STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-22

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 15-005; SC 15-009; 15-T-0018**
	:	**cigarette tax and dealer's license**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer ("Notice") issued on July 28, 2016 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). A hearing was held on August 30, 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] See testimony below.

III. ISSUE

Whether the Taxpayer breached its settlement stipulation ("Stipulation") dated March 6, 2015, and if so, what should be the sanction.

IV. MATERIAL FACTS AND TESTIMONY

The Taxpayer entered into the Stipulation with the Division in order to resolve two (2) Notices of Deficiencies and two (2) cigarette dealer's license suspensions issued by the Division to the Taxpayer related to two (2) seizures of untaxed "other tobacco products." See Division's Exhibits A (Stipulation); B (Notices of Deficiencies dated December 18, 2014 and February 6, 2015); and C (cigarette license suspensions dated December 18, 2014 and February 6, 2015).

Revenue Officer II, Special Investigation Unit, testified on behalf of the Division. She testified that pursuant to the Stipulation, the Taxpayer was to make seven (7) payments of each and the Taxpayer only made three (3) payments for a total of . She testified that she tried to contact the Taxpayer regarding the outstanding balance, but received no response. She testified that she learned that the Taxpayer abandoned its business. She testified that in order to contact the Taxpayer regarding this hearing, she searched income tax records for the Taxpayer's owner's address and the Notice was sent to the owner's address on record with the Division. See Notice.

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. Whether the Taxpayer Violated the Stipulation

The Taxpayer did not appear at hearing. It is undisputed that the Taxpayer entered into a Stipulation to settle two (2) matters arising from the seizure from the Taxpayer of untaxed "other tobacco products"[2] and the Taxpayer failed to make all of the payments required by the Stipulation. R.I. Gen. Laws § 44-20-51.1 provides for administrative penalties for the violation of the tax laws. R.I. Gen. Laws § 44-20-8 provides for the suspension or revocation of a cigarette dealer's license. R.I. Gen. Laws § 44-1-7 provides for interest to be imposed on delinquent payments.

The Division seeks a judgment for the total amount of the two (2) deficiencies (representing the tax owed and penalties imposed pursuant to R.I. Gen. Laws § 44-20-51.1) issued to the Taxpayer with a credit for the already paid. The Division also seeks revocation of the Taxpayer's cigarette dealer's license[3] as provided by R.I. Gen. Laws § 44-20-8 and referenced in paragraph 13 of the Stipulation as a potential consequence of the failure to comply with the Stipulation. The Division also seeks interest pursuant to R.I. Gen. Laws § 44-1-7.

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[2] R.I. Gen. Laws § 44-20-12 imposes a tax on cigarettes sold. Gen. Laws § 44-20-33 prohibits the sale of unstamped cigarettes. 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. R.I. Gen. Laws § 44-20-13.2 imposes a tax on "other tobacco products." See Rule 5 of the Division of Taxation's *Tax on Other Tobacco Products Regulation* – OTP 14-01 for a definition of other tobacco products.

[3] At hearing, the issue of the Taxpayer's permit to make sales at retail was also raised. However, the Notice did not include the potential revocation of the sales permit so the undersigned will not address it. It is noted that the Taxpayer's sales permit and cigarette dealer's license most likely have expired.

VI. FINDINGS OF FACT

1. The Taxpayer entered into a Stipulation of March 6, 2015.

2. A hearing was held on August 30, 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 Taxpayer violated the Stipulation by failing to make all payments due.

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 the Stipulation.

VIII. RECOMMENDATION

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

Therefore, pursuant to R.I. Gen. Laws § 44-20-13 and R.I. Gen. Laws § 44-20-51.1, the Taxpayer owes the total amount of the two (2) deficiencies less the $1,500 paid as well as any accrued statutory interest.[4] Pursuant to R.I. Gen. Laws § 44-20-8, the Taxpayer's cigarette dealer's license shall be revoked upon execution of this decision. Payment of the tax and penalty and any accrued interest owed shall be due within 30 days of the execution of this decision.

Date: 9/7/16

Catherine R. Warren
Hearing Officer

[4] The total amount of the two (2) deficiencies shall be reduced by the already paid by the Taxpayer pursuant to the Stipulation and any amounts already paid by the Taxpayer on the deficiencies prior to hearing. There was evidence at hearing that the Taxpayer had already paid the December 18, 2014 deficiency and sought a refund at hearing. Any interest owed under R.I. Gen. Laws § 44-1-7 shall also be imposed.

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: 9/19/16

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 19th day September, 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 Meaghan Kelly, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.