Gen. Laws § 33-20-33[5] prohibits the sale of unstamped cigarettes. Inspections of cigarette dealers are allowed by R.I. Gen. Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1[6]

---

[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] Rolling papers are included in the definition of cigarettes. See R.I. Gen. Laws § 44-20-1(2).

[4] R.I. Gen. Laws § 44-20-13 provides 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 § 44-20-33 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.

[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.

provides for administrative penalties for the violation of the tax laws. In addition, R.I. Gen. Laws § 44-20-8[7] provides for the suspension or revocation of a cigarette dealer's license.

C. The Taxpayer Owes Tax and Penalties

The Taxpayer did not appear at hearing. It is undisputed that the Division seized rolling paper for which Rhode Island tax had not been paid. R.I. Gen. Laws § 44-20-13 provides that tax is imposed on unstamped cigarettes so that the Division properly assessed tax on the seized tobacco products. See Division's Exhibit O.

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 or not more than 25 times in some circumstances. 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.

(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.

[7] 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 Division seeks penalties for the unpaid cigarette tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b). As this is the Taxpayer's second offense, the Division is seeking a penalty of ten (10) times the retail value of the papers and a penalty of five (5) times the tax due. See Division's Exhibit O. R.I. Gen. Laws § 44-20-51.1(a)(2) provides that for a second offense in 24 months, a penalty of not more than 25 times or $5,000 whichever is greater can be imposed. The Taxpayer's first violation was on April 1, 2015. See Division's Exhibits F and G (April 1, 2015 compliance report and seizure report). (The first violation was settled by stipulation dated July 30, 2015. See Division's Exhibit L). Thus, the Taxpayer's second violation on July 10, 2015 was within 24 months of the Taxpayer's first violation.

The Division issued its Order to Show Cause in October, 2015. Since then, the Taxpayer has closed its store without approaching the Division about resolving its outstanding cigarette tax liability. It failed to appear at hearing or at the very least contact the Division upon receipt of the notice of hearing. Thus, while this is the Taxpayer's second offense, the Taxpayer closed its store and failed to contact the Division regarding its outstanding tax liability and failed to appear at hearing. These aggravating factors support the imposition of the maximum penalties allowed pursuant to R.I. Gen. Laws § 44-20-51.1(a)(1) and (b): 25 times the retail value of the cigarettes and five (5) times the tax due but unpaid.

In addition, when the Order to Show Cause was issued, the Division sought suspension of the Taxpayer's cigarette dealer's license for 30 days pursuant to R.I. Gen. Laws § 44-20-8. Since then, the Taxpayer has closed its store and failed to surrender its cigarette dealer's license and failed to approach the Division regarding its outstanding tax liabilities and failed to appear at hearing. Therefore, pursuant to R.I. Gen. Laws § 44-20-8, the Taxpayer's cigarette dealer's license shall be revoked.

VI. FINDINGS OF FACT

1. Untaxed rolling papers (unstamped cigarettes) were seized from the Taxpayer on July 10, 2015.

2. A hearing was held on May 17, 2016. The Taxpayer did not appear. The Taxpayer was adequately noticed of the hearing. The Division was represented by counsel and rested on the record.

3. 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 § 44-20-1 *et seq*. on July 10, 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*., the tax owed by the Taxpayer was properly assessed as set forth in Division's Exhibit O. In addition, pursuant to R.I. Gen. Laws § 44-20-51.1(a)(2), a penalty of 25 times the retail value of the cigarettes shall be imposed using the retail value of the seized rolling papers in Division's Exhibit O. Also, pursuant to R.I. Gen. Laws § 44-20-51-1(b), a penalty of five (5) times the tax due shall be imposed as set forth in Division's Exhibit O. Finally, the Taxpayer's cigarette dealer's license shall be revoked upon execution of this decision. Payment shall be due within 30 days of 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 addresses on record with the Division and by hand delivery to Matthew Cate, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.