

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-19

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 and Use Tax
	:	Case No.: 11-T-0004
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 May 25, 2011 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing dated April 19, 2011. A hearing was held on September 27, 2011. At the hearing, the Division was represented by counsel and the Taxpayer was *pro se*. The parties 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 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 use tax on a car ("Car") purchased by the Taxpayer.

IV. MATERIAL FACTS AND TESTIMONY

Senior Revenue Agent, testified on the Division's behalf. He testified that he received a report of an out-of-state car registration which turned out to be the Taxpayer's Car so he reviewed the Taxpayer's tax and Car records. He testified that the Taxpayer filed Rhode Island resident tax returns between 2000 and 2009, works for the State of Rhode Island, has had a State driver's license since 1972, has two (2) other motor vehicles registered in State, owns a house in Cumberland, Rhode Island, and is registered to vote and votes in Rhode Island. See Division's Exhibits Three (3), Four (4), Six (6), and Eight (8). He testified that since the Taxpayer did not qualify as *bona fide* nonresident of Rhode Island, an assessment was issued on the Car for 7% because there is no use tax in New Hampshire where the Car was registered so 7% represents the difference between the tax paid in New Hampshire and the tax owed in Rhode Island.

The Taxpayer testified on his behalf. He testified he agrees that he is a Rhode Island resident and pays Rhode Island taxes. He testified there is no law in Rhode Island that says he cannot purchase a motor vehicle in New Hampshire and he purchased the Car and insured it in New Hampshire. He testified he pays an annual tax to New Hampshire on the Car so one cannot compare New Hampshire and Rhode Island car taxes. He testified that the Car had been registered in Rhode Island but it was driven to New Hampshire to make the sale. See Division's Exhibit Two (2) (Car's carfax history) and Five (5) (DMV history of Car). He testified that the Car is an antique car and is stored in New Hampshire though it has been driven in Rhode Island.

The parties do not dispute that the Car was purchased on June 7, 2008. The Division relied on R.I. Gen. Laws § 44-18-20, R.I. Gen. Laws § 44-18-21, R.I. Gen.

Laws § 44-18-30(13), R.I. Gen. Laws § 44-18-10 (use defined), and R.I. Gen. Laws § 44-18-25 and argued that the Taxpayer was not a *bona fide* nonresident of Rhode Island so that use tax is owed. The Taxpayer relied on his testimony to argue that he did not owe the assessed tax.

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.

R.I. Gen. Laws § 44-18-30 provides in part as follows:

Gross receipts exempt from sales and use taxes. – There are exempted from the taxes imposed by this chapter the following gross receipts:

(13) Motor vehicles sold to nonresidents.

(i) From the sale, subsequent to June 30, 1958, of a motor vehicle to a bona fide nonresident of this state who does not register the motor vehicle in this state, whether the sale or delivery of the motor vehicle is made in this state or at the place of residence of the nonresident.

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.

C. The Taxpayer Owes Use Tax on the Car

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 Car in New Hampshire, the Taxpayer did not pay any Rhode Island tax on the Car. Pursuant to R.I. Gen. Laws § 44-18-30(13), only a *bona fide* Rhode Island nonresident 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). *McLaughlin* found that taxpayer had sufficient connection with Rhode Island to be liable as a “resident” for taxes under Title 44 even though the car in that matter was registered, titled, and garaged in Florida. In this matter, there is no dispute that the Taxpayer is a resident of Rhode Island since he admitted at hearing that he is a Rhode Island resident and was at the time the Car was purchased.

The Taxpayer argued that there is no law that he cannot purchase a motor vehicle in New Hampshire. That is true but since he is a resident of Rhode Island, he is not exempt from paying taxes on the Car even if the physical purchase was made in New Hampshire and the Car is registered there. The issue is not the location of the purchase of a motor vehicle but rather whether the purchaser – in this matter, the Taxpayer – was a resident of Rhode Island at the time of purchase. The Taxpayer has not shown that he was a *bona fide* nonresident of Rhode Island.

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).

VI. FINDINGS OF FACT

1. On or about May 25, 2011, the Division issued a Notice of Hearing and Appointment of Hearing Officer.
2. A hearing in this matter was held on September 27, 2011.
3. The parties rested on the record at hearing.
4. The facts as detailed in Section V are incorporated herein by reference.

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.

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.*

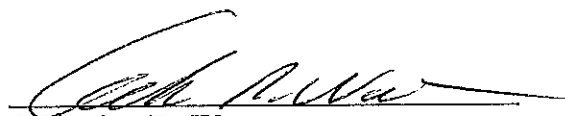
2. Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Fourteen (14).

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Fourteen (14).

Date: October 11, 2011

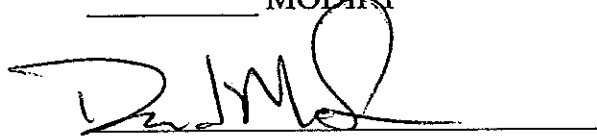

Catherine R. Warren
Hearing Officer

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: October 11, 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.

CERTIFICATION

I hereby certify that on the 12th day of October, 2011, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid to the Taxpayer's address on file with the Division of Taxation and by hand delivery to Linda Riordan, Esquire, Department of Administration, One Capitol Hill, Providence, RI 02908.

