STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-13

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 17-014; 17-T-0026**
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 ("Notice") issued on May 12, 2017 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division"). The Taxpayer holds a cigarette dealer's license ("License") pursuant to R.I. Gen. Laws § 44-20-1 *et seq.* A hearing was held on August 29, 2017. The parties were represented by counsel. A briefing schedule was set with the Division timely filing a brief by September 15, 2017. The Taxpayer chose not to file a brief 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.*

III. ISSUE

Whether the Taxpayer owes the other tobacco tax assessed by the Division, and if so, should a penalty be assessed.

IV. MATERIAL FACTS AND TESTIMONY

Based on the evidence at hearing, the following is undisputed: There was an inspection by the Division of the Taxpayer on December 6, 2016. See Division's Exhibits B (compliance report regarding Taxpayer and the December 6, 2016 inspection) and C (audit report). As a result of the inspection, a notice of deficiency and a notice of a 30 day License suspension was issued. See Division's Exhibits D (notice of deficiency) and E (suspension notice). The Division received copies of the invoices for the Taxpayer's other tobacco products ("OTP") purchases from an out of state distributor which was not licensed as a tobacco distributor in Rhode Island. See Division's Exhibit G (invoices). The Taxpayer had not remitted any tax for its OTP purchases prior to the inspection. See Division's Exhibit B. After the 2016 inspection, the Taxpayer filed three (3) remittances for OTP tax with the Division. See Division's Exhibits B and F (copy of remittance forms). The Division assessed the Taxpayer the difference between the amount of tax owed based on the purchase invoices and the amount of tax actually remitted. See Division's Exhibits B, F, and G.

The Division's tax assessments covered the years 2012, 2013, 2014, 2014, and 2016. Based on the Taxpayer's arguments (see below), the Taxpayer agreed that it owed tax for 2015 and 2016. In addition, it is undisputed that there have been no prior violations by the Taxpayer regarding any tobacco tax that resulted in any discipline.

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 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).

B. Relevant Statutes[1]

R.I. Gen. Laws § 44-20-12 imposes a tax on cigarettes sold. R.I. Gen. Laws § 44-20-13.2 imposes a tax on "other tobacco products" and provides 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:
>
> (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

[1] There were amendments to R.I. Gen. Laws § 44-20-1 *et seq.* in 2017, but these are not applicable to the time period of this assessment. See P.L. 2017 ch. 302. Art. 8, § 15. Effective 8/3/17. Thus, the relevant prior statutes are cited.

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.

(b) Any dealer having in his or her possession any tobacco, cigars, and pipe tobacco products with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after coming into possession of the tobacco, cigars, and pipe tobacco in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due. Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

(c) The proceeds collected are paid into the general fund.

R.I. Gen. Laws § 44-20-40.1 provides in part as follows:

Inspections. – (a) The administrator or his or her duly authorized agent shall have authority to enter and inspect, without a warrant during normal business hours, and with a warrant during nonbusiness hours, the facilities and records of any manufacturer, importer, distributor or dealer.

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.

Prior to June 23, 2014, R.I. Gen. Laws § 44-20-51.1 provided as follows:

Civil Penalties

(a) Whoever omits, neglects, or refuses to comply with any duty imposed upon him/her by this chapter, or to do, 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 to a penalty of one thousand dollars ($ 1,000), or five (5) 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 to a penalty of five (5) times the tax due but unpaid.

After June 23, 2014, R.I. Gen. Laws § 44-20-51.1 provides as follows:[2]

> 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.

Section 2.5 of the Division of Taxation's *Cigarette Tax/Other Tobacco Products Regulation*, 280-RICR-20-15-2 ("Regulation"), defines other tobacco products as follows:

> H. "Other Tobacco Product/s" (OTP) means any cigars (excluding Little Cigars which are subject to cigarette tax), cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or otherwise), chewing tobacco (including Cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), any and all forms of hookah and shisha tobacco, snuff, and shall include any other articles or products made of tobacco or any substitute therefore, except cigarettes.

C. Arguments

The Division argued that the Taxpayer has been a smoking bar since 2012, and the 2016 inspection found a large number of untaxed tobacco products. The Division argued that while the Division usually only goes back three (3) years for an assessment, it can go back six (6) years for an assessment under *Couture v. Norberg*, 338 A.2d 538 (R.I. 1975). The Division also requested

[2] See P.L. 2014, ch. 151, § 1; P.L. 2014, ch. 168, § 1.

a 30 day License suspension and relied on R.I. Gen. Laws § 44-20-51.1 to request additional penalties and argued that statute does not apply to the period of time for an assessment.

The Taxpayer argued that under R.I. Gen. Laws § 44-20-51.1, the Division only can go back 24 months as this is not a use tax, but a different type of tax. The Taxpayer argued that the statute's clear intent is only to assess for the prior 24 months so that the Division only can assess tax for the two (2) years prior to the inspection which was on December 6, 2016. The Taxpayer argued that there were no aggravating factors in relation to the imposition in that the non-filing of smoking bar affidavits is not a statutory aggravating factor.

D. How Far Back can the Division Assess Tax

A statute is to be given its clear and unambiguous meaning. R.I. Gen. Laws § 44-20-51.1 provides that in addition to other penalties provided for in the statute, penalties may also be imposed. Thus, in addition to suspension and revocation of a license as provided for by R.I. Gen. Laws § 44-20-8, penalties may be imposed for violations of the statute. Those penalties are set forth in subsection (a) and (b). In subsection (a), the penalties are limited by whether it is a first offense or a second offense in a 24 month period. In subsection (b), the penalty is a penalty for a violation (non-payment of the tax under the chapter) based on the tax owed. In subsection (c), the statute provides that aggravating and mitigating factors shall be considering in determining a penalty.

The statute clearly and unambiguously in its actual substance - how and when to assess penalties - is about penalties. The Taxpayer argued that R.I. Gen. Laws § 44-20-51.1(a) limits the Division to assessing tax from two (2) years prior to an inspection. However, the two (2) year limit refers to how to calculate a first and second offense for a penalty imposed under subsection (a). It has nothing to do with limiting when the Division can assess tax owed.

The Division relied on *Couture v. Norberg* to argue for the Division's five (5) year assessment of Taxpayer. The Taxpayer argued that *Couture* is inapplicable because it dealt with use tax. *Couture* held as follows:

> A final contention made by the taxpayer is that the deficiency determination against him should be limited to 3 years. The pertinent portion of § 44-19-13 with respect to this issue is as follows:
>
> "Notice of determination. -- The tax administrator shall give to the retailer or to the person storing, using, or consuming the tangible personal property a written notice of his determination. Except in the case of fraud, intent to evade the provisions of this article, failure to make a return, or claim for additional amount pursuant to §§ 44-19-16 to 44-19-19, inclusive, every notice of a deficiency determination shall be mailed within three (3) years after the fifteenth day of the calendar month following the month for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later, unless a longer period is agreed upon by the tax administrator and the taxpayer."[3]
>
> It is clear from the statute that there is no limitation period established for cases involving a failure to file a return. In this case it is undisputed that the taxpayer failed to file use tax returns for the 6 years in question, and therefore there was no legal impediment by way of time limitation on the tax administrator to audit for that period. The tax administrator has adopted a policy through the promulgation of a regulation that he will not audit for periods beyond 6 years.
>
> In a situation such as that presented in the instant case, the tax administrator could have gone back more than 6 years but elected to follow his established policy. The taxpayer contends that the failure to set any statute of limitation for the exceptions therein makes the statute unconstitutionally vague. On these facts we do not reach this question, since, in fact, the tax administrator limits himself to a reasonable period of time wherein it could be expected that records would be retained. *Id.* At 798-709.

In *Couture*, there was a statute that provided a three (3) year period for an assessment except in certain situations such as fraud, evasion, and failure to file a return. The Court found that the Division limited itself to a reasonable time period of six (6) years in terms of the assessment. The Court found that six (6) years was a reasonable time that records would be retained. R.I. Gen. Laws § 44-19-27 requires that a taxpayer maintain its tax records for three (3)

[3] Note: This statutory provision is still the same.

years. Nonetheless, in situations of a non-filing of a return, the Division may assess more than three (3) years. In contrast, R.I. Gen. Laws § 44-20-1 *et seq*. does not provide a time period for assessments of either filed returns or non-filing of returns. Section 2.8[4] of the Regulation provides that OTP records must be kept for three (3) years.

While *Couture* was a use tax audit, the Court addressed the general issue of the time period of an audit. The Court found that the regulation that limited audits to six (6) years was reasonable because it was reasonable that records would be kept for that long. (This regulation is apparently no longer in effect). While the sales and use statute mandates the retention of records for three (3) years, such a requirement does not preclude an assessment for being for a longer period of time. Certainly, the three (3) year period for records in R.I. Gen. Laws § 44-19-27 matches the three (3) year assessment period for when returns have been filed in R.I. Gen. Laws § 44-19-13. But the three (3) year period does not apply in R.I. Gen. Laws § 44-19-13 when returns have not been filed. *Couture* found that under the applicable statute, the Division could have gone farther back than six (6) years but chose to follow the policy of six (6) years.

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[4] Section 2.8 of the Regulation provides in part as follows:

> Record Requirements
> ***
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> B. Every Dealer of Other Tobacco Products must keep complete and accurate records of all tobacco products purchased from either a licensed or non-licensed Distributor. These purchase records must contain an accurate date, the identity of the person selling the tobacco product/s including name, address, phone number, and OTP Distributor's license number, the identity of the Dealer including the name, address, phone number, and Dealer's cigarette license number, as well as the quantity, wholesale cost of the item/s, and the actual amount of tax paid for specific items.
>
> C. Both Distributors and Dealers must keep documentation of any returns filed with the Division, as well as proof of payment of Other Tobacco Products Tax.
>
> D. For a period of at least six (6) months after purchase, the records shall be kept at the Place of Business in accordance with R.I. Gen. Laws § 44-20-13.2(b). After six (6) months, the records may be kept off site; however, they must be produced upon demand to the Division of Taxation within twenty-four (24) hours.
>
> E. Distributors and Dealers may keep records electronically as long as they are immediately accessible for inspection at the Place of Business.
>
> F. All records shall be kept safely for a period of three (3) years in a manner to insure permanency and accessibility for inspection by the Tax Administrator or his or her agents.

R.I. Gen. Laws § 44-20-1 *et seq.* provides no such limit for assessment with returns or no returns. However, in line with *Couture*, a look back of six (6) years is reasonable.[5]

E. The Assessment

The Taxpayer did not challenge the Division's calculation of tax owed. It admitted it owed tax for 2014 and 2015. It argued that if it was found to owe tax prior to 2014, it could not be assessed. The Division applied the statutory tax charged to the invoices provided by the distributor and gave the Taxpayer credit for any tax paid. The Taxpayer owes the tax assessed and can be assessed for the five (5) years between 2012 to 2016.

F. What are the Appropriate Sanctions

R.I. Gen. Laws § 44-20-51.1 was amended effective June 23, 2014. It now differentiates in subsection (a) for penalties for the first offense and for a second or subsequent offense within 24 months. However, the Division imposed its penalty pursuant to R.I. Gen. Laws § 44-20-51.1(b) which provides that another penalty based on the tax due shall be imposed and that this penalty shall not be more than five (5) times the tax due. The prior R.I. Gen. Laws § 44-20-51.1(b) provided that the penalty was to be five (5) time the tax due. 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 including severity, history, 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.

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[5] R.I. Gen. Laws § 44-19-13 is contained in the chapter entitled "sales and use – enforcement and collection" and arguably applies to those statutory provisions. However, R.I. Gen. Laws § 44-20-13.2(b) (see above), R.I. Gen. Laws § 44-20-14, and R.I. Gen. Laws § 44-20-16 speak of tax on the storage and use of cigarettes. Nonetheless, R.I. Gen. Laws § 44-20-1 *et seq.* does not provide any limit to the issuance of an assessment. As *Couture* approaches the issue as a general matter of reasonableness of the length of an assessment in the context of a use case, the fact that this matter does not fall under R.I. Gen. Laws § 44-19-13 is irrelevant.

Subsection (c) provides that aggravating factors and mitigation factors are to be considered. Thus, a higher penalty would be for those with aggravating factors and a lower penalty for those with mitigating factors. Since the statute requires that mitigating and aggravating factors be included in the calculation of penalties, it follows that the maximum penalty is not to be automatically applied. If the severity is to be considered,[6] it would also follow that the higher the tax owed, the higher the penalty imposed. Subsection (c) states mitigating and aggravating factors, "including history, severity, and intent, shall be considered." The statute does not limit those factors to only history, severity, and intent. Rather it states that those three (3) factors are to be included in aggravating and mitigating factors.

Here the Taxpayer has had no prior violations; however, that is offset by the fact that it has been in business since 2012 and until it was inspected paid no OTP tax. After the inspection, the Taxpayer filed three (3) remittances for taxes owed in the Fall of 2016. It did not pay any of the prior tax owed. The Taxpayer also did not maintain its records – three (3) years - as required by section 2.8 of the Regulation. The Division had to obtain all purchase records including for the last three (3) years prior to the inspection from the Taxpayer's distributor.

The Taxpayer did not pay other tobacco tax for five (5) years and maintained no records of such purchases as required by law. The Division did not impose the maximum or minimum penalty allowed after the change in statute. While this was the Taxpayer's "first violation," the Taxpayer's long history of non-payment (severity and history) and its failure to comply with its regulatory requirements (severity) merit the three (3) times penalty. In looking at the aggravating

[6] The term "severe" in the statute is not defined and could apply not only to the amount of tax owed, but the method used by a taxpayer to avoid paying the statutory tax.

factors, the non-filing of a smoking affidavit[7] does not even have to be considered in finding enough aggravating factors to merit the Division's penalty of three (3) times the tax owed.

In terms of the tax owed prior to June 23, 2014, the Division did not impose the mandatory penalty under the old statute. *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977) found that R.I. Gen. Laws § 44-19-12[8] does not provide any authority to waive a penalty even when the taxpayer has a good-faith, though erroneous, belief that certain property is not subject to tax when the disputed tax matter is in hearing. *Brier* held as follows:

> The statute identifies no exception to its provisions in circumstances where the taxpayer has a good-faith, albeit erroneous, belief that certain property is not subject to tax liability. The operative language of s (sic) 44-19-12 is clear and unambiguous and imposes a penalty upon an intentional but nonfraudulent avoidance of the tax. Western Elec. v. Weed, supra. [185 Colo. 340, 524 P.2d 1369 (1974)] The taxpayer's remedy in the event that he disputes a portion of his liability is to pay the tax and then seek a refund pursuant to the appropriate statute. *Id.*, at 350

Similarly, the old version of R.I. Gen. Laws § 44-20-51.1 provided that the penalty was mandatory. Just as in *Brier*, the statute does not provide any grounds for a waiver of such a penalty. This interpretation is consistent with R.I. Gen. Laws § 44-1-10[9] which grants the Tax Administrator the authority to settle and compromise tax, excise, fee, penalties, or interest. The penalty is to be assessed and is only waived as part of a compromise between a taxpayer and the Tax Administrator. Obviously, the new statute now provides that the penalty is not mandatory, but is to be imposed on the bases of aggravating and mitigating factors.

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[7] See R.I. Gen. Laws § 23-20.10-2(15)(a).

[8] Sales tax statute.

[9] R.I. Gen. Laws § 44-1-10 states as follows:

> Compromise or abatement of uncollectible or excessive taxes. Whenever the tax administrator determines that any tax, excise, fee, penalty, interest, or other charge payable to the tax administrator is un-collectible, illegal, or excessive, in whole or in part, the tax administrator may, with the approval of the director of revenue, compromise, abate, or cancel the charge, as the circumstances may warrant.

Nonetheless, prior to June 23, 2014, the penalty was mandatory. Based on R.I. Gen. Laws § 44-20-51.1 and *Brier*, the undersigned does not have the authority to waive a penalty. Therefore, a penalty of five (5) times the amount of the tax owed prior to June 23, 2014 shall be imposed.

Along with an administrative penalty, the Division seeks a 30 day suspension of the License. While the statute for administrative penalties changed in 2014, the suspension and revocation statute did not change. The suspension statute does not contain the same kind of mitigating and aggravating factors as those found in the administrative penalty statute. However, the same kind of considerations of history, severity, and proportionality should be at play in determining the appropriate suspension.[10] This is a first violation by the Taxpayer, but the nonpayment of taxes has been ongoing for five (5) years. The Taxpayer also did not maintain its required records. A 30 day suspension can be seen as a six (6) day suspension of License for each year there was no payment of taxes. A 30 day suspension for this first violation, but ongoing violations for five (5) years is reasonable.

VI. FINDINGS OF FACT

1. A hearing was held on August 29, 2017 with the parties represented by counsel. A briefing schedule was set with the Division timely filing a brief by September 15, 2017. The Taxpayer chose not to file a brief and rested on the record.

2. The facts contained in Section IV and V are reincorporated by reference herein.

[10] For a good discussion of what should be considered in considering a sanction by an administrative agency, see *Jake and Ella's Inc. v. Department of Business Regulation*, 2002 WL977812 (R.I. Super.). In that case, the Court found there are two (2) components to an administrative decision: 1) a determination of the merits of the case; and 2) determination of the sanction and while the former is mainly factual, the latter not only involves ascertainment of factual circumstances but the application of administrative judgment and discretion. *Jake and Ella*'s concluded that the facts to be considered in weighing the severity of the violation should include the frequency of the violations, the real or potential danger to the public posed by the violation, the nature of any previous violations and sanctions, and any other facts deemed relevant to fashioning an effective and appropriate sanction. In other words, the imposition of sanctions is not always a mechanical grid and the determination of sanctions should include a consideration of a variety of factors.

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 owes the assessed other tobacco products tax.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows: Pursuant to R.I. Gen. Laws § 44-20-1 *et seq*. and R.I. Gen. Laws § 44-20-13.2, the tax owed was properly assessed on the Taxpayer's OTP as set forth in Division's Exhibit D. Pursuant to the old version of R.I. Gen. Laws § 44-20-51.1(b), the penalty to be imposed for taxes owed prior to June 23, 2014 shall be calculated as the mandatory five (5) times the taxes owed prior to June 23, 2014. For the penalty imposed after June 23, 2014, the Division's penalty of three (3) times the tax owed shall be imposed. Pursuant to R.I. Gen. Laws § 44-20-8, the License shall be suspended for 30 days to begin on the 31st day after the execution of this decision. The tax and penalty owed by the Taxpayer shall be due to the Division by the 31st day after the execution of this decision.

Date: October 17, 2017

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: 10/13/17

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 16th day October, 2017 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail to the Taxpayer's attorney's address on record with the Division and by hand delivery to Michael Taylor, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Gail Belasco