STATE OF RHODE ISLAND

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2022-20

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

IN THE MATTER OF:	:	
	:	**Case No. 18-T-067**
	:	**sales tax**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as a result of a Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Notice") dated July 23, 2018 and issued to the above captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing filed with the Division. The parties agreed that the matter could be decided on an agreed statement of facts and written briefs. The parties were represented by counsel with briefs timely filed by November 21, 2022.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to 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, R.I. Gen. Laws § 44-1-1 *et seq.*, and 280-RICR-20-00-2 *Administrative Hearing Procedures* regulation.

III. ISSUE

The parties agreed that there is one issue: whether the Taxpayer owes the sales and use tax assessed in the May 22, 2020 Notice of Assessment.

IV. MATERIAL FACTS

The parties entered in an agreed upon statement of facts ("ASOF") and exhibits. The agreed facts and exhibits are summarized as follows:[1]

1. The Taxpayer is a domestic limited liability company that was organized under the laws of Rhode Island on December 4, 1998. The Taxpayer has held a Rhode Island permit to make sales at retail since 1998 and has a history of filing sales tax returns with the Division. Exhibits One (1) (Secretary of State filings); Two (2) (permit); and Three (3) (sales tax filing history).

2. In April of 2017, a routine sales and use tax field audit of the Taxpayer was commenced for the period encompassing May 1, 2014 through April 30, 2017, inclusive ("Audit Period"). Exhibit Seven (7) (initial contact letter dated April 17, 2017).

3. On January 1, 2018, a Notice of Deficiency was issued against the Taxpayer seeking additional tax and interest. The Taxpayer requested a hearing. Exhibits 12 and 13. The parties had numerous discussions that resulted in said notice being settled in principle. However, a secondary issue arose during settlement discussions that is now the focus of this hearing.

4. On June 12, 2017, the Taxpayer filed with the Division its Form T-204R Annual Reconciliation for tax year 2016. The T-204R claimed a credit of . Exhibit 22.

5. On January 23, 2018, the Taxpayer filed its Form T-204R Annual Reconciliation for tax year 2017. The 2017 T-204R claimed a credit due of Exhibit 23.

6. On January 24, 2018, the Taxpayer filed a claim for refund with the Division. Exhibit 24. Since the refund claim's period (calendar year 2017) overlapped with the Audit Period, the claim for refund was held in abeyance pending the outcome of the audit.

7. On June 20, 2018, the Division issued a Notice of Deficiency ("NOD") to Taxpayer because the credits claimed on the 2016 and amended 2017 Forms T-204R were disallowed. Exhibits 25 (NOD); and 26 (email disallowing 2016 tax credit). Taxpayer did not appeal the NOD.

8. On June 28, 2018, Taxpayer filed an amended Form T-204R for 2017. Exhibit 27.

9. On July 27, 2018, the Division issued a Notice of Assessment ("NOA") to the Taxpayer. Exhibit 28. The Taxpayer did not appeal the NOA.

10. On April 17, 2020, a Notice of Deficiency ("NOD 2") was issued to the Taxpayer for the same tax and period as the NOD but with updated interest. Exhibit 31. The NOD 2 supersedes the NOD. The Taxpayer did not appeal the NOD 2.

11. On May 22, 2020, a Notice of Assessment ("NOA 2") was issued to Taxpayer for the same tax as the NOA but with updated interest. Exhibit 32. The NOA 2 supersedes the NOA.

[1] See amended statement of facts and exhibits filed September 15, 2022.

On June 19, 2020, the Taxpayer requested a hearing on the NOA 2. Exhibit 33. The NOA 2 is the subject of the present hearing.

12. On or about August 31, 2016, Taxpayer invoiced its customer ("Company") located in Rhode Island for equipment and services that Taxpayer sold to the Company. Rhode Island sales tax in the amount of was included on the invoice. A stamp on the invoice indicates that it was paid on or about December 9, 2016. On or about September 19, 2016, Taxpayer remitted in sales tax to the Division for the period of August 2016. Exhibits 19 and 39.

13. The Company dated a Rhode Island Resale Certificate December 16, 2016 and claimed it was purchasing tangible personal property from the Taxpayer for resale. The certificate claimed that the Company was purchasing "general merchandise" from the Taxpayer and that it was engaged in the business of selling "general merchandise." Exhibit 20.

14. On or about December 31, 2016, the Taxpayer generated a credit memo in the amount of for its customer, the Company. Exhibit 21.

15. The Taxpayer calculated its claimed tax credit on the tax year 2016 T-204R Annual Reconciliation by applying part of the tax credit it believed it had to Taxpayer's December 2016 sales tax liability in the amount of Exhibit 11 (Memo #3). The remainder of the credit, was carried forward to calendar year 2017.

16. On its T-204R Annual Reconciliation for tax year 2016, the Taxpayer claimed total net taxable sales for the period of January through December 2016 of and an amount of tax of . Exhibit 22. The Taxpayer claimed an amount of total tax remitted for 2016 of , resulting in a claimed credit amount of The Taxpayer did not include the Company's invoice sales (Exhibit 19) on Schedule B, Line 4B (resale) on the same form.

17. On its T-204R Annual Reconciliation for tax year 2017 received on January 23, 2018, the Taxpayer claimed total net taxable sales for the period of January through December 2017 of and an amount of tax of The Taxpayer claimed an amount of total tax remitted for 2017 of , resulting in a credit amount of Exhibit 23.

18. After reviewing the Taxpayer's refund claim and 2016 and 2017 T-204R forms, the Division issued the NOD on June 20, 2018 since there was a discrepancy between the amount of tax claimed on the 2017 T-204R form and the amount of tax actually paid for that year The total amount due on the NOD was which included in tax (the difference between and in interest, and in negligence penalty. The Taxpayer did not appeal this notice. Exhibit 25.

19. On or about June 28, 2018, the Taxpayer submitted an amended T-204R Annual Reconciliation form for tax year 2017. The Taxpayer claimed total net taxable sales for the period of January through December 2017 of and an amount of tax of The Taxpayer claimed an amount of total tax remitted for 2017 of plus a credit balance of from 2016, resulting in total tax paid of The Taxpayer claimed a credit amount of (minus). Exhibit 27.

20. On July 27, 2018, the Division issued the NOA to the Taxpayer in the amount of , which included in tax, in interest, and in penalty. Exhibit 28. The Taxpayer did not appeal this notice.

21. Both the NOD 2 (issued on April 17, 2020) and the NOA 2 (issued on May 22, 2020) were for the same period and amount of tax and penalty as the NOD and NOA but with accrued interest. Exhibits 31 and 32. The NOD 2 and NOA 2 supersede and replace the NOD and NOA.

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

Pursuant to R.I. Gen. Laws § 44-18-18, Rhode Island imposes a sales tax of 7% on gross receipts of a retailer. Pursuant to R.I. Gen. Laws § 44-18-19, the retailer is responsible for the collection of sales tax. R.I. Gen. Laws § 44-18-25 presumes that all gross receipts are subject to sales tax and the burden of proving otherwise falls on the taxpayer. Thus, the burden of proof is on the Taxpayer to prove that its sale was not subject to tax because of the statutory presumption

that all items purchased or sold are subject to tax unless the "contrary" is established by a taxpayer to the satisfaction of the Tax Administrator. R.I. Gen. Laws § 44-18-25[2] provides as follows:

> It is presumed that all gross receipts are subject to the sales tax, and that the use of all tangible personal property . . . are subject to the use tax, and that all tangible personal property . . . or services as defined in § 44-18-7.3, sold or in processing or intended for delivery or delivered in this state is sold or delivered for storage, use, or other consumption in this state, until the contrary is established to the satisfaction of the tax administrator. The burden of proving the contrary is upon the person who makes the sale and the purchaser, unless the person who makes the sale takes from the purchaser a certificate to the effect that the purchase was for resale. The certificate shall contain any information and be in the form that the tax administrator may require.

R.I. Gen. Laws § 44-18.1-1 *et seq.* is the statute by which Rhode adopted the streamlined sales and use tax agreement ("SSUTA").[3] R.I. Gen. Laws § 44-18.1-18 provides for the administering of tax exemptions for streamlined and sales and use tax member states. It provides in part as follows:

> Administration of exemptions.
> (A) Each member state shall observe the following provisions when a purchaser claims an exemption:
> (1) The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
> ***
> (5) A member state may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
> ***
> (B) Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transactions sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an

[2] This is the current version of this statute. It was amended in 2018 and 2019. Those amendments post-date this matter and are not relevant to the issues in this matter. P.L. 2018, ch. 47, art. 4; and § 10; P.L. 2019, ch. 88, art. 5, § 9.
[3] Rhode Island is a SSUTA member as provided for in R.I. Gen. Laws § 44-18.1-1 *et seq.* so it must comply with the related laws as a SSUTA.

exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator) that the claimed exemption is not available in that state.

(C) Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale.

(1) If the seller has not obtained an exemption certificate or all relevant data elements as provided in § 44-18.1-18, subsection (C) the seller may, within 120 days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement.

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C. Arguments

This matter involves the Division's May, 2020 assessment and the tax credit the Taxpayer claimed in relation to its sale to the Company as detailed above.

The Division argued that the Taxpayer owes the assessment because the Company's resale certificate was not given to the Taxpayer at the time of the purchase. The Division also argued that the Taxpayer did not meet the requirements of the statutory 90 day extension to obtain a resale certificate. Finally, the Division argued that the Taxpayer is not exempt just because it accepted the Company's resale certificate.

The Taxpayer argued that the proof of taxability falls on the person claiming the exemption which in this case is its customer, the Company, so that the Taxpayer cannot be taxed. The Taxpayer argued that it accepted the resale certificate in good faith so that the transaction should be excluded from its taxable sales. The Taxpayer argued that any tax owed would be by the Company as the purchaser presented the resale certificate. The Taxpayer argued that the resale exclusion is not an exemption as argued by the Division but a transaction that is not subject to sales tax. The Taxpayer argued that this is not an issue of sales tax exemptions as provided for in R.I. Gen. Laws § 44-18-30 but rather the statute explicitly excludes resale transactions.

D. Whether the Taxpayer Owes Sales Tax

The Taxpayer argued that a retail sale is defined specifically in R.I. Gen. Laws § 44-18-8[4] to exclude resale transactions from sales tax. Thus, the Taxpayer argued resale transactions are excluded from the taxable gross receipts as opposed to being an exemption such as those contained in R.I. Gen. Laws § 44-18-30 (e.g. manufacturing, school meals, medicine). The Taxpayer argued that this exclusion is not a matter of legislative grace so that the rules of statutory construction and interpretation cited by the Division for tax exemptions do not apply.

In terms of taxation exemptions, those statutes are not only strictly construed against a taxpayer, but "[t]he party claiming the exemption from taxation under a statute has the burden of demonstrating that the terms of the statute illustrate a clear legislative intent to grant such exemption." *Cookson v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992). Tax exemption statutes are also strictly construed in favor of the taxing authority and against the party seeking the exemption. *Fleet Credit Corp. v. Frazier*, 726 A.2d 452, 454 (R.I. 1999). The Taxpayer does not believe these rules of statutory construction apply in this matter.

Whether one calls a purchase for resale an exclusion from sales tax or an exemption from sales tax, there are statutory requirements on a seller in terms of taking a resale certificate and using one. Indeed, R.I. Gen. Laws § 44-18.1-18 refers to such proof as a proof of an exemption.

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[4] R.I. Gen. Laws § 44-18-8 provides as follows:

> Retail sale or sale at retail defined. A "retail sale" or "sale at retail" means any sale, lease, or rentals of tangible personal property, prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten computer software, specified digital products, or services as defined in § 44-18-7.3 for any purpose other than resale, sublease, or subrent in the regular course of business. The sale of tangible personal property to be used for purposes of rental in the regular course of business is considered to be a sale for resale. In regard to telecommunications service as defined in § 44-18-7(9), retail sale does not include the purchase of telecommunications service by a telecommunications provider from another telecommunication provider for resale to the ultimate consumer; provided, that the purchaser submits to the seller a certificate attesting to the applicability of this exclusion, upon receipt of which the seller is relieved of any tax liability for the sale.

Thus, in order to receive an exemption from sales tax, R.I. Gen. Laws § 44-18.1-18(A)(1) requires that when a purchaser claims an exemption, "the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of purchase." R.I. Gen. Laws § 44-18.1-18(A)(5) also provides that the exemption shall be presented to the seller at the time of the sale. The invoice for the sale at issue by the Taxpayer to the Company is dated August 31, 2016 and stamped paid on December 9, 2016. Exhibit 19. The resale certificate for said sale is dated December 16, 2016. Exhibit 20. The Taxpayer did not receive an exemption (resale) certificate from the Company at the time of sale.

However, Rhode Island law applies two (2) other time periods if a seller is not in possession of an exemption (resale) certificate at the time of the sale. R.I. Gen. Laws § 44-18.1-18(C) and R.I. Gen. Laws § 44-18.1-18(C)(1). For the Taxpayer to fall under the 90 day extension provided for by R.I. Gen. Laws § 44-18.1-18(C), the Taxpayer has to prove that it "obtain[ed] a fully completed exemption certificate or capture[d] the relevant data elements required . . . within 90 days subsequent to the date of sale." December 16, 2016 is more than 90 days from August 31, 2018. It is approximately 107 days after the date of sale. Thus, the Taxpayer did not receive a certificate of resale from the Company within 90 days of the date of sale, so the extension does not apply.

The other time period in R.I. Gen. Laws § 44-18.1-18(C)(1) provides a 120 day period when a seller has not obtained an exemption certificate. In that situation, the seller has 120 days from a request for substantiation by a member state to either prove the transaction was not subject to tax or obtain a fully completed exemption certification from the purchaser, taken in good faith. This section does not apply to this transaction as the seller received a resale certificate.

The Taxpayer rejected the clear time periods specified in R.I. Gen. Laws § 44-18.1-18 for providing a resale certificate. It argued that those time periods do not apply since the purpose of

R.I. Gen. Laws § 44-18.1-18 is to provide a method to shift the burden of proof from the seller to the purchaser, and the burden does not shift to the purchaser unless seller receives the resale certificate in good faith. The Taxpayer argued that it took the resale certificate in good faith so that the burden is now on the purchaser and the purchaser is clearly a seller at retail. The Taxpayer argued that R.I. Gen. Laws § 44-18.1-18(B) and (C) relieves sellers of the sales tax liability as long as they follow the procedures of the statute.

It is true that taxpayers must follow statutory procedures to be relieved of sales tax liability. But those statutory procedures include compliance by certain dates. Section (A) states the resale certificate must be given at the time of sale. Section (C) provides that a seller can be relieved of liability if the seller obtains a fully completed exemption certificate within 90 days of the date of sale. Similarly, *In the Matter of* ***, Taxpayer 2022 WL 1039572 (R.I.Div.Tax.) found that those statutory time deadlines applied to manufacturing exemptions. In that case, a manufacturing exemption certificate – like a resale certificate – was not timely provided to the seller so the seller could not claim a tax refund for prepaid sales tax.

The other statutory provisions are not applicable to the Taxpayer. Section (C)(1) is inapplicable to the Taxpayer as it has a resale certificate.[5] Section (B) provides that if purchasers improperly claim an exemption, sellers are relieved from tax liability if they followed the process. While the Division raised questions about the Company claiming the purchase to be for resale, the basis for the assessment was not an improperly claimed exemption by a purchaser but for sales tax owed by the Taxpayer. Section (B) also provides that if there is fraud by the seller, the seller

[5] The Division argued that it received insufficient substantiation of the credit claimed by the Taxpayer when it asked the Taxpayer for more information regarding the Taxpayer's annual reconciliations. For example, the Division argued that the exemption totals of gross receipts and exemption totals did not match (Exhibits 5, 22, 24, 37). The Division also argued that it is unclear if the Company was actually entitled to a sales tax exemption (exclusion) as it is unclear if the general merchandise described can be applied to computer equipment and services. However, the 120 day extension applies when a taxpayer has not received a resale certificate and is asked for substantiation. The Taxpayer received a resale certificate so the 120 day provision did not apply.

would not be relieved of tax liability. Section (B) does not apply in this matter as there is no allegations or evidence of fraud.

The Taxpayer claimed the credit on its 2016 and 2017 reconciliations when the Taxpayer received the resale certificate in 2016 for a 2016 sale. The Division argued that the Taxpayer did not include the sale as a resale on its 2016 reconciliation (ASOF ¶16 above) which would have been appropriate for sale claimed as a resale. As noted in the ASOF, the disparity between the tax owed and paid on the 2017 reconciliation resulted in the NOA 2 at issue here. The Taxpayer relied on the Company's purchase to argue that it does not owe the NOA 2 as a credit should be given for that sale.[6]

R.I. Gen. Laws § 44-18-25 provides a statutory presumption that all gross receipts are subject to sales tax. As the Taxpayer notes, the statute clearly provides that a seller can rebut the presumption of taxability by taking a resale certificate.[7] However, the determination of whether a resale certificate applies does not turn on whether at some point in time a purchaser provided a seller with a resale certificate that the seller took in good faith. The statute provides clarity by providing precise times by which a resale certificate must be supplied.

R.I. Gen. Laws § 44-18.1-18 provides time periods for a resale certificate to be received by a seller. The seller has the burden to show that gross receipts are not taxable. If a seller receives

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[6] The Taxpayer also argued that if the assessment was upheld, equity provides that it should be allowed a credit for any tax paid by the Company to the Division on the purchase after an audit of the Company by the Division. The Division argued that there is no double taxation on the Taxpayer and the Company because this is an assessment of tax owed by the Taxpayer since the Taxpayer remitted less tax than it owed. First, equitable principles are not applicable to an administrative procedure. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004) (Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called "inherent equitable powers"). Second, this issue arose out of an assessment for tax owed. The Taxpayer argued it owes less tax because of the sale to the Company. The Division argues the Taxpayer owes more tax than it remitted to the Division. The issue is whether tax is owed by the Taxpayer.

[7] Indeed, the provision of resale certificates is common and addressed in Division regulations, 280-RICR-20-70-21 *Resale, Certificates, Wholesalers, Distributors, and Replacement Parts* and 280-RICR-20-75-19 *Manufacturing, Property and Public Utilities Service Used In.*

a timely resale certificate, it can meet that burden. However, if the seller does not receive a timely resale certificate as provided for in R.I. Gen. Laws § 44-18.1-18, it cannot meet that burden under R.I. Gen. Laws § 44-18-25.

In order for the Taxpayer to use the resale certificate, the statute requires it to be given at the time of sale or within 90 days of the date of sale. This did not happen in this matter. Thus, the Taxpayer did not meet the statutory requirements of either time period. As a result, the Taxpayer cannot receive a credit for the sales tax owed on the Company's purchase, and it owes the May 20, 2020 assessment.

E. Interest and Penalty on the Sales Tax Assessment

The Division properly imposed interest on the sales tax assessment pursuant to R.I. Gen. Laws § 44-19-11.[8] In addition, the Division properly imposed a 10% penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12[9] and R.I. Gen. Laws § 44-19-14.[10] R.I. Gen.

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[8] R.I. Gen. Laws § 44-19-11 provides as follows:

> Deficiency determinations — Interest. If the tax administrator is not satisfied with the return or returns or the amount of tax paid to the tax administrator by any person, the administrator may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or for more than one month. The amount of the determination, exclusive of penalties, bears interest at the annual rate provided by § 44-1-7 from the fifteenth day (15th) after the close of the month for which the amount, or any portion of it, should have been paid until the date of payment.

[9] R.I. Gen. Laws § 44-19-12 provides as follows:

> Pecuniary penalties for deficiencies. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of the provisions of this chapter and chapter 18 of this title, a penalty of ten percent (10%) of the 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.

[10] R.I. Gen. Laws § 44-19-14 provides as follows:

> Determination without return — Interest and penalties. If any person fails to make a return, the tax administrator shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use, or other consumption of which in this state is subject to the use tax. The estimate shall be made for the month or months in respect to which the person failed to make a return and is based

Laws § 44-19-12 clearly provides that if a taxpayer does not pay a tax because of negligence or does not pay, a 10% penalty is imposed. That penalty is not discretionary because the statute provides that the penalty "is" to be added rather than "may be added." *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

VI. FINDINGS OF FACT

1. The matter came before the undersigned as a result of a Notice issued by the Division dated July 23, 2018 and issued to the Taxpayer.

2. The parties agreed that a decision could be made on an agreed statement of facts and exhibits and briefs. The parties were represented by counsel, and briefs were timely filed by November 21, 2022.

3. The Taxpayer did not receive a resale certificate from the Company either at the time of the sale or within 90 days of the date of sale.

4. The facts contained in Section IV and V are incorporated 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 § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-20-1, and R.I. Gen. Laws § 44-1-1 *et seq.*

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upon any information, which is in the tax administrator's possession or may come into his or her possession. Upon the basis of this estimate, the tax administrator computes and determines the amount required to be paid to the state, adding to the sum arrived at a penalty equal to ten percent (10%) of that amount. One or more determinations may be made for one or for more than one month. The amount of the determination, exclusive of penalties, bears interest at the annual rate provided by § 44-1-7 from the fifteenth (15th) day after the close of the month for which the amount or any portion of the amount should have been paid until the date of payment. If the failure of any person to file a return is due to fraud or an intent to evade the provisions of this chapter and chapter 18 of this title, a penalty of fifty percent (50%) of the amount required to be paid by the person, exclusive of penalties, is added to the amount in addition to the ten percent (10%) penalty provided in this section. After making his or her determination, the tax administrator shall mail a written notice of the estimate, determination, and penalty.

2. Since the Taxpayer did not receive a resale certificate from the Company either at the time of the sale or within 90 days of the date of sale as required by R.I. Gen. Laws § 44-18.1-18, the Taxpayer was not able to rebut the presumption of taxability pursuant to R.I. Gen. Laws § 44-18-25.

3. The Taxpayer owes the sales tax assessment and the assessed interest and penalties as set forth in the May 20, 2020 Notice of Assessment (Exhibit 32).

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 § 44-18.1-1 *et seq.*, R.I. Gen. Laws § 44-19-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-19-11, R.I. Gen. Laws § 44-19-12, R.I. Gen. Laws § 44-19-14, the Taxpayer owes the assessed tax and interest and penalties as set forth in the May 20, 2020 Notice of Assessment (Exhibit 32).

The tax, penalties, and interest shall be paid by the 31st day after the execution of this decision.

Date: December 21, 2022

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: Dec. 22, 2022

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 STATUTES WHICH STATES AS FOLLOW:

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 22nd day December, 2022 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail to the Taxpayer's representative's address on record with the Division and by electronic delivery to Matthew Cate, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Gail Bulesco