

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-05

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

IN THE MATTER OF:	:	
	:	
	:	Sales/Use Tax
	:	Case No.: 10-T-0003
Taxpayer.	:	
	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated March 26, 2010 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on December 10, 2010. At the hearing, the Division was represented by counsel and the Taxpayer did not appear. The Taxpayer had adequate notice of hearing by first class mail and certified mail. As the Taxpayer had notice of hearing, the hearing was held. The Division rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *et seq.*, the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*, and the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*.

III. ISSUE

Whether the Taxpayer owes use tax on a truck ("Truck") purchased by the Taxpayer.

IV. MATERIAL FACTS AND TESTIMONY

Based on the exhibits entered at hearing, the following is the timeline of events related to the purchase of the Truck:

1. On April 27, 2007 the Taxpayer purchased a Truck in Rhode Island. See Division's Exhibit One (1).
2. Subsequent to said purchase, the Taxpayer registered the truck in Vermont. See Division's Exhibit Two (2).
3. From 1996 to at least November 13, 2008, the Taxpayer had the same local Rhode Island address. See Division's Exhibit Three (3) (Division's records on personal income tax filing).
4. Between 2002 and 2007, the Taxpayer filed Rhode Island resident returns. See Division's Exhibit Four (4)
5. For the year 2007, the Taxpayer filed a resident joint return in Rhode Island. See Division's Exhibit Five (5).
6. The Taxpayer currently holds a Rhode Island driver's license which he obtained 1994 and last renewed in 2006. See Division's Exhibit Six (6).
7. The Taxpayer purchased the residential property for his above-referenced local Rhode Island address in 1995. See Divison's Exhibit Seven (7).
8. The Taxpayer used a Vermont address to purchase the Truck. See Exhibit Eleven (11) (Truck dealer's records of purchase along with dealer's statement of sale purchase and statement by Taxpayer acknowledging his responsibility for the tax on the Truck).

9. The Division issued a Notice of Deficiency dated April 22, 2009 for the use tax on the purchase of Truck as well as interest and penalty. See Division's Exhibit Thirteen (13).

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). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). 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. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citing to *Cocchini v. City of Providence*, 479 A.2d 108 (R.I. 1984)). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statutes and Regulations

R.I. Gen. Laws § 44-18-20 states in part as follows:

(a) An excise tax is imposed on the storage, use, or other consumption in this state of tangible personal property, including a motor vehicle, a boat, an

airplane, or a trailer, purchased from any retailer at the rate of six percent (6%) of the sale price of the property.

(b) An excise tax is imposed on the storage, use, or other consumption in this state of a motor vehicle, a boat, an airplane, or a trailer purchased from other than a licensed motor vehicle dealer or other than a retailer of boats, airplanes, or trailers respectively, at the rate of six percent (6%) of the sale price of the motor vehicle, boat, airplane, or trailer.

(h) The use tax imposed under this section for the period commencing July 1, 1990 is at the rate of seven percent (7%).

R.I. Gen. Laws § 44-18-21 states in part as follows:

(a) Every person storing, using, or consuming in this state tangible personal property, including a motor vehicle, boat, airplane, or trailer, purchased from a retailer, and a motor vehicle, boat, airplane, or trailer, purchased from other than a licensed motor vehicle dealer or other than a retailer of boats, airplanes, or trailers respectively, is liable for the use tax. The person's liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaging in business in this state or from a retailer who is authorized by the tax administrator to collect the tax under rules and regulations that he or she may prescribe, given to the purchaser pursuant to the provisions of § 44-18-22, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Each person before obtaining an original or transferral registration for any article or commodity in this state, which article or commodity is required to be licensed or registered in the state, shall furnish satisfactory evidence to the tax administrator that any tax due under this chapter with reference to the article or commodity has been paid, and for the purpose of effecting compliance, the tax administrator, in addition to any other powers granted to him or her, may invoke the provisions of § 31-3-4 in the case of a motor vehicle.

R.I. Gen. Laws § 44-18-25 states as follows:

Presumption that sale is for storage, use, or consumption – Resale certificate. – It is presumed that all gross receipts are subject to the sales tax, and that the use of all tangible personal property is subject to the use tax, and that all tangible personal property 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.

Sales and Use Regulation SU 04-131 (“SU 04-131”) states in part as follows:

Motor Vehicles and Nonmotorized Recreational Vehicles Sold to Nonresidents

Rhode Island dealers of motor vehicles and/or nonmotorized recreational vehicles are required to add and collect sales tax on the sale of a motor vehicle and/or a nonmotorized recreational vehicle to a bona fide nonresident of this state, whose state of residence imposes a sales tax on a motor vehicle or nonmotorized recreational vehicle to its nonresidents.

Sales and Use Regulation SU 03-69 (“SU 03-69”) states in part as follows:

Motor Vehicles - Payment of Tax as Prerequisite to Registration

Each person before obtaining an original or transfer registration for any article or commodity in this state, which article or commodity is required to be licensed or registered in the state, shall furnish evidence satisfactory to the Tax Administrator that any tax due has been paid. The sales or use tax on any motor vehicle and/or recreational vehicle requiring registration by the Registry of Motor Vehicles shall not be added by the retailer to the sale price or charge but shall be paid directly by the purchaser to the Tax Administrator.

C. The Taxpayer Owes Use Tax on the Truck

Pursuant to R.I. Gen. Laws § 44-18-20, the use tax is imposed on the “storage, use, or other consumption in this state” of personal property including automobiles. R.I. Gen. Laws § 44-18-10 defines “use” as “the exercise of any right or power of tangible personal property incident to the ownership of that property.” The use tax rate is 7% of the “sale price of the property.” R.I. Gen. Laws § 44-18-20(a) and (h).

By registering the Truck in Vermont, the Taxpayer did not pay any Rhode Island tax on the Truck. Pursuant to SU 04-131, only a *bona fide* Rhode Island non-resident does not have to pay Rhode Island tax on vehicles. The Rhode Island District Court case of *McLaughlin v. Norberg*, AA No. 83-429 (1985) addressed the test for residency as contained in the case of *Randall v. Norberg*, 403 A.2d 240 (1979) (sufficient connection with Rhode Island to determine whether a taxpayer would be liable as a “resident” for

taxes under Title 44). However, in this matter, there is no question that the Taxpayer was a resident of Rhode Island at the time he purchased the Truck. The Taxpayer filed a Rhode Island resident tax return for the relevant time period.

Pursuant to R.I. Gen. Laws § 44-18-25, there is a presumption that all sales are taxable and it is the Taxpayer's burden to show otherwise. The Taxpayer has not shown otherwise.

In addition, the Division properly imposed interest on the use tax assessment pursuant to R.I. Gen. Laws § 44-19-11.¹ The Division also properly imposed a 10% penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12.² The statute 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." See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977).

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 states 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.

VI. FINDINGS OF FACT

1. On or about March 26, 2010, the Division issued a Notice of Hearing and Appointment of Hearing Officer.
2. A hearing in this matter was held on December 10, 2010.
3. The Taxpayer did not appear at the hearing despite adequate notice.
4. The Division rested on the record at hearing.
5. The facts as detailed in Section V are incorporated herein by reference.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

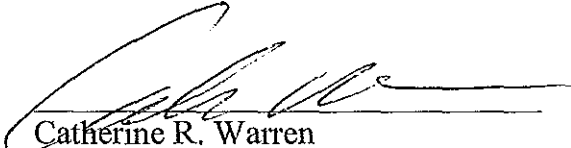
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, and R.I. Gen. Laws § 44-1-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-18-20, the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Thirteen (13).

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-20, the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Thirteen (13).

Date: 2/17/11


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

Date: Feb 22, 2011

David Sullivan
David Sullivan
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-19-18 Appeals

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

CERTIFICATION

I hereby certify that on the 22nd day of February, 2011, 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 address on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, Department of Administration, One Capitol Hill, Providence, RI 02908.

Gail Belasco