STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2016-24

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.: 16-T-0086
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 October 20, 2016 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing dated July 26, 2016. A hearing was held on November 18, 2016. At the hearing, the Taxpayer was *pro se* and Taxpayer was represented by counsel. The parties rested on the record. After hearing, the Division requested to submit a brief to which the Taxpayer did not object. The Division submitted a brief. The Taxpayer was given time to reply by December 2, 2016, but chose not to submit a reply brief.

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 purchased by the Taxpayer. This issue requires a determination of whether the Taxpayer was a *bona fide* nonresident of Rhode Island at the time of the purchase of the car.

IV. MATERIAL FACTS AND TESTIMONY

The parties stipulated that the Taxpayer purchased a car ("Car") in Portland, Oregon on July 11, 2015.

, Senior Revenue Agent, testified on behalf of the Division. He testified that the Taxpayer filed a request for a refund of the use tax that he paid on the Car when he registered it in Rhode Island.[1] He testified that when filing the refund request, the Taxpayer completed a questionnaire that indicated that he was not a *bona fide* nonresident of Rhode Island in 2015. See Division's Exhibit One (1) (Taxpayer's claim for refund); and Two (questionnaire). He testified that in 2015, the Taxpayer filed a personal income tax return with the State and owned property in Rhode Island with his wife that had been purchased in 1999. He testified that the Taxpayer and his wife had paid personal income tax to Rhode Island from 2004 to 2015. See Division's Exhibits Three (3) (Division's records showing Taxpayer's income tax filings from 2004 to 2015); Four (4) (property record showing Taxpayer's ownership of a house in Rhode Island); and Five (5) (Taxpayer's 2015 Federal income tax return).

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[1] The Car was purchased in Oregon and there is no sales tax in Oregon so the Taxpayer had not paid any sales tax when he purchased the Car in Oregon. The Division assessed use tax on the Car when it was registered in Rhode Island. If the Taxpayer had paid sales tax to Oregon when purchasing the Car, he would have been exempt from the imposition of use tax in Rhode Island pursuant to R.I. Gen. Laws § 44-18-36.

Pursuant to R.I. Gen. Laws § 44-18-18, Rhode Island imposes a sales tax of 7% on gross receipts of a retailer. Pursuant to R.I. Gen. Laws § 44-18-20, a use tax is imposed on the storage, use or consumption of tangible personal property. "The use tax . . . is a complement to Rhode Island's sales tax . . . The sales tax applies to 'sales at retail in this state.' (citation omitted). The use tax, in contradistinction, is imposed on 'the storage, use, or other consumption in this state of tangible personal property.'" *Dart Industries, Inc. v. Clark*, 696 A.2d 306, 309 (R.I.1997).

The Taxpayer testified on his behalf. He testified that in July, 2015 he moved to Oregon. He testified that he had earned income for the first five (5) months of 2015 in Rhode Island so he filed a Rhode Island return, but in July 2015 he moved to Oregon and intended that to be permanent. He testified that in the 1990's, he and his family had lived in Oregon for four (4) years, then moved to the east coast, and eventually Rhode Island. He testified he moved to Oregon in 2015 with the intention of moving his family there, but that it did not work out. He testified that he registered to vote there, signed leases to rent somewhere to live, and bought the Car. He testified that the only indication that he was not a nonresident of Rhode Island is that he still owned property with his wife in Rhode Island. He testified that the other documents such as his voter registration in Oregon and his Oregon driver's license showed he moved to Oregon. See Taxpayer's Exhibits One (1) (certificate of title for the Car with Taxpayer's Oregon address); Two (2) (voter registrations as of July 13, 2015 in Oregon); Three (3) (Oregon driver's license issued to Taxpayer on July 13, 2015); Four (4) (Taxpayer's Oregon lease); and 4A (Oregon registration for Car).[2]

On cross-examination, the Taxpayer testified that he moved to Oregon in July 2015 and back to Rhode Island in June 2016. He testified that he lived in Rhode Island before he moved to Oregon and his wife lived in the Rhode Island house while he was in Oregon and he did visit Rhode Island while living in Oregon.

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*,

[2] Two of Taxpayer's exhibits were admitted as Exhibit Four (4) so that the registration of the Car will be Taxpayer's Exhibit 4A.

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).

B. Relevant Statutes

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:
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> (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.
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C. Arguments

The Division argued that from mid-July 2015 to June, 2016 when the Taxpayer lived in Oregon, he maintained a house in Rhode Island and filed a 2015 income tax return in Rhode Island.

The Division argued that based on *McLaughlin v. Norberg*, AA No. 83-429 (1985), the standard for taxing for the purposes of the use tax is a different standard than the standard for personal income tax or domicile. The Division argued the Taxpayer is not a *bona fide* nonresident of Rhode Island due to his connections with Rhode Island.

The Taxpayer argued that no use tax should be paid on the Car because except for the house, all the other evidence shows that he was a *bona fide* nonresident of Rhode Island.

D. Tax Exemptions

Not only are taxation exemption statutes strictly construed against a taxpayer, but "[t]he party claiming the exemption from taxation under a statute has the burden of demonstrating that the terms of the statute illustrate a clear legislative intent to grant such exemption." *Cookson v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992). Tax exemption statutes are also strictly construed in favor of the taxing authority and against the party seeking the exemption. *Fleet Credit Corp. v. Frazier*, 726 A.2d 452, 454 (R.I. 1999). Pursuant to R.I. Gen. Laws § 44-18-25,[3] there is a presumption that the use of all tangible personal property is subject to the use tax.

[3] R.I. Gen. Laws § 44-18-25 provides 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, or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3, are subject to the use tax, and that all tangible personal property, or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3, 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.

E. The Taxpayer Owes Use Tax on the Car

a. R.I. Gen. Laws § 44-18-30(13)

Pursuant to R.I. Gen. Laws § 44-18-20,[4] an excise tax is imposed on the "storage, use, or other consumption in this state" of personal property including the purchase of a motor vehicle. R.I. Gen. Laws § 44-18-30(13) provides an exemption to this tax if the purchaser of a motor vehicle is a *bona fide* nonresident of Rhode Island. As discussed above, a tax exemption is to be strictly construed against a taxpayer.

As the car was purchased and registered in Oregon, the Taxpayer did not pay any Rhode Island tax on the Car.[5] 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 the purchase of a vehicle. In regard to the claim of being a *bona fide* nonresident, the Rhode Island District Court case of *McLaughlin v. Norberg*, AA No. 83-429 (1985) addressed the test for residency as delineated in *Randall v. Norberg*, 403 A.2d 240 (1979) (sufficient connection with Rhode Island to determine whether a taxpayer would be liable as a "resident" for taxes under Title 44). *McLaughlin* held that the issue was not whether that taxpayer was resident or domiciliary of another state or a resident of Rhode Island or a resident of Rhode Island for the purposes of Title 31 (motor vehicles), but rather

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[4] R.I. Gen. Laws § 44-18-20 provides 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.
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> (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.
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> ***
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> (h) The use tax imposed under this section for the period commencing July 1, 1990 is at the rate of seven percent (7%).

[5] The tax paid on a purchased motor vehicle owed in Rhode Island would be paid upon registering the vehicle in Rhode Island directly to the Tax Administrator. See R.I. Gen. Laws § 31-3-4 and Sales and Use Regulation SU 03-69 *Motor Vehicles - Payment of Tax as Prerequisite to Registration.*

whether that taxpayer was a resident of Rhode Island for title 44 purposes. *McLaughlin* found that that taxpayer had sufficient connections (owned a summer house in Rhode Island and owned a second car that was registered in Rhode Island) with Rhode Island to be liable as a "resident" for taxes on the purchase of a car under Title 44 even though the car at issue was registered, titled, and garaged in Florida. In *Randall*, the taxpayer often visited Rhode Island, maintained a home there, and filed a resident income tax return. *Randall* found that taxpayer had enough of a connection with Rhode Island to be considered a resident. The Division has consistently applied the District Court case of *McLaughlin* in order to determine whether a taxpayer is a *bona fide* nonresident at the time of purchase of a vehicle.

In *Administrative Decision*, 2011 WL 6749688 (R.I.Div.Tax), the taxpayer owned a house in and voted in Maine in 2008 when he bought a car and registered it in Maine; however, he was not a *bona fide* nonresident of Rhode Island when he purchased the car as he had filed a 2008 Rhode Island resident income tax return. *Administrative Decision*, 2004 WL 2370466 (R.I.Div.Tax) rejected a taxpayer's argument that she was a resident or domiciliary of Oregon finding that the taxpayer could be both but based on *McLaughlin v. Norberg*,[6] if the taxpayer was a resident of Rhode Island, she would owe tax. In that matter, the taxpayer had filed resident income tax return in Rhode Island as well as voted, attended school in Rhode Island, and held a

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[6] This Administrative Decision cited to *McLaughlin* and quoted from that case as follows:

> In this case the simple issue is whether the plaintiff-taxpayer is a resident of Rhode Island for the purposes of Title 44 of the Rhode Island General Laws pertaining to sales and use taxes. This is the sole issue to be considered and this Court is bound by the existing case law in Rhode Island. The tests for residency in this matter is contained in the case of Randall v. Norberg, 121 R.I. 714, 403 A.2d 240 (1979) where the court used a "sufficient connection with Rhode Island" test to determine whether the taxpayer would be liable as a "resident" for taxes under Title 44. The court held that repeated visits to this state in addition to retaining a home here and the filing of a Rhode Island residential income tax return were sufficient for the trial justice to find residency status. This Court must decide whether there exists substantial evidence on which the Division could find the taxpayer had a "sufficient connection" with Rhode Island or whether the agency erred as matter of law in finding residency status. (See William H. McLaughlin v. John H. Norberg, District Court, A.A. No. 83-429).

Rhode Island driver's license so was found to be a resident of Rhode Island. *Administrative Decision*, 2001 WL 1606904 (R.I. Div.Tax) found that the taxpayer corporation was not a *bona fide* nonresident as it filed Rhode Island returns and was a Rhode Island corporation. *Administrative Decision*, 1998 WL 751234 (R.I.Div.Tax) found that the taxpayer was a Rhode Island resident despite claims to be a Florida resident as the taxpayer had filed Rhode Island resident returns. In *Administrative Decision*, 2015 R.I. Tax Lexis 20, it was found that even if the taxpayer had dual-residency in both Rhode Island and Massachusetts (as argued by the Taxpayer), it would still owe the use tax in Rhode Island because said vehicle was purchased by a Rhode Island corporation that filed resident corporate returns and paid tax to Rhode Island so was not a *bona fide* nonresident of Rhode Island.

While the Taxpayer planned to and did move to Oregon in July, 2015, he still had sufficient contacts - property ownership and payment of personal income tax - with Rhode Island not to be considered a *bona fide* nonresident of Rhode Island at the time of the purchase of the Car.

Based on the forgoing, the Division properly denied the Taxpayer's request for refund of the use tax paid on the Car.

VI. FINDINGS OF FACT

1. On or about October 20, 2016, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. A hearing in this matter was held on November 18, 2016 with the Division filing a brief. The Taxpayer did not file a brief.

3. During 2015, the Taxpayer owned a house in Rhode Island and filed a 2015 personal income tax return in Rhode Island.

4. The facts as detailed in Section 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. The Taxpayer is not a *bona fide* nonresident of Rhode Island.

3. Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer is not exempt from paying use tax upon the registering of the Car as he is not a *bona fide* nonresident of Rhode Island.

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 Division properly denied the Taxpayer's request for a refund of the tax paid upon registering the Car as he is not a *bona fide* nonresident of Rhode Island.

Date: December 15, 2016

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: 12/29/16

Neena S. Savage
Acting 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 29th day of December, 2016 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 Michael Taylor, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco