

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2024-12

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

IN THE MATTER OF:

**18-T-014
sales and use tax**

Taxpayer.

DECISION

I. INTRODUCTION

The above-entitled matter initially came for hearing pursuant to a Notice of Pre-hearing Conference and Appointment of Hearing Officer issued on February 13, 2018 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”). Division’s Exhibit Eight (8). That matter was resolved by a Stipulation of Settlement and Dismissal (“First Stipulation”) dated August 29, 2019 which was amended by the parties on February 20, 2023 (“Amended Stipulation”). Division’s Exhibits Nine (9) and 12. On May 10, 2023, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer based on the Division’s allegation that the Taxpayer breached the First Stipulation and Amended Stipulation (collectively, “Stipulations”). Division’s Exhibit 13. A hearing was held on April 4, 2024 with the parties represented by counsel. The record was left open for one (1) week for the Division to file a written argument.

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.*, and the 280-RICR-20-00-2 *Administrative Hearing Procedures*.

III. ISSUE

Whether the Taxpayer breached its Stipulations with the Division, and if so, should any sanctions be imposed.

IV. MATERIAL FACTS AND TESTIMONY

The First Stipulation provided that on June 22 and June 29, 2016, the Division issued notices of deficiency to the Taxpayer for sales tax owed. Division's Exhibits Two (2) (notice of deficiency dated June 22, 2016 for trust fund sales tax); and Three (3) (notice of deficiency dated June 29, 2016 for additional sales tax). In order to settle this matter, the Taxpayer agreed in the First Stipulation to make certain up-front payments and then 52 monthly payments. In the Amended Stipulation, the Taxpayer agreed that it currently owed a balance of _____ under the First Stipulation and agreed to pay certain sums up-front and to make monthly payments until the arrearage under the First Stipulation was paid in full by July 15, 2024.

("Auditor"), Senior Tax Auditor, testified on behalf of the Division He testified that the First Stipulation included the total amount owed by the Taxpayer under the First Stipulation. He testified that the Taxpayer made some payments in July, August, and November, 2023 but also bounced two (2) checks of _____ each in March, 2023. Division's Exhibit 14. He testified that the Taxpayer did not make monthly payments under the First Stipulation nor under the Amended Stipulation. He testified the Taxpayer has not made a payment since November, 2023. He testified that the Amended Stipulation extended the payment deadline to July, 2024. He

testified that the May 2023 Notice of Hearing included the entire tax amount now owed by the Taxpayer as set forth in the notices of deficiency, and that interest continues to accrue.

On cross-examination, the Auditor testified the Amended Stipulation provided that the last payment is due in July, 2024 so three (3) months from the hearing. He testified that there is a possibility that payment in full could be made in July, 2024 so the Taxpayer could make one (1) payment in full in July that would equal the amount of all monthly payments. He testified that the amount due under the May Notice of Hearing is higher than the amount due under the Stipulations because the Amended Stipulation provided that in the event of a breach by the Taxpayer which included missing monthly payments, the original amounts assessed plus interest would be due.

The Taxpayer's owner testified on its behalf. He testified that after he entered the First Stipulation, the business was affected by Covid19 for which he obtained a grace period and then in May, 2023, his brother who was in charge of production died and that took four (4) months to sort out. He testified that he was not trying to trick the Division when the checks bounced in March, 2023 but he had a lot of deposits at the time. He testified that he does not have the money to pay off the Stipulations right now, but he is trying to obtain an equity loan on his house to pay off the remaining amount on the Amended Stipulation.

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. Stipulations

In order to settle the notices of deficiency issued in June, 2016 to the Taxpayer for sales and use tax owed, the Taxpayer entered into the Stipulations and agreed to pay a reduced amount of the total amount of the deficiencies. However, in the Amended Stipulation, the Taxpayer agreed to pay the full amount of the deficiencies if it defaulted on the Stipulations.

Paragraph Eight (8) of the Amended Stipulation provides as follows:

DEFAULT. If Taxpayer breaches the Stipulation and/or this Amendment, Taxpayer agrees that the entire Trust Fund Sales Tax and Additional Sales Tax set forth in the [First] Stipulation, plus accrued interest, shall be immediately due, final, and payable. At that time, the Tax Division may invoke any further remedies under Rhode Island law that it deems appropriate. "Breach" includes but is not limited to, Taxpayer's failure to make any payment required by the stipulation and/or this Amendment.

The Stipulations both provided the dates for the monthly payments to be made by as well as dates for the payment of the up-front payments. The First Stipulation provided that the monthly payments were to be made by the last day of each month. (Paragraph Two (2) of the First Stipulation). The Amended Stipulation provided that monthly payments were to be made by the 15th of each month. (Paragraph One (1) of the Amended Stipulation.). The Amended Stipulation provided that the last month for payment was to be in July, 2024.

Along with the agreement for monthly payments in paragraph one (1) of the Amended Stipulation, the parties also agreed as follows:

There shall be no deviation from the above schedule for paying the Arrearage and Settlement sum. Any deviation from these terms shall be deemed a default as defined in Paragraph 8 below and in paragraph 15 of the [First] Stipulation.

The Stipulations both contain a provision that acceptance of a late payment by the Division was not a waiver of the Division's right to seek a full payment of the settlement sum or right to go forward with an administrative hearing. Paragraph 15 of the First Stipulation provided that the failure to abide by the First Stipulations' requirements would be considered a default, and the Division would either proceed with the hearing or initiate further administrative proceedings. However, as part of the Amended Stipulation, the default provision provided that a default would result in the Taxpayer owing the entire tax amount that was initially assessed. *Supra*. Presumably, the parties agreed to the new default term as part of the negotiation to amend the First Stipulation.

C. Arguments

The Division argued the Taxpayer did not make the required monthly payments under the First Stipulation and breached the First Stipulation, but agreed to the Amended Stipulation that provided more time to pay but did not make those required monthly payments either. It argued that as provided for in the Amended Stipulation, the Taxpayer's failure to make monthly payments breached the Stipulations and as a result, the Taxpayer owes the initial tax assessments.

The Taxpayer did not dispute that it did not make the monthly provisions under the Stipulations. However, it argued the failure to make the scheduled payments is not a material breach of the Amended Stipulation. It represented that it did not contest that there were periods when it did not make payments, but there were issues with Covid19 and its supply chain. It argued that it tried and has made some payments and has three (3) months under the Amended Stipulation to make the payment in full. The Taxpayer argued that under case law, this is not a material breach since it still has three (3) months to pay and if it does, the State still has the benefit of its bargain

because it will receive the payments owed. It argued that the breach is not vital to the contract as the entire payment is vital, and it can remedy the breach by making the payment in full.

D. Whether the Taxpayer Breached the Stipulation

The Taxpayer reduced what it owed the Division by entering into the First Stipulation and agreeing to make certain up-front payments and then monthly payments thereafter. Both Stipulations provided that acceptance of a late payment by the Division would not waive the Division's right to proceed to full hearing. The First Stipulation provided that the failure by the Taxpayer to comply with the conditions of the First Stipulation would be a breach of the First Stipulation. The Amended Stipulation provided that any deviation from the monthly payments would be a breach of the Amended Stipulation and would result in the full tax assessment being owed by the Taxpayer. The purpose of the Stipulations was for the Taxpayer to pay the Division monthly payments of an agreed to amount in order to resolve the Taxpayer's outstanding taxes.

The Taxpayer argued that under *Women's Development Corp. v. City of Central Falls*, 764 A.2d 151 (R.I. 2001), it was not in material breach of the Stipulations. It argued the breach is not vital to the contract as the entire payment is vital. However, the Amended Stipulation provided that deviation from monthly payments would be a breach (as did the First Stipulation) and would result in the full tax assessment being owed. If the monthly payments were not vital to the Stipulations, the Division would have just agreed to the full amount being due four (4) years after the First Stipulation. Rather, the Division chose to reduce the amount owed in return for the Taxpayer making monthly payments.

This is not a situation where the Taxpayer missed one (1) monthly payment and has been regularly paying since so it only one (1) month behind. Even then the Taxpayer would be in breach. Here, the Taxpayer missed so many payments that a second stipulation was entered into

giving the Taxpayer more time to pay, and the Taxpayer still did not make monthly payments. Indeed, the testimony was the Taxpayer had not made a payment since November, 2023 and even that payment was not up to date.

The Division is being deprived of the benefit of the Amended Stipulation by the Taxpayer's failure to make monthly payments. It is not reasonable for the Division to have to wait to the end of agreed to monthly payments for tax owed to then determine a taxpayer was in breach. Such a finding would defeat the purpose of agreeing to monthly payments and could delay such an action by months or years depending on the length of the payment plan. As *Women's Development* found "the doctrine of substantial performance recognizes it would be unreasonable to condition recovery upon strict performance for minor defects or omissions could be remedied by repair." *Id.* at 160 (internal citation omitted). Failure to make payments is not a minor defect but a breach of the entire point of the Stipulations: to make monthly payments to pay off the agreed to amount.

E. What Does Taxpayer Owe

Pursuant to paragraph Eight (8) of the Amended Stipulation, the Taxpayer agreed that any default by the Taxpayer of the Stipulations would result in the "entire" assessments for trust fund sales tax and additional sales tax set forth in the First Stipulation being owed. Paragraph six (6) of the First Stipulation indicated the total amount of tax owed for the trust fund deficiency notice issued June 22, 2016, and the total amount of tax owed for the additional sale tax deficiency issued June 29, 2016. Division's Exhibits Two (2) and Three (3). However, paragraph Eight (8) of the First Stipulation stated the Division revised both deficiencies after a preliminary conference. Those tax amounts are in Paragraph Eight (8) of the First Stipulation. The parties reduced that revised amount owed into a settlement sum.

Interest is imposed on a sales tax assessment pursuant to R.I. Gen. Laws § 44-19-11.¹ A 10% penalty is on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12 and R.I. Gen. Laws § 44-19-14.² R.I. Gen. 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.” It can be abated through a settlement (R.I. Gen. Laws § R.I. Gen. Laws § 44-1-10) but

¹ R.I. Gen. Laws § 44-19-11 states 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.

² 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.

R.I. Gen. Laws § 44-19-14 states 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 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.

Brier Mfg. Co. v. Norberg, 377 A.2d 345 (R.I. 1977) found that R.I. Gen. Laws § 44-19-12 does not provide authority for a hearing officer to waive a penalty.

The Taxpayer does not owe the settlement sum. The Taxpayer is in breach of the Stipulations and under the Amended Stipulation – an agreement between the Tax Administrator and Taxpayer - now owes the entire amount of assessed tax plus interest. The amount of tax owed is the revised 2016 assessments set forth in the First Stipulation. Thus, the Taxpayer owes those amounts plus interest minus any amounts already paid.

VI. FINDINGS OF FACT

1. On February 13, 2018, the Division issued a Notice of Pre-Hearing Conference and Appointment of Hearing Officer to the Taxpayer in relation to notices of deficiencies issued to the Taxpayer for sales tax owed. That matter was resolved by a First Stipulation dated August 29, 2019 which was amended by the parties on February 20, 2023 by the Amended Stipulation.

2. On May 10, 2023, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayer based on the Division's allegation that the Taxpayer breached the Stipulations.

3. The Taxpayer did not dispute that it had failed to make monthly payments as set forth in the Stipulations.

4. A hearing was held on April 4, 2024. The record closed a week later.

5. 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 § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, and R.I. Gen. Laws § 44-19-1 *et seq.*

2. The Taxpayer violated and breached both Stipulations by failing to make numerous monthly payments.

3. The Taxpayer is in default of the Amended Stipulation as it failed to make monthly payments as required, and that is a default under the Amended Stipulation.

4. The parties, the Tax Administrator and the Taxpayer, agreed in the Amended Stipulation that if there was a breach by the Taxpayer, the Taxpayer would owe the initial revised tax assessment plus accrued interest.

5. As a consequence of its breach and in accordance with the agreed to Amended Stipulation, the Taxpayer owes the full amount of taxes imposed in the two 2016 notices of deficiency issued to the Taxpayer pursuant to R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.* and further revised as set forth in the First Stipulation plus any accrued interest.

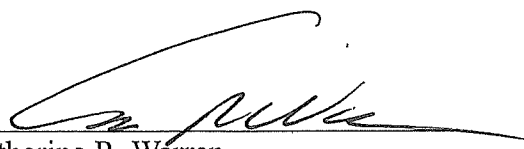
VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.*, the Taxpayer is in breach of the Stipulations so pursuant to the agreed to Amended Stipulation, the Taxpayer now owes the full tax amounts assessed by the Division in its initial notices of deficiency as revised in the First Stipulation minus any payments that it already made plus any accrued interest.

Date:

May 6, 2024

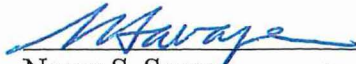

Catherine R. Warren
Hearing Officer

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: 5/14/24



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 R.I. Gen. Laws § 44-19-18 WHICH PROVIDES AS FOLLOWS.

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 14th day May, 2024 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, post prepaid and by electronic delivery to the Taxpayer's attorney'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.

