

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2012-06

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

IN THE MATTER OF:

Taxpayer.

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Case No.: 08-T-0047
Sales Tax

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer (“Notice”) that was issued on October 31, 2008 to (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s request for hearing. A hearing was scheduled for January 27, 2009 which was continued at the Taxpayer’s request. The matter was continued for settlement discussions with a status conference being held on March 31, 2011. Failing settlement, this matter was again scheduled for a status conference on September 16, 2011 which was then continued at the Taxpayer’s request. A full hearing was scheduled for February 2, 2012 at which time the Taxpayer did not appear. The Taxpayer had adequate notice of the full hearing by first class mail.¹ As the Taxpayer chose not to appear at hearing, the undersigned held the hearing. The Division was represented by counsel and rested on the record.

¹ The Taxpayer was also notified by email.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-35-1 *et seq.*, R.I. Gen. Laws § 44-1-1 *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 assessed sales tax and interest.

III. MATERIAL FACTS

The following exhibits were entered at hearing:

1. Notice of Deficiency issued on May 20, 2008 to the Taxpayer by the Division. See Division's Exhibit One (1).
2. Division's Field Audit Report. See Division's Exhibit Two (2).
3. Sample invoices related to the audit that formed the basis of the audit and are evidence of taxable transactions. See Division's Exhibit Three (3).

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. 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

Sales price is defined by R.I. Gen. Laws § 44-18-12.² R.I. Gen. Laws § 44-18-18 imposes a 7% sales tax upon sales at retail. R.I. Gen. Laws § 44-18-19 requires that retailers collect sales tax.

C. Whether the Taxpayer Owes Sales Tax

Pursuant to R.I. Gen. Laws § 44-18-25,³ the presumption is that all receipts are subject to sales tax. The evidence at hearing was that the Division conducted an audit on the Taxpayer for April 1, 2003 through March 31, 2006 by reviewing assets, invoices, sales journal, purchases invoices, the general ledger, etc. The audit found that the Taxpayer had not collected the correct amount of sales tax and failed to collect applicable sales tax on transportation costs. See Division's Exhibits Two (2) and Three (3).

The Taxpayer had more than enough time to provide the Division with any further information regarding the Division's audit. The Taxpayer did not appear at hearing. At hearing, the Division presented undisputed evidence regarding its assessment for the Taxpayer.

² This statute was amended effective January 1, 2007 which is subsequent to the audit period but the changes were not relevant to the audit period.

³ 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.

Therefore, the Division properly assessed the Taxpayer the sales tax it owed.⁴ The Division imposed interest on its assessment pursuant to R.I. Gen. Laws § 44-19-11.⁵ See Division's Exhibit One (1). However, the Division did not impose a penalty on said deficiency. Pursuant to R.I. Gen. Laws § 44-19-12,⁶ if a taxpayer does not pay a tax because of negligence (e.g. poor records) or does not pay, a 10% penalty is imposed. See *Brier Mfg. Co. v. Norberg*, 377 A.2d 345 (R.I. 1977). The penalty may be abated by the Tax Administrator in settlement but cannot be abated at hearing. *Id.* Therefore, a 10% penalty is imposed on the deficiency.

Pursuant to R.I. Gen. Laws § 44-18-25, the Taxpayer is presumed to owe the sales tax. The Taxpayer did not overcome this presumption and provided no proof that it does not owe the assessed tax. The Taxpayer owes the deficiency, interest, and the 10% penalty.

VI. FINDINGS OF FACT

1. This matter came before the undersigned as a result of a Notice of Hearing and Appointment of Hearing Officer that was issued on October 31, 2008.

⁴ The Taxpayer signed the statute of limitations' waiver. See Division's Exhibit Two (2).

⁵ R.I. Gen. Laws § 44-19-11 states in part 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.

⁶ 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.

2. A hearing was held on February 2, 2012. The Taxpayer did not appear despite being noticed of hearing.

3. A field audit was conducted by the Division on the Taxpayer for the period April 1, 2003 through March 31, 2006.

4. The Notice of Deficiency was not disputed at the hearing.

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

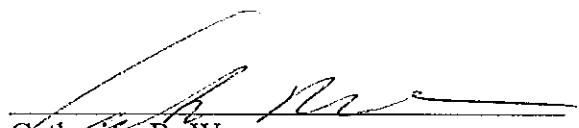
2. Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-19-11, and R.I. Gen. Laws § 44-19-12 the Taxpayer owes the assessed sales tax, the assessed interest, and a 10% penalty.

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 owes the sales tax assessment and interest as set forth in the Division's Exhibit One (1) and also owes the 10% penalty as applied to the deficiency.

Date: 2/17/12


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:

 X ADOPT
 REJECT
 MODIFY

Dated: FEB 27, 2012

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 27th day of February, 2012 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 representative address and the Taxpayer's address on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

Paul Belasco