

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-06

**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 14-024**
: **sales permit/**
: **cigarette license denial**

Taxpayer. :
_____ :

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer dated July 29, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing filed by the Taxpayer on May 1, 2014. A hearing was held on November 14, 2014. The parties were represented by counsel and rested on the record. After hearing, the parties tried to resolve this matter but were unable to so that on February 12, 2015, the parties requested that a decision be issued.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-0*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Taxpayer's application for sales permit and cigarette dealer's license should be denied pursuant to R.I. Gen. Laws § 44-20-4.1. More specifically, the Division argued that the permit and license should be denied based on the following: 1) pursuant to R.I. Gen. Laws § 44-20-4.1(a), there is a relationship between the Taxpayer's authorized representative and an entity called ("LLC") and the LLC owes cigarette and other tobacco products taxes; 2) pursuant to R.I. Gen. Laws § 44-20-4.1(a)(1), the Taxpayer applicant owes more than in taxes; and 3) pursuant to R.I. Gen. Laws § 44-20-4.1(b)(1), the Taxpayer applicant has not paid all penalties and fees for the LLC and other entities

V. MATERIAL FACTS AND TESTIMONY

Tax Investigator, testified on behalf of the Division. He testified that he received a business and registration ("BAR") application for a sales' permit and cigarette sales' license from the Taxpayer. He testified that ("Owner") signed the Taxpayer's BAR as the owner. See Division's Exhibit B (Taxpayer's BAR). He testified that a prior business located at the location requested by the Taxpayer has outstanding tax liabilities. He testified that the Taxpayer's Owner is married to ("Husband") and he is a former owner or registered agent of the LLC which has outstanding tax liabilities and both the Owner and Husband collected income from the LLC from 2011 to 2013. See Division's Exhibits E (DLT wage records for Owner and Husband) and F (2011, 2012, 2013 tax returns for the Owner and Husband). He testified that the Husband was a corporate officer of the LLC. See Exhibit G (LLC's 2010 business corporation tax return). He testified that the LLC had prior tobacco tax violations. See Division's Exhibit H (LLC's compliance report). On cross-examination, he testified that the Owner was an employee of

the LLC and is married to the LLC's officer so that under the statute, there is a family relationship.

Chief of Compliance and Collections, testified on behalf of the Division. He testified that generally members of a LLC do not have to disclose themselves but the Husband is an authorized officer of said LLC. He testified that the Owner is also an officer of three (3) other entities: _____ and _____ ("Entity One, Two, Three" respectively). He testified that the LLC owes cigarette tax and has an outstanding balance for other tobacco products tax. See Division's Exhibits I (administrative decision against LLC that it owes _____ in cigarette tax) and K and J (Notices of Deficiency for cigarette and other tobacco tax). He testified that the LLC owes outstanding sales tax but also has failed to file monthly sales tax filings from July, 2013 to present so could owe tax for those filings. In addition, he testified that the LLC failed to file an annual reconciliation for 2013 and a litter permit for 2009 and 2014. He testified that the LLC failed to file monthly withholding filings from July, 2013 to the present. He testified that LLC has not filed a corporate return for 2012 and owes corporate tax for 2013. See Division's Exhibits L, M, and N (Division's main frame records for LLC). He also testified that Entity Three never filed sales or corporate returns so it is unclear what it may owe. See Division's Exhibits O and P (Division's mainframe tax records). He testified that Entity Two owes corporate tax from 2009 to 2013 and 1998 which would be a minimum of _____ a year. He testified that Entity One changed its name to Entity Two and Entity One owed corporate tax returns for 2008 and 2009. He testified that Entity One is missing litter permits and sales tax returns for various years. See Division's Exhibits Q, R, S, T, and U (Division's mainframe tax records).

On cross-examination, testified that there are no documents to show the Owner owns the LLC or the other entities. However, he testified that she and her Husband filed joint personal income tax returns in 2011, 2012, and 2013.

The Owner testified on behalf of the Taxpayer. She testified that she worked at the LLC and until today, she was not aware of the money that the LLC owed. She testified that she did not remember signing the other entities' papers with the Secretary of State's office and did not recognize her signature on them. See Division's Exhibit A (Secretary of State filings for the three (3) entities).

The LLC, the Taxpayer, and three (3) entities are all convenience stores. See Division's Exhibit A (Secretary of State filings). The parties agreed that the previous store at the requested location owes taxes. See Division's Exhibits V, W, and X. It was agreed that there is no relationship between the Taxpayer applicant and the prior business at the requested location.¹

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 (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 would produce an

¹ Since no relationship or agency relationship was established between the Taxpayer and prior business, R.I. Gen. Laws § 44-20-4.1(b)(2) and (3) are not applicable.

unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (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 § 44-20-4.1(a) speaks of licenses issued under R.I. Gen. Laws § 44-20-1 *et seq.* (cigarette tax) but R.I. Gen. Laws § 44-20-4.1(b) includes licenses and permits defined by R.I. Gen. Laws § 44-19-1. R.I. Gen. Laws § 44-20-4.1 states in part as follows:

License availability. – (a) No license under this chapter may be granted, maintained or renewed if the applicant, or any combination of persons owning directly or indirectly any interests in the applicant:

(1) Owes five hundred dollars (\$500) or more in delinquent cigarette taxes;

(2) Is delinquent in any tax filings for one month or more;

(b)(1) No person shall apply for a new license or permit (as defined in § 44-19-1) or renewal of a license or permit, and no license or permit shall be issued or renewed for any person, unless all outstanding fines, fees or other charges relating to any license or permit held by that person have been paid.

(2) No license or permit shall be issued relating to a business at any specific location until all prior licenses or permits relating to that location have been officially terminated and all fines, fees or charges relating to the prior licenses have been paid or otherwise resolved or the administrator has found that the person applying for the new license or permit is not acting as an agent for the prior licensee or permit holder who is subject to any such related fines, fees or charges that are still due. Evidence of such agency status includes, but is not limited to, a direct familial relationship and/or an employment, contractual or other formal financial or business relationship with the prior licensee or permit holder.

(3) No person shall apply for a new license or permit pertaining to a specific location in order to evade payment of any fines, fees or other charges relating to a prior license or permit for that location.

R.I. Gen. Laws § 44-19-1 states in part as follows:

Annual permit required – Retail business subject to sales tax – Promotion of shows – Revocation of show permit. – (a) Every person desiring to engage in or conduct within this state a business of making sales at retail, or engage in a

business of renting living quarters in any hotel, rooming house, or tourist camp, the gross receipts from which sales or rental charges are required to be included in the measure of the tax imposed under chapter 18 of this title, shall file with the tax administrator an application for a permit for each place of business. The application shall be in a form, include information, and bear any signatures that the tax administrator may require. At the time of making an application, the applicant shall pay to the tax administrator a permit fee of ten dollars (\$10.00) for each permit. Every permit issued under this chapter expires on June 30 of each year.

C. Whether the BAR should be Granted or Denied

The undisputed evidence was that the Owner and Husband are married. The Husband filed corporate returns on behalf of the LLC. Both the Owner and Husband worked at the LLC. No evidence was introduced to show that the Husband was not a corporate officer of the LLC. The undisputed evidence is that the LLC owes cigarette tax, sales tax, corporate tax, litter permit fees, and failed to timely file various sales and withholding filings. The LLC owes more than in cigarette tax.

The Husband has a direct and indirect interest in the Taxpayer because of the family relationship. As the Husband owes via LLC more than in cigarette taxes, the cigarette license cannot issue for the Taxpayer. Following from the determination in R.I. Gen. Laws § 44-20-4.1 that the Husband has a direct and indirect interest in the BAR application, the sales permit also cannot issue pursuant to R.I. Gen. Laws § 44-20-4.1(b)(1) since the Husband had outstanding fees and taxes relating to a license (cigarette) and permits (litter and sales) held with the Division.

In addition, the Owner was an officer of Entities One (1) and Two (2) and an incorporator for Entity Three (3). No evidence was introduced to show that the Owner did not sign for those entities when filing with the Secretary of State's office. The undisputed evidence is that these three (3) entities are delinquent in making various tax filings so that it

unknown what sales taxes they owe and they are delinquent in paying corporate tax and litter permit fees. Thus, based on her role in the other three (3) entities, the Owner also has outstanding fees and taxes relating to permits (litter and sales) held with the Division so that a permit and license cannot issue for the Taxpayer.

VI. FINDINGS OF FACT

1. On or about July 29, 2014, the Division issued an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer to the Taxpayer.
2. A hearing was held on November 14, 2014 with the Division resting on the record. The parties tried to resolve this matter but on February 12, 2015 requested a decision be issued.
3. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

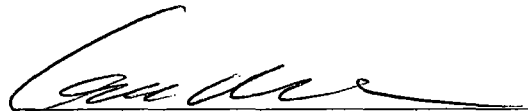
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, and R.I. Gen. Laws § 44-20-1 *et seq.*
2. The Taxpayer's BAR is denied pursuant to R.I. Gen. Laws § 44-20-4.1.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-20-4.1, the Taxpayer's application for sales permit and cigarette dealer's license shall be denied.

Date: 2/20/15



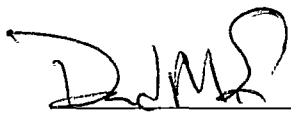
Catherine R. Warren
Hearing Officer

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: 3/9/05



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:

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.

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.

CERTIFICATION

I hereby certify that on the 10th day of March, 2015 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to the Taxpayer's attorney's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Paul Belascio