STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-21

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 15-057; -054; -053; -018**
	:	**15-T-0086; -084; -083; -034**
	:	**consolidated**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter initially came for hearing pursuant to Orders to Show Cause, Notice of Pre-Hearing Conference and Appointment of Hearing Officer issued in August, 2015 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's requests for hearing. Prior to hearing, the parties consolidated these matters and settled them by stipulation dated November 11, 2015. The Division now alleges that the Respondent violated said stipulation and issued a new Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer ("Second Order") dated March 4, 2016 to the Taxpayer. A hearing was held on April 15, 2016 and May 17, 2016.[1] The Taxpayer did not appear on either day of the hearing. As the Taxpayer received notice of the hearing, the undersigned held the hearing. The Division was represented by counsel and rested on the record.

[1] Letters were sent to Taxpayer on April 15, 2016 notifying the Taxpayer of the hearing date after the Taxpayer's attorney withdrew from representation. The Taxpayer's attorney withdrew by letter dated March 10, 2016 after the Second Order was issued to the Taxpayer. In order to ensure that the Taxpayer received notice of the hearing, the Division forwarded letters on April 15, 2016 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.

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 Taxpayer violated the stipulation ("Stipulation") dated November 11, 2015 and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

Revenue Agent, Special Investigations Unit, testified on behalf of the Division. She testified that the total amount of the four (4) notices of deficiencies sent to the Taxpayer for its four (4) violations relating to unstamped cigarettes and other tobacco products was for See Division's Exhibit Two (2) (four (4) notice of deficiencies for the four (4) seizures of untaxed cigarette and other tobacco products). She testified that the Taxpayer was to make five (5) payments on a reduced amount pursuant to the Stipulation, but only made two payments of $ each, and did not finish paying the stipulated amount. See Division's Exhibit Three (3) (Stipulation). She testified that the amount remaining of the total amount of the four (4) deficiencies is . She testified that as of December 17, 2015, the Taxpayer filed a final sales tax return indicating that the business was inactive. See Division's Exhibit Four (4) (final tax return). She testified that the Taxpayer's cigarette dealer's license expires in June, 2016 but has not been surrendered.

Tax Investigator, Special Investigation Unit, testified on behalf of the Division. He testified that the Taxpayer's store has been closed since November, 2015.

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

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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 § 44-20-33 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.

"other tobacco products" in R.I. Gen. Laws § 44-20-13.2.[4] Administrative penalties for violation the tax law are provided for in R.I. Gen. Laws § 44-20-51.1.[5] In addition, R.I. Gen. Laws § 44-20-8[6] provides for the suspension or revocation of a cigarette dealer's license.

C. The Taxpayer Owes the Full Assessment

The Taxpayer entered into a Stipulation in order to settle its four (4) outstanding tax liabilities arising from the four (4) seizures. The tax liabilities included tax owed pursuant to R.I. Gen. Laws § 44-20-13 and R.I. Gen. Laws § 44-20-13.2 and penalties imposed pursuant to R.I. Gen. Laws § 44-20-51.1 on untaxed cigarettes and other tobacco products. The Taxpayer only made partial payment on the amount owed under the Stipulation. Five (5) payments were to be

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[4] R.I. Gen. Laws § 44-20-13.2 applies to "other tobacco products" and provides in part 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:

[5] 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.

[6] 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.

made every 30 days starting November 11, 2015 and ending March 11, 2015. The Taxpayer only made partial payment of the agreed to amount and failed to complete payment by the date agreed to in the Stipulation. See Division's Exhibit Three (3).

The Division seeks the full assessments under the four (4) notice of deficiencies for violating the Stipulation. In addition, the Division requested that the cigarette dealer's license be suspended up to its expiration date.

The Taxpayer did not appear at hearing and did not dispute the Division's request for full payment of the deficiencies. No reason has been shown not to impose the full assessments on the Taxpayer after it violated the Stipulation that it entered into in relation to its violations of R.I. Gen. Laws § 44-20-1 *et seq*. In addition, the Taxpayer closed its store, failed to surrender it cigarette's dealer's license, and failed to appear at hearing. Therefore, for violating the Stipulation and for violations of R.I. Gen. Laws § 44-20-1 *et seq*. and pursuant to R.I. Gen. Laws § 44-20-8, the Taxpayer's cigarette dealer's license is revoked.

VI. FINDINGS OF FACT

1. The Taxpayer entered into a Stipulation to settle its four (4) notices of deficiencies related to its four (4) violations relating to unstamped cigarettes and/or other tobacco products seized from the Taxpayer.

2. The Taxpayer did not comply with the terms of the Stipulation.

3. A hearing was held on April 15 and May 17, 2016. The Taxpayer did not appear. The Taxpayer was adequately noticed of hearing. The Division was represented by counsel and rested on the record.

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 § 44-20-1 *et seq.* on four (4) different occasions resulting in it entering the Stipulation. The Taxpayer failed to comply with the Stipulation in violation of R.I. Gen. Laws § 44-20-1 *et seq.*

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, and R.I. Gen. Laws § 44-20-8, the Taxpayer shall owe the total amount of the four (4) deficiencies[7] and its 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: 8/4/16

Neena S. Savage
Acting Tax Administrator

[7] The Taxpayer shall receive credit for the it has already paid to the Division toward the deficiencies.

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 4th day Aug, 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 Anne Marie Maccarone, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Gail Belasco