

STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-03

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

IN THE MATTER OF:

**21-T-162
cigarette tax**

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 August 13, 2021 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). A hearing was scheduled for December 7, 2023 at which time the Taxpayer did not appear at the hearing. Since the Taxpayer was adequately noticed of hearing,¹ a hearing was held on December 7, 2023 before the undersigned. Pursuant to Section 2.7(G)(3) of the 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”), a default judgment may be entered against the party not appearing at hearing.² The Division was represented by counsel who 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.*, and the Hearing Regulation.

¹ Division’s Exhibit 13 is the initial notice of hearing that was forwarded to the Taxpayer’s attorney. As the parties were unable to resolve this matter, a hearing was scheduled. By email, the undersigned discussed convenient hearing dates with the parties using the Taxpayer’s attorney’s email address. The Taxpayer’s attorney identified December 7, 2023 at 1:00 p.m. as the convenient day and time for a hearing for him. An email scheduling the hearing for December 7, 2023 at 1:00 p.m. was sent by the undersigned to both parties’ attorneys. Division’s Exhibit 17.

² The Hearing Regulation provides that the defaulted party be given notice of the default by mail and may request reinstatement of the matter pursuant to a motion for reconsideration as set forth in the Hearing Regulation.

III. ISSUE

Whether the Taxpayer owes cigarette and other tobacco products tax and if so, should any sanctions be imposed.

IV. MATERIAL FACTS

Tax Investigator, testified on behalf of the Division. He testified that he is an inspector for the Special Investigations Unit (“SIU”) which ensures compliance with tobacco tax statutes. He testified that in November, 2016, SIU received information from the state police that a warrant was to be executed on the Taxpayer in relation to purchases of tobacco products. He testified that upon the execution of the warrant, boxes and bags of tobacco including bags marked with store addresses for delivery were found at the Taxpayer’s residence. He testified the state police seized the various tobacco products and based on those seizures, a seizure report was compiled for cigarettes and for other tobacco products (“OTP”). Division’s Exhibits One (1) (compliance reports dated November 3, 2016); Two (2) and Three (3) (cigarette seizure report and OTP seizure report each dated November 3, 2016).

(“Auditor”), Principal Tax Auditor, testified on behalf of the Division. He testified that he is the supervisor of the SIU. He testified that neither the Taxpayer nor her DBA had a permit to make sales at retail or a tobacco dealers license during 2016. He testified the SIU issued four (4) notices of deficiencies in relation to the contraband tobacco and OTP seized by the police. Division’s Exhibits Eight (8) through 11 (2017 notices of deficiency). He testified the Taxpayer did not pay the deficiencies and requested a hearing. Division’s Exhibit 12. He testified that interest began to accrue 30 days from the date of the notices of deficiency due to the Taxpayer’s nonpayment. He testified the Taxpayer was criminally charged in relation to the

tobacco seizures, and the criminal matter was eventually resolved. Division's Exhibits 14, 15, and 16 (2018 sentence agreement, case summary).

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 § 44-20-12³ imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2⁴ imposes tax on "other tobacco products."

³ In 2016, R.I. Gen. Laws § 44-20-12 (P.L. 2015, ch. 141, art. 11, § 10) provided 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 eighty-seven and one half (187.5) mills for each cigarette.

⁴ In 2016, R.I. Gen. Laws § 44-20-13.2 (P.L. 2012, ch. 241, art. 21, § 6) provided 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:

R.I. Gen. Laws § 44-20-51.1⁵ provides for administrative penalties for the violation of the tax laws.

C. Whether Tax is Owed on the Other Tobacco Products

The Taxpayer did not appear at hearing. It is undisputed that on November 3, 2016, the police seized cigarettes and OTP from the Taxpayer for which Rhode Island tax had not been paid. The products seized included over 1,500 cigarette packages and over 13,000 rolling papers. Division's Exhibits Two (2) and Three (3). R.I. Gen. Laws § 44-20-12 provides that tax is imposed on cigarettes, so the Division properly assessed tax on the seized cigarette products. R.I. Gen. Laws § 44-20-13.2 provides that tax is imposed on other tobacco products, so the Division properly assessed tax on the seized other tobacco products.

(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.

⁵ R.I. Gen. Laws § 44-20-51.1 provides for penalties to be imposed on untaxed tobacco products. In 2016 and 2017, at the time of the seizure and notices of deficiencies, the statute (P.L. 2014, ch. 151, § 1; P.L. 2014, ch. 168, § 1.) provided 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.

D. What Sanctions Should be Imposed

At the time of the seizure, R.I. Gen. Laws § 44-20-51.1(a) provided that penalties were to be imposed at “not more than five (5) times” the retail value of the cigarettes for a first offence. R.I. Gen. Laws § 44-20-51.1(b) provided that a penalty of not more than five (5) times of the tax owed could be imposed. R.I. Gen. Laws § 44-20-51.1(c) provides that when determining the penalty to be imposed, mitigating and aggravating factors such as history, severity, and intent shall be considered.

The Division seeks monetary penalties for the unpaid cigarette and other tobacco products tax pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b).

The notice of deficiency admitted as Division’s Exhibit Eight (8) represented cigarette tax imposed on little cigars, cigarette, tubes, and papers. The penalties imposed were under (a) and (b) of R.I. Gen. Laws § 44-20-51.1. The penalty for (a) was based on the retail value of the products and was two (2) times the retail value, and the penalty for (b) was two (2) times the tax owed as this was a first offense. Division’s Exhibit Four (4) (audit workpapers).

The notice of deficiency admitted as Division’s Exhibit Nine (9) represented OTP and cigar taxes. The only penalty imposed was under R.I. Gen. Laws § 44-20-51.1(b) and was two (2) times the tax owed as this was a first offense. Division’s Exhibit Five (5) (audit workpapers).

The notice of deficiency admitted as Division’s Exhibit Ten (10) represented cigarette tax imposed on little cigars, cigarette, tubes, and papers. The penalties imposed were imposed under (a) and (b) of R.I. Gen. Laws § 44-20-51.1. The penalty for (a) was based on the retail value of the products and was five (5) times the retail value. The penalty for (b) was five (5) times the tax owed. The workpapers do not indicate why a change was made from imposing penalty (a) from two (2) times to five (5) times the retail value of the products. The workpapers do not indicate why the

change was made from imposing penalty (b) at two (2) times the tax owed for a first offense to five (5) times the tax owed. Division's Exhibit Six (6) (audit workpapers).

The notice of deficiency admitted as Division's Exhibit 11 represented other tobacco tax and cigar tax. No penalties were issued with this deficiency. Division's Exhibit Seven (7) (audit workpapers).

The Taxpayer did not appear. No mitigating factors were shown in relation to the monetary penalties requested. The number of untaxed products seized from the Taxpayer was voluminous. The seizure was an action by the state police in conjunction with the Massachusetts state police investigating unlicensed distribution of tobacco products within Rhode Island. Division's Exhibit One (1). This matter was not an issue of a mistake or minor violations but rather the Taxpayer was engaged in a large unlicensed distribution business that purposely circumvented Rhode Island tax laws related to tobacco.

As a consequence, the severity of the violations justified the penalty imposed for Division's deficiency in Exhibit Ten (10) at five (5) times the tax owed after the two (2) other notices imposed penalty (b) at two (2) times the tax owed. Similarly, the severity of the violations justified penalty (a) at five (5) times the retail value in Exhibit Ten (10) after the other deficiency assessed penalty (a) at two (2) times the retail value. Penalty (a) is limited to a first offense as up to five (5) times the retail value. Penalty (b) allows for up to five (5) times the tax owed. Meanwhile, no penalty was imposed with the deficiency issued as Division's Exhibit 11. A penalty under R.I. Gen. Laws § 44-20-51.1(b) shall be imposed for the Division's Exhibit 11 notice of deficiency at two (2) times the tax owed.

The imposition of interest after the nonpayment of a deficiency by its due date is authorized by R.I. Gen. Laws § 44-1-7.⁶ While the notices of deficiency did not include interest, the Auditor testified that interest has been accruing since the nonpayment of the assessment by the Taxpayer after payment was due. This is consistent with R.I. Gen. Laws § 44-1-7.

VI. FINDINGS OF FACT

1. Other tobacco products for which no tax was paid were seized from the Taxpayer on November 3, 2016.

2. Cigarette products for which no tax was paid were seized from the Taxpayer on November 3, 2016.

3. A notice of hearing was issued on August 13, 2021. A hearing was scheduled for December 7, 2023, and all parties were notified. The Taxpayer did not appear at the hearing. As the Taxpayer was adequately notified of hearing, a hearing was held. The Division was represented by counsel and rested on the record. The Taxpayer is in default for failing to appear at the hearing.

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 § 44-20-13.2 on November 3, 2016.

⁶ R.I. Gen. Laws § 44-1-7 provides in part as follows:

Interest on delinquent payments. (a) Whenever the full amount of any state tax or any portion or deficiency, as finally determined by the tax administrator, has not been paid on the date when it is due and payable, whether the time has been extended or not, there shall be added as part of the tax or portion or deficiency interest at the rate as determined in accordance with subsection (b) of this section, notwithstanding any general or specific statute to the contrary.

3. The Taxpayer violated R.I. Gen. Laws § 44-20-12 on November 3, 2016.

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 § 44-20-13.2, the Taxpayer owes the tax and penalties assessed by the Division as set forth in Division's Exhibits Eight (8); Nine (9); Ten (10), and 11. Additionally, a penalty under R.I. Gen. Laws § 44-20-51.1(b) shall be added to Division's Exhibit 11 at two (2) times the tax owed. Finally, the Taxpayer owes the accrued interest pursuant to R.I. Gen. Laws § 44-1-7. Payment shall be made by the 31st day from the date of execution of this decision.

Date: 1/12/24


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: 1/18/24


Neena S. Savage
Tax Administrator

NOTICE OF APPELLATE RIGHTS

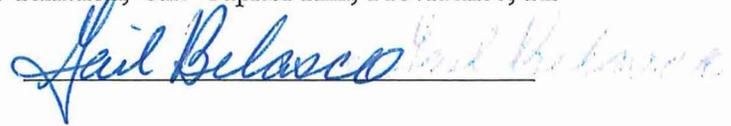
THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

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 of January 2024 a copy of the above Decision and Notice of Appellate Rights was sent by electronic delivery and by first class mail, postage prepaid to the Taxpayer's attorney's address on record with the Division and by electronic delivery to John Beretta, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.



Nail Belasco