

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-10

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.: 11-T-0004
	:	Sales and Use
Taxpayer.	:	
	:	

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 January 27, 2011 to (“Taxpayer”) by the Division of Taxation (“Division”) in response to the Taxpayer’s requests for hearings. A hearing was scheduled for March 21, 2011 at which time the Taxpayer did not appear. The Taxpayer had adequate notice of the hearing since the Notice was sent by certified mail which the Taxpayer received. See Division’s Exhibit 15 (United States Post Office tracking sheet). 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.

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.*, 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 the assessed sales tax, interest, and penalties.

IV. MATERIAL FACTS

Revenue Agent II, testified on behalf of the Division. She testified she performed a special investigation field audit of the Taxpayer for the period December 2003 to November 2009. She testified that the Taxpayer was incorporated in Massachusetts with a place of business in Rhode Island during the audit period. She testified that the Taxpayer did not hold a permit to make sales at retail during the audit period despite making sales at retail. She testified she reviewed the sales invoices, corporate returns, and accounts and that there was a complete set of records. She testified that the Taxpayer made sales that it did not tax but claimed were for resale or sales exempt but provided no proof of exemptions or certificates for resale. See Division's Exhibit Five (5) (Additional Taxable Sales). She testified there was also a Rhode Island asset for 2008 that was taxable. See Division's Exhibit Six (6) (Ex-tax purchases (assets)). She testified that based on the review of invoices and the manager's tax summary, the Taxpayer collected sales tax but did not remit those taxes ("trust funds") to the Division. See Division's Exhibits Eight (8) (manager's tax register report) and Seven (7) (Trust Funds). She testified that statutory interest was assessed on the Notice of Deficiencies issued for the additional tax owed and trust funds owed. See Division's Exhibits 11 and 12 (sales tax owed and trust funds owed). She testified that revisions were made to initial Notice of Deficiency for additional taxes owed because the Taxpayer was able to produce further records. See Division's Exhibit 14 (audit revisions).

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). 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

Sales price is defined by R.I. Gen. Laws § 44-18-12.¹ 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. Pursuant to R.I. Gen. Laws § 44-19-35, sales taxes collected by any retailer from purchasers constitute a trust fund for the State until paid to the tax administrator.

¹ This statute was amended effective January 1, 2007. However, the changes which occurred during the audit period do not make a difference to this matter.

C. Whether the Taxpayer Owes Sales Tax

Pursuant to R.I. Gen. Laws § 44-18-25,² all receipts are taxable. The Taxpayer has provided no proof it does not owe either the assessed trust funds or sales tax.

i. Trust Fund Deficiency

The Division presented evidence that the Taxpayer collected sales tax on some items but did not remit these taxes to the Division. See Division's Exhibit Seven (7) (Schedule 1A Trust Funds). Therefore, the Division properly assessed the Taxpayer the trust fund sales tax owed by Taxpayer. The Division imposed interest on the trust fund assessment pursuant to R.I. Gen. Laws § 44-19-11.³ See Division's Exhibit Ten (10) (trust fund interest calculation). In addition, the Division properly imposed a 10% penalty on the said deficiency pursuant to R.I. Gen. Laws § 44-19-12 and R.I. Gen. Laws § 44-19-14.⁴ The statute clearly provides that if a taxpayer does not pay a tax because of

² 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.

³ 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.

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

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).

ii. Additional Sales Tax Deficiency

The Division presented evidence that the Taxpayer did not properly charge sales tax on taxable items. The Division made its assessments based on the Taxpayer’s records. The Division properly imposed interest on the additional sales tax assessment pursuant to R.I. Gen. Laws § 44-19-11. In addition, the Division properly imposed a 10% penalty on the sales tax deficiency pursuant to R.I. Gen. Laws § 44-19-12 and R.I. Gen. Laws § 44-19-14.

D. Conclusion

The Taxpayer owes the sales tax assessment and the trust fund assessment as set forth in the Notices of Deficiencies (See Division’s Exhibit 11 (sales tax) and 12 (trust funds) and as revised by Division’s Exhibit 14.

chapter 18 of this title, a penalty of fifty percent (50%) of the amount of the determination is added to it.

R.I. Gen. Laws § 44-19-14 states as follows:

Determination without return – Interest and penalties. – If any person fails to make a return, the tax administrator shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use, or other consumption of which in this state is subject to the use tax. The estimate shall be made for the month or months in respect to which the person failed to make a return and is based upon any information, which is in the tax administrator’s possession or may come into his or her possession. Upon the basis of this estimate, the tax administrator computes and determines the amount required to be paid to the state, adding to the sum arrived at a penalty equal to ten percent (10%) of that amount. One or more determinations may be made 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 (15th) day after the close of the month for which the amount or any portion of the amount should have been paid until the date of payment. If the failure of any person to file a return is due to fraud or an intent to evade the provisions of this chapter and chapter 18 of this title, a penalty of fifty percent (50%) of the amount required to be paid by the person, exclusive of penalties, is added to the amount in addition to the ten percent (10%) penalty provided in this section. After making his or her determination, the tax administrator shall mail a written notice of the estimate, determination, and 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.
2. A hearing was held on March 21, 2011. 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 December, 2003 to November, 2009.
4. The Notices of Deficiencies and the revised assessment were 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:

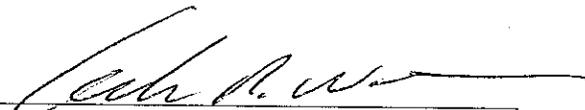
1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.* and R.I. Gen. Laws § 44-18-1 *et seq.*
2. Pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-19-11, R.I. Gen. Laws § 44-19-12, and R.I. Gen. Laws § 44-19-14, the Taxpayer owes the assessed sales tax and trust funds and the assessed interest and penalties.

VIII. RECOMMENDATION

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

Based on R.I. Gen. Laws § 44-18-1 *et seq.* and R.I. Gen. Laws § 44-19-1 *et seq.*, the Taxpayer owes the trust fund assessment and additional sales tax assessment and interest and penalties set forth in Division's Exhibits Nine (9), Ten (10), Eleven (11), and Twelve (12) and revised by Division's Exhibit 14.

Date: May 31, 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

Dated: JUNE 15, 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.

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 15th day of June, 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 Linda Riordan, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

