STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2012-15

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.: 12-T-029
	:	Use Tax
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 September 5, 2012 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 November 15, 2012. The parties rested on the record. The Division was represented by counsel and the Taxpayer was *pro se*.

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.*, 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 car ("Car") purchased by the Taxpayer.

IV. MATERIAL FACTS AND TESTIMONY

The following facts have been ascertained from the exhibits and testimony[1] at hearing:

1. This matter involves a Car that was initially sold by a ("Distributor") to ("Dealer") using the certificate of origin on March 6, 2011. See Division's Exhibit Three (3) and Taxpayer's Exhibit Two (2) (certificate of origin).

2. On December 30, 2011, the Dealer sold the Car to the Taxpayer. See Division's Exhibit Three (3) (bill of sale and odometer reading).

3. The odometer reading on the Car at the time of the transfer from the Dealer to the Taxpayer was 1,838 miles. See Division Exhibit Three (3) (odometer reading).

4. The parties agreed that the Taxpayer is a used car dealer. See also Division Exhibits Four (4) (Taxpayer's application for 2012 renewal of used motor vehicle license) and Five (5) (DMV print-out of Taxpayer's license plates).

5. While the Dealer had the Car, the Dealer installed OnStar in the Car. See Taxpayer's Exhibit One (1).

6. While the Dealer had the Car, the Dealer had work done on the Car using the Car's warranty. See Taxpayer's Exhibit Six (6).

7. After the Dealer sold the Car to the Taxpayer, the Dealer paid tax on the Car. See Taxpayer's Exhibits Three (3) (Dealer letter) and Four (4) (copies of checks).

---

[1] Testimony from Senior Revenue Agent, for the Division and from the Taxpayer. Their testimony is summarized after the facts.

Senior Revenue Agent, testified on behalf of the Division. He testified that the Dealer is a used car dealer. He testified that when Taxpayer purchased the Car, the Car was sold as a new car because the Taxpayer purchased the Car from Dealer on the certificate of origin and was not titled. He testified that the Car went from the Car manufacturer to the Distributor to Dealer to Taxpayer on the certificate of origin. He testified there is no evidence that the Car was used for anything but a demonstrator vehicle. He testified that the Taxpayer cannot sell new vehicles. He testified that the Taxpayer was assessed because there was a certificate of origin on a vehicle purchased by a used car dealer from another used car dealer and the Taxpayer does not sell new motor vehicles in its regular course of business so the use tax was assessed. He testified that a Notice of Deficiency was issued on May 11, 2012. See Division's Exhibit Eight (8).

("Owner") testified on behalf the Taxpayer. He testified a motor vehicle can only be moved one time to be considered new and under the applicable regulation for a motor vehicle to be considered new it has to be transferred from either the manufacturer or distributor to a franchise dealer of the same line with the certificate of origin and carries a full factory warranty so the transfer from dealer to dealer would be a transfer of a used vehicle. He testified that the Distributor sold the Car to the Dealer on the certificate of origin and that the Dealer paid taxes and penalty but it was not used as a demonstration vehicle but for personal use. He submitted an affidavit from the Dealer's owner stating that he drove the Car for his own personal use and that he should have registered and titled the Car but he did not and he paid the tax. The Owner testified that if the Dealer had not paid tax, then he (Owner) would agree that he owed tax on the Car.

He testified that under R.I. Gen. Laws § 31-5.1-1(10), the Car is not a new vehicle and additionally a vehicle cannot be moved twice and the installation of OnStar and the warranty work indicate that the Car was not new when it was sold to the Taxpayer.

On cross-examination, the Owner testified that shortly after buying the Car, he sold it to a manufacturer superstore in Massachusetts.

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.

R.I. Gen. Laws § 44-18-26 states as follows:

Tax on retailer's use of merchandise. - If a person who gives a certificate consumes or makes any storage or use of purchased property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage, use, or consumption is subject to the sales or use tax, as the case may be, as of the time the property is first stored, used, or consumed, and the cost of the property to the purchaser is the measure of the tax.

Sales and Use Tax Regulation SU 96-138 ("SU 96-138") states as follows:

New Motor Vehicle Purchased by Used Car Dealer or Auto Body Mechanic

When a used car dealer or auto body repairer holding a motor vehicle dealer's license and permit to make sales at retail purchases a new motor vehicle from a new car dealer such used car dealer or auto body repairer shall be deemed liable for the payment of tax thereon unless such used car dealer or auto body repairer can show, by proper records, that the motor vehicle in question was actually purchased for resale in which case the tax shall not apply; provided, however, when the used car dealer or auto body repairer sells the motor vehicle in question within thirty (30) days of its purchase from the new car dealer it shall be presumed that such used car dealer or auto body repairer purchased the motor vehicle for resale.

Sales and Use Tax Regulation SU 87-34 ("SU 87-34") states in part as follows:

Demonstration and Display

A purchaser of tangible personal property who gives a resale certificate therefor, and who uses the property solely for demonstration or display while holding it for sale in the regular course of business, is not required to pay tax on account of such use. If the property is used for any purpose other than or in addition to demonstration or display, such as for the personal use of the retailer or of his or her employees, the purchaser must include in the measure of the tax paid the purchase price of the property. Tax applies to the subsequent retail sale of the property.

R.I. Gen. Laws § 31-5.1-1 defines a new motor vehicle as follows:

> (10) "New motor vehicle" means a vehicle which has been sold to a new motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer. The term "motor vehicle" also includes any engine, transmission, or rear axle, regardless of whether it is attached to a vehicle chassis, that is manufactured for installation in any motor-driven vehicle with a gross vehicle weight rating of more than sixteen thousand (16,000) pounds that is required to be registered.

The following definitions are contained in the *Rules and Regulations Regarding Dealers, Manufacturers & Rental Licenses Pursuant to R.I.G.L. Sections 31-5-2 and 31-5.1-3*:

> Section V
> (N) "NEW OR UNUSED MOTOR VEHICLE" means a motor vehicle that is transferred from either a manufacturer or a distributor to a franchised dealer of the same line make with a certificate or (sic) origin and carries a full factory warranty. Any motor vehicle that is transferred from one franchised dealer to another same line make franchised dealer with a certificate of origin and a full factory warranty shall also be considered a new or unused motor vehicle.
> ***
> (P) "USED MOTOR VEHICLE" means any motor vehicle that does not fall within the definition of a new or unused motor vehicle or demonstrator vehicle shall be considered a used motor vehicle.

C. Arguments

Essentially the arguments boil down to the Taxpayer's position that it does not owe tax as it bought the Car for resale so under R.I. Gen. Laws § 44-18-25 and R.I. Gen. Laws § 44-18-26, the use tax would not apply. The Taxpayer also argued that the Car did not fall under the definition of a new car. The Division's position is that the Taxpayer could not hold the Car for resale as the Car was new and the Taxpayer is a used car dealer. As the Division stated at hearing, the issue hinges on whether the Car is considered "new" or not.

The Division argued that the Car was sold twice on the certificate of origin and is still new under the statute and the mileage shows it was a demonstration vehicle rather than for personal use and the Taxpayer's argument basically is that it should not be penalized for bad practices (selling the Car on the certificate of origin) that make the Car seem to be still a new vehicle. The Taxpayer argued that the Car was a used car pursuant to statute and a vehicle cannot be transferred twice as new and the warranty work and Onstar installation show that the Car was used and not new.

D. 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." R.I. Gen. Laws § 44-18-9 defines "storage" as "any keeping or retention in this state, except for sale in the regular course of business or for subsequent use solely outside of this state, of tangible personal property purchased from a retailer." The use tax rate is 7% of the "sale price of the property." R.I. Gen. Laws § 44-18-20(a) and (h). R.I. Gen. Laws § 44-18-26 provides that a person holding property for sale who makes use of the property other than for retention, demonstration, or display that property is subject to use or sales tax.

The Taxpayer argued that the Car cannot be transferred twice as new and that the Car does not fall under the definition of a new car contained in the Division of Motor Vehicles' ("DMV") statute. The DMV statute, R.I. Gen. Laws § 31-5.1-1, defines a new motor vehicle to be one sold to a new motor vehicle dealer and has not be used for other than demonstration purposes and the original title has not been issued from a new motor

vehicle dealer. In this matter, the Car does not fall neatly into any categories in the DMV or Taxation statutes. However, the relevant inquiry is whether the Car is taxed under the Taxation statutes and not whether DMV would deem it new.

The Taxpayer argues this is a "dealer to dealer" transaction so exempt from tax. The term "dealer to dealer" was included in the purchase agreement between Taxpayer and Dealer for the sale of the Car. See Division's Exhibit Three (3). The Dealer submitted a letter stating that he used the Car for personal purposes prior to its sale of the Car to Taxpayer and it was a "'dealer to dealer' transaction." See Taxpayer's Exhibit Three (3).

SU 87-34 requires that a purchaser who uses property for other than demonstration and display must pay tax and that tax applies to subsequent retail sale of property. The Dealer's letter states that the Car was not used for demonstration purposes but for personal use. The Dealer paid tax on the Car. The Taxpayer argued that it would agree to pay tax if the Dealer had not paid tax; though, when the Taxpayer bought the Car, the Dealer had not paid tax as the Dealer only later paid tax to the Division. See Taxpayer's Exhibit Four (4).

Accepting the Taxpayer's argument that the Dealer personally used the Car so that arguably, the Car was sold as a retail sale from Dealer to Taxpayer so would be subject to tax (SU 96 87-34). However, the Taxpayer argues that it was a dealer to dealer sale and it purchased the Car in the regular course of business for resale so is exempt from tax. The problem with the resale argument is that SU 96-138 speaks of a used car dealer buying from a new car dealer and if vehicle is purchased for resale, no tax is owed. If a vehicle is sold within 30 days of its purchase from the new car dealer, there is a

presumption of a resale. In this matter, the Dealer was a used car dealer. The Taxpayer's Owner testified he sold the Car to a manufacturer superstore in Massachusetts but provided no paperwork.[2] Nonetheless, SU 96-138 is inapplicable as it refers to a used car dealer purchasing a motor vehicle from a new car dealer. The Dealer is a used car dealer.

The Taxpayer purchased the Car on the certificate of origin from a used car dealer. The DMV statute also deems a car to be "new" or "unused" if it is transferred from one franchised dealer to another franchised dealer of then same line make with a certificate of origin and full factory warranty. Obviously, the Dealer and Taxpayer are not franchised dealers, but it should be noted that the statute deems transfers on certificate of origins to be "new" or "unused." R.I. Gen. Laws § 31-3-1 *et seq.* requires owners to their register car. The Car was not registered. R.I. Gen. Laws § 31-2-1 *et seq.* requires every car owner to title their car and the DMV cannot issue a registration without a title. The Car did not have a title.

In reviewing the facts of the Car's transfer and the various statutes, the Car was transferred as new (no title, no registration, on certificate of origin). The Taxpayer is a used car dealer and cannot purchase a new car from another used car dealer in the regular course of business and hold it for resale under the pertinent state law and regulations.

E. Penalty and Interest

In addition, the Division properly imposed interest on the use tax assessment pursuant to R.I. Gen. Laws § 44-19-11.[3] The Division also properly imposed a 10%

---

[2] Such paperwork could have shown when and how the Car was sold.

[3] 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

penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12.[4] 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. The facts as detailed in Sections IV and 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 § 44-1-1 *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 § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-18-20, R.I. Gen. Laws § 44-19-11, and R.I. Gen. Laws § 44-19-12, the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Eight (8).

---

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.

[4] 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.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-18-1 *et seq.*, R.I. Gen. Laws § 44-18-20, R.I. Gen. Laws § 44-19-11, and R.I. Gen. Laws § 44-19-12, the Taxpayer owes the use tax and interest and penalty as assessed in the Notice of Deficiency. See Division's Exhibit Eight (8).

Date: December 21, 2012

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: January 15, 2013

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 15th day of January, 2013 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 Revenue, One Capitol Hill, Providence, RI 02908.

91 7108 2133 3938 6356 7821