STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-01

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

IN THE MATTER OF:	:	Case No.: 09-T-032
	:	Rental Vehicle Surcharge
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 November 9, 2009 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing on the Division's denial of its refund request. The parties filed an agreed statement of facts and exhibits. The parties agreed to proceed upon stipulated facts and briefs without hearing. Both parties were represented by counsel. A briefing schedule was set and the parties timely filed briefs by September 23, 2010 with the Taxpayer filing its reply brief on September 29, 2010.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 31-34.1-1 *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

The parties agreed that the sole issue was as follows: whether the Taxpayer is entitled to recover the rental vehicle surcharges charged, collected, and retained by another car rental company ("Company") on the Taxpayer's behalf during the latter portion of 2006 by virtue of the Taxpayer paying the qualifying expenses on the fleet of rental vehicles earlier in the same year.

IV. MATERIAL FACTS AND TESTIMONY

The parties agreed to exhibits and the following facts:[1]

1. From January 1, 2006 to August 1, 2006, the Taxpayer, a Rhode Island corporation, operated a car rental company, under the trade names Rhode Island. Exhibits One (1) and Three (3).

2. On August 1, 2006, the Taxpayer sold the car rental business via an Asset Purchase Agreement, to the Company, a Corporation. Exhibit Two (2).

3. The Company continued operation of the car rental business, under the trade names from the location from August 1, 2006 through December 31, 2006. Exhibit Four (4).

4. At all pertinent times during calendar year 2006, the fleet of vehicles used for the car rental business conducted from the location were owned by the Taxpayer and/or leased by the Taxpayer to the Company.

5. The Division is a state agency charged with the administration and enforcement of all state taxes and other state monetary levies including, *inter alia*, the Rental Vehicle Surcharge imposed by R.I. Gen. Laws § 31-34.1-1 *et seq*.

6. From January 1, 2006 to August 1, 2006, during the course of operating said car rental business, the Taxpayer charged and collected a total of in Rental Vehicle Surcharges from its customers. Exhibit 14.

7. The Taxpayer routinely retained 50% of the surcharges it collected and remitted the other 50% to the Division on a quarterly basis. Exhibits Five (5), Six (6), and Seven (7). Thus, during the time it operated the car rental business in calendar year 2006, the Taxpayer retained in surcharges and remitted in surcharges to the State. Exhibit 14 (Taxpayer's 2006 Recap).

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[1] See joint submission of facts and exhibits.

8. During calendar year 2006, the Taxpayer paid a total of in transfer fees, title fees, registration fees, and excise taxes (hereafter collectively referred to as 'qualifying expenses") with regard to the fleet of vehicles used for the car rental business conducted from the location. Exhibit 14.

9. From August 1, 2006 to December 31, 2006, during the course of operating the car rental business at the location, the Company charged and collected a total of in surcharges from its customers. Exhibit 15 (the Company's 2006 Recap).

10. The Company routinely retained 50% of the surcharges it collected and remitted the other 50% to the Division on a quarterly basis. Exhibits 11 and 12. Thus, during the time it operated the car rental business in calendar year 2006, the Company retained in surcharges and remitted in surcharges to the State. Exhibit 15. (the Company's 2006 Recap).

11. During calendar year 2006, the Company paid no qualifying expenses with regard to the fleet of vehicles used for the car rental business conducted from the location. Exhibit 15.

12. After the end of calendar year 2006, the Taxpayer filed an annual reconciliation return with the Division by which it accounted for all the surcharges it retained and the qualifying expenses it paid during 2006. Based upon this filing, none of the surcharges the Taxpayer had retained were due to the State. Exhibit Nine (9).

13. After the end of calendar year 2006, the Company filed an annual reconciliation return with the Division by which it accounted for all the surcharges it had retained and the qualifying expenses it paid (0) during 2006. Based upon this filing, the Company remitted the surcharges it had retained to the State. Exhibit 13.

14. On September 28, 2007, the Taxpayer filed an amended annual reconciliation return for calendar year 2006 with the Division and laid refund claim to the in retained surcharges that the Company had remitted to the State. Exhibits 10 and 16.

15. On October 24, 2007, the Division denied the Taxpayer's refund claim. On October 31, 2007, the Taxpayer made a timely request for administrative review of its refund claim denial. Exhibits 17 and 18.

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) (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). 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 Regulation

R.I. Gen. Laws § 31-34.1-1 states in part as follows:

> Definitions. – The following words and phrases used in this chapter, for the purposes of this chapter, have the following meanings:
>
> (1) "Excise tax" means the tax imposed under chapter 34 of title 44.
>
> (2) "Gross receipts" means the total amount of money for the value of other consideration received by a renter of motor vehicles from motor vehicles rented in the state of Rhode Island. Gross receipts includes any charges related to the rental including gas, insurance, etc. whether or not set out in separate contract.
>
> (3) "Motor vehicle" means a private passenger motor vehicle designed to transport fifteen (15) or fewer passengers that is rented without a driver and is part of a fleet of five (5) or more passenger vehicles used for that purpose, owned or leased by the same person or entity.
>
> (4) "Rental company" means any business entity engaged in the business of renting motor vehicles in the state of Rhode Island.

R.I. Gen. Laws § 31-34.1-2 states in part as follows:

> Rental vehicle surcharge.. – (a) Each rental company shall collect, at the time a motor vehicle is rented in this state, on each rental contract, a surcharge

equal to six percent (6.0%) of gross receipts per vehicle on all rentals for each of the first thirty (30) consecutive days. The surcharge shall be computed prior to the assessment of any applicable sales taxes, provided, however, the surcharge shall be subject to the sales tax.

(b) The surcharge shall be included on the rental contract and collected in accordance with the terms of the rental contract. Fifty percent (50%) of the surcharge shall be retained by the rental company in accordance with this section and subsection (c), and fifty percent (50%) of the surcharge shall be remitted to the state for deposit in the general fund, on a quarterly basis in accordance with a schedule adopted by the tax administration. Each rental company collecting and retaining surcharge amounts may reimburse itself in accordance with this section from the funds retained for the total amount of motor vehicle licensing fees, title fees, registration fees and transfer fees paid to the state of Rhode Island and excise taxes imposed upon the rental companies' motor vehicles during the prior calendar year; provided, that rental companies shall not be authorized to reimburse themselves for title fees, motor vehicles licensing fees, transfer fees, registration fees and excise taxes unless those fees and taxes shall have been assessed and paid in full to the state or appropriate city or town prior to any reimbursement. No reimbursement shall be allowed upon the prepayment of any fees or excise taxes.

(c) At a date to be set by the state tax administrator, but not later than February 15th of any calendar year, each rental company shall, in addition to filing a quarterly remittance form, file a report with the state tax administrator on a form prescribed by him or her, stating the total amount of motor vehicles licensing fees, transfer fees, title fees, registration fees and excise taxes paid by the rental company in the previous year. The amount, if any, by which the surcharge collections exceed the amount of licensing fees, title fees, transfer fees, registration fees and excise taxes paid shall be remitted by the rental company to the state of Rhode Island for deposit in the general fund.

C. Arguments

At issue is that was collected by the Company in the second half of 2006 as surcharges on rental vehicles owned by the Taxpayer but rented out by the Company and remitted to the State as the Company did not pay any qualifying expenses to off-set this amount. The Taxpayer had paid all qualifying expenses for the first half of year on said vehicles and pursuant to the statute retained half of the surcharges it collected in the first half of the year and remitted the other half of said surcharges to the State. The Taxpayer seeks a

refund of the Company's remittance of its collected surcharges for the second half of the year as an off-set for the Taxpayer's payment of qualifying expenses.

i. The Taxpayer's Argument

The Taxpayer argues that since it paid all the qualifying expenses for 2006, it is entitled to off-set those expenses from the surcharges collected by the Company on vehicles rented out by the Company but still owned by the Taxpayer. The Taxpayer argued that it meets the statutory definition in R.I. Gen. Laws § 31-34.1-1 of a "rental company" because "rental company" is defined as "any business entity" and the Taxpayer was a rental company at all relevant times in 2006 since it owned the fleet and paid the qualifying expenses.

The Taxpayer argued that the State's position that it is not entitled to the refund since it did not physically collect the surcharge is not based in statute as the statute applies to "[e]ach rental company collecting and retaining surcharge amounts" which the Taxpayer did in 2006. The Taxpayer further argues that since it may be reimbursed from the funds retained for the "total amount [of qualifying expenses] imposed on rental companies' motor vehicles" that does not preclude a predecessor company being reimbursed for qualifying expenses for its fleet that is rented out by a successor company as the statute speaks of companies' – in the plural - right to reimbursement.

Furthermore, the Taxpayer argues that the statute envisioned that there could be more than one (1) corporate entity by the use of "each" before "rental company." The Taxpayer also argues that the statute makes clear that the corporate entity seeking reimbursement must be a rental company and have paid the qualifying expenses during a calendar year (though cannot be pre-paid expenses) and the Taxpayer was a rental company and paid qualifying expenses in 2006 and the statute does not require that the Taxpayer be the one that physically

collected the surcharges. Finally, the Taxpayer argues that the State is receiving unjust enrichment at its expense. The Taxpayer argues that the intent of the statute is to reimburse the payor of the expense and not the collector of the expenses. The Taxpayer also relied on the Division's 1994 Special Notice (see agreed to facts) regarding this statute which indicated that the surcharge goes to reimbursing the "vehicle owner" or "rental company." Thus, the Taxpayer argues that it should be reimbursed the surcharge proceeds remitted to the State in 2006 by the Company.

ii. The Division's Arguments

The Division argues there is no statutory authority that allows a rental company to off-set its qualifying expenses against the surcharges collected and retained by another rental company. The Division argued that because each rental company is a separate and distinct taxpaying entity, the Taxpayer and the Company were required independently to comply with the statute's tax reporting mandate. Thus, the Division argues the Taxpayer cannot use surcharge proceeds collected, retained and reported by the Company as an off-set.

D. Whether the Taxpayer is Entitled to its Refund Request

The resolution of this matter turns on statutory construction. The statute must be examined in its entirety and words given their plain and ordinary meaning. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.*, at 674. As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543.

Random House Dictionary, 2nd Edition (1987) defines "each" as follows:

(adj) 1. Every one of two or more considered individually or one by one: *Each stone in a building* . . . Everyone one individually . . . **syn** 1. Each, Every are alike in having a distributive meaning. Of two or more members composing an aggregate, Each directs attention to the separate members in turn: *each child* (of those considered and enumerated) *received a large apple*. Every emphasizes inclusiveness or universality: *Every child* (of all in existence) *likes to play*.

The statute enumerates what is a rental company (any business engaged in renting motor vehicles). "Each" then directs attention to the separate members of the aggregate: "each rental company." Thus, each rental company, separately, collects a surcharge on vehicles rented. The statute further states that the surcharge is collected "at the time the vehicle is rented" and "on each rental contract." Thus, the Taxpayer and the Company collected the surcharge due for each rental contract entered into by them at the time of rental. As a result, the Taxpayer did not collect any surcharges in the second half of 2006 since it no longer operated the rental company.

The statute states that each rental company – the individual members of the aggregate – may be reimbursed for certain fees. The statute states that each rental company is to file a report stating the total amount of qualifying fees paid by the rental company and the amount that the retained surcharge exceeds the qualifying expenses shall be remitted by the rental company to the State. Thus, each rental company may be reimbursed for its qualifying expenses from the retained surcharges. Each rental company is to file a quarterly remittance form for the surcharges and no later than February 15 is to file a report regarding the qualifying expenses.

The statute separates the members of the aggregate. Each member of the group is responsible for collecting the surcharge on each rental contract at the time of rental. Each member of the group can be reimbursed for qualifying expenses from the surcharges each member collects. The Taxpayer argues that since it was a rental company in 2006, it is

allowed to off-set its expenses from another company's surcharges because it paid qualifying expenses for those vehicles that another company (the Company) rented. However, the statute does not state that any rental company that pays qualifying expenses for vehicles may off-set those expenses from surcharges retained by any rental company for those vehicles. Rather the statute delineates that each rental company – separate members of an aggregate group – is responsible for collecting and remitting the surcharges, filing the qualifying expenses report, and if permissible, off-setting expenses from the retained surcharges.

The Taxpayer argues that the use of the term "rental companies" in the statute and that it was a rental company in 2006 which paid qualifying expenses for vehicles on which surcharges were collected makes it eligible for said set-off. The use of the term "rental companies" in R.I. Gen. Laws § 31-34.1-2(b) follows the use of "each rental company" at the beginning of the sentence which are collecting and retaining surcharge amounts that can be off-set by certain expenses incurred by all rental companies. All rental companies have certain expenses as referenced in R.I. Gen. Laws § 31-34.1-2(b) that will be considered under the statute to be qualifying expenses. The use of the plural term "rental companies" does not mean that any rental company can use any rental company's surcharges collected as off-set for qualifying expenses on vehicles rented. Rather the statute allows each rental company to reimburse itself for its own expenses that are incurred by all rental companies.

The Taxpayer argues that there is nothing in the statute that precludes its literal reading of the statute as the statute provides the qualifying expenses must have been paid during the calendar year on the vehicles for which surcharges were collected but does not require that the one seeking reimbursement must have physically collected the surcharge.[2]

[2] The Rhode Island Supreme Court has warned against "myopic literalism" in interpreting the "plain meaning" of a statute. See *In Re: Brown*, 903 A.2d 147 (R.I. 2006).

The Taxpayer argues that the collection and retention of the surcharge is not a condition for reimbursement but is related to the notion that the funds are held in trust for the State. However, the plain meaning of the statute is each separate company collects and remits the surcharges, files said expense report, and makes a reimbursement claim.

D. The Purpose of the Rental Vehicle Surcharge Statute

The Taxpayer admits the legislature most likely did not envision the "unique factual scenario" in this matter. Thus, the Taxpayer argued that if the statute is considered to be ambiguous since it does not clearly answer the question in this matter then the statute should be construed in accordance with legislative intent. The Taxpayer argued that the statutory intent was two-fold: 1) allow rental companies to reimburse themselves for certain fees; and 2) create an additional source of money for the State. The Taxpayer argues that the Division has been unjustly enriched by retaining the Company's surcharges so that the intent of the statute is frustrated as the State received all the qualifying expenses, fees, and taxes and also retained the that should be used to reimburse the Taxpayer.

The purpose of this statute is to raise revenue for the State; therefore, it is a taxing statute.[3] See R.I. Gen. Laws § 31-34.1-3. A 6% surcharge is collected on all rental contracts with half of the surcharge collected – thus, 3% of the rental contracts - being remitted to the State. Thus, the State is guaranteed to receive at the minimum a 3% surcharge on all rental vehicle contracts as provided in R.I. Gen. Laws § 31-34.1-2(a) and (b). E.g. See Exhibit Five (5) (Taxpayer's 2006 first quarter remittance of its collected surcharges with half of the

[3] *Kent County Water Auth. v. State Dept. of Health*, 723 A.2d 1132, 1135 (R.I. 1999) held as follows:

> We have previously noted the distinction between a tax-which is primarily a revenue-raising measure-and a licensing fee-which is primarily a regulatory imposition. *See State v. Foster* . . . 46 A. 833, 835-36 (R.I.1900) ("If the imposition * * * has for its primary object the regulation of the business, trade, or calling to which it applies, its exercise is properly referable to the police power; but, if the main object is the obtaining of revenue, it is properly referable to the taxing power.").

amount collected forwarded to the Division and the other half retained by Taxpayer). As part of the statute, each company may be reimbursed for certain fees spent on the rental vehicles from each company's retained half of the surcharge. Despite that off-set provision, the statute's primary purpose is to raise revenue for the State as the State is guaranteed revenue from the surcharge.

The Taxpayer argues that the Division's retention of the is unjust and contrary to statutory construction as the statute intends for that money to reimburse the payor of the underlying expenses. However, the intent of the statute is to raise revenue for the State. If the Company had paid qualifying expenses, it would have been permitted to off-set those expenses from that money. However, the Company did not. While the Taxpayer did pay qualifying expenses for the vehicles rented by the Company, the statute does not allow any rental company to claim any rental company's surcharges.[4] The use of the term "each rental company" separates out each individual member for said collection, retention, and reimbursement.

The Taxpayer characterizes the money at issue as an unjust windfall for the Division. The Taxpayer argued that the unique circumstances and fairness supports its argument that the money at issue should be refunded. As the money is due to the State pursuant to the statute, presumably the Division would disagree that the money constitutes an unjust windfall for the State. However, an administrative proceeding is not an equitable proceeding and there is no equitable jurisdiction. To find for the Taxpayer on the basis of a fairness argument would be reversible error. *Nickerson v. Reitsma* , 853 A.2d 1202 (R.I. 2004).

[4] Unfortunately for the Taxpayer, it sold its company mid-year but any contract for sale of a business can include, if the parties choose, provisions that take into account tax consequences of a sale.

The Taxpayer also relies on the Division's 1994 Special Notice[5] issued to rental companies upon the passage of the statute as said notice indicates that only fees paid by a vehicle owner or rental company may be reimbursed and surcharges may not off-set any fees on vehicles not subject to the surcharge. The Taxpayer argues that this applies to this situation where the vehicle owner (Taxpayer) paid the fees but the notice is merely ensuring that a taxpayer does not claim reimbursement for qualifying expenses it did not pay. However, the issue here is one of statutory construction and the clear and unambiguous language of the statute so that the 1994 notice is not controlling or applicable to the issue of statutory construction.

E. Conclusion

Based on the forgoing, the Taxpayer is not entitled to its claim refund from another taxpayer's collected surcharge.

VI. FINDINGS OF FACT

1. A Notice of Hearing and Appointment of Hearing Officer dated November 9, 2009 was issued to the Taxpayer by the Division in response to the Taxpayer's request for hearing filed with the Division.

2. The parties filed an agreed statement of facts and exhibits.

3. The parties agreed to proceed upon stipulated facts and briefs without a hearing.

4. A briefing schedule was set and the parties timely filed briefs by September 23, 2010, with the Taxpayer filing its reply brief by September 29, 2010.

5. The facts contained in Sections IV and V are reincorporated by reference herein.

[5] R.I. Gen. Laws § 31-34.1-3 provides for the promulgation by the Division of regulations but none have been promulgated.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 31-34.1-1 *et seq.*, the Taxpayer is not entitled to its claimed refund of the Company's[5] retained surcharge for 2006.

Date: 1/10/11

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

Dated: Feb 4, 2011

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.

[5] It should be noted that the Taxpayer in its prehearing submission filed a motion to amend to add the Company as a party. This motion was never pressed and never ruled on. In light of this decision, the motion is moot.

R.I. Gen. Laws § 8-8-25 Time for commencement of proceeding against the division of taxation. – (a) Any taxpayer aggrieved by a final decision of the tax administrator concerning an assessment, deficiency, or otherwise may file a complaint for redetermination of the assessment, deficiency, or otherwise in the court as provided by statute under title 44.

(b) The complaint shall be filed within thirty (30) days after the mailing of notice of the final decision and shall set forth the reasons why the final decision is alleged to be erroneous and praying relief therefrom. The clerk of the court shall thereupon summon the division of taxation to answer the complaint.

CERTIFICATION

I hereby certify that on the 9th day of ~~January,~~ February 2011 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's attorney at the address on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco