

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2012-16

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

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IN THE MATTER OF:

Taxpayer.

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Case No.: 10-T-0006  
cigarette tax

**DECISION**

**I. INTRODUCTION**

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer ("Notice") issued on October 5, 2012 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing. A hearing was scheduled for December 3, 2012 at which time the Taxpayer did not appear. The Division was represented by counsel. The Taxpayer had adequate notice of the hearing since the Notice was forwarded to her address on record with the Department (and where she had received the notices of deficiency). As the Taxpayer chose not to appear at hearing, the undersigned held the hearing. The Division 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 § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, the *Division of Legal Services Regulation 1 – Rules of Procedure for Administrative Hearings*, and the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*.

### III. ISSUE

Whether the Taxpayer owes the sales and cigarette taxes and interest assessed by the Division.

### IV. MATERIAL FACTS AND TESTIMONY

The Division received information from the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) that the Taxpayer had purchased cigarettes online from  
sometime between 2003 to 2009.<sup>1</sup> See Division’s Exhibits D (detail of assessed transactions), E (explanation of assessment and notice of rights given to Taxpayer by Division), G (ATF evidence of invoices to Taxpayer dated September, 2008 to November, 2009), H (payment screen shots of Taxpayer’s account). The Division confirmed that the Taxpayer was living at the address the cigarettes were sent to during the time in question. See Division’s Exhibits J, K, L (LexisNexis residency check, DMV records, personal income tax records). The Division issued a Notice of Deficiency to the Taxpayer for the cigarette tax and one for the sales tax. See Division’s Exhibits B and C respectively.

### 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

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<sup>1</sup> This information was provided by the ATF as it was investigating for failure to comply with reporting requirements of the Jenkins Act and Contraband Cigarette Trafficking Act. See Division’s Exhibit One (1) (letters from the ATF to Division). See also *United States v. Contents of Accounts*, 2010 WL 2556849 (W.D.Ky.) (unreported).

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 Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

#### **B. Relevant Statutes and Regulation**

Sales price is defined by R.I. Gen. Laws § 44-18-12. R.I. Gen. Laws § 44-18-18 imposes a 7% sales tax upon sales at retail. Pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, cigarettes sold at retail shall be sold with a tax stamp which evidences the payment of the cigarette tax. R.I. Gen. Laws § 44-20-13<sup>2</sup> authorizes the imposition of tax on unstamped cigarettes.

#### **C. Whether the Taxpayer Owe Sales and Cigarette Taxes**

When cigarettes are sold in Rhode Island by a retail establishment (a dealer) with licenses to sell at retail and to sell cigarettes, sales tax and cigarette tax have been pre-paid pursuant to R.I. Gen. Laws § 44-19-10.1 and R.I. Gen. Laws § 44-20-12 (and each cigarette box had a tax stamp). Cigarette purchases made over the internet and mailed to

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<sup>2</sup> 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.



taxpayer does not pay the sales or use tax because of negligence or does not pay, a 10% penalty is imposed. See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

The Division properly assessed the Taxpayer the cigarette tax she owed. See Division's Exhibit B (cigarette tax Notice of Deficiency). The Division imposed interest on the assessment pursuant to R.I. Gen. Laws § 44-19-11.

## VI. FINDINGS OF FACT

1. The Notice was issued on October 5, 2012 to the Taxpayer in response to the Taxpayer's request for hearing.
2. The hearing was held on December 3, 2012.
3. The Taxpayer was notified of the hearing date and did not appear.
4. The facts contained in Section IV and V are reincorporated by reference herein.
5. The Taxpayer did not make a showing that she did not owe the sales and cigarette taxes assessed by the Division.

## 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.*, R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*, the Division properly assessed the Taxpayer the sales tax and the cigarette tax set forth in the respective Notice of Deficiencies admitted as

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amount of the determination is added to it. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the provisions of this chapter or chapter 18 of this title, a penalty of fifty percent (50%) of the amount of the determination is added to it.

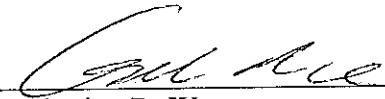
Division's Exhibit B and C. Pursuant to R.I. Gen. Laws § 44-19-11, the Taxpayer owes the interest assessed for both deficiencies. R.I. Gen. Laws § 44-19-12 requires that a 10% penalty be added to the sales tax deficiency.

**VIII. RECOMMENDATION**

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

Pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*, the Taxpayer owes the assessed sales and cigarette tax. Pursuant to R.I. Gen. Laws § 44-19-11, the Taxpayer owes the interest assessed on both deficiencies. R.I. Gen. Laws § 44-19-12 requires that a 10% penalty be assessed on the sales tax deficiency so that such penalty shall be included in the final assessment. See Division's Exhibits B and C.

Date: 12/20/12

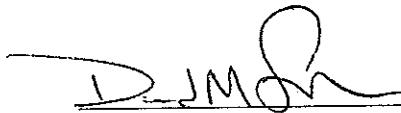
  
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Catherine R. Warren  
Hearing Officer

**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: January 16, 2013

  
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David Sullivan  
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 § 44-19-18 Appeals**

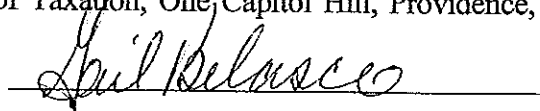
Appeals from administrative orders or decisions made pursuant to any provisions of this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal under this chapter is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer moves for and is granted an exemption from the prepayment requirement pursuant to § 8-8-26.

### **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 16<sup>th</sup> day of January, 2013 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and return receipt requested to the Taxpayer's address and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

  
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