STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-04

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-098**
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 December 22, 2016 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing dated October 5, 2016. A hearing was held on January 25, 2017. At the hearing, the Division was represented by counsel. No one appeared for the Taxpayer. The Taxpayer did not contact the undersigned or the Division. The Taxpayer received notice of the hearing. As the Taxpayer received notice of the hearing, the undersigned held the hearing. The Division 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 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

Based on the undisputed evidence entered at hearing, the Taxpayer purchased a car ("Car") on September 20, 2014 from a Rhode Island dealer. See Division's Exhibits One (1); Seven (7); and Eight (8) (dealer statement, purchase agreement, and service records). It was undisputed that the Taxpayer registered the Car in North Carolina, but brought the Car back to Rhode Island where it was serviced in 2014. See Division's Exhibit Six (6) (CarFax). In 2014, he filed a Rhode Island resident income for 2014 and his 2014 Federal return indicated that he lived in Rhode Island. See Division's Exhibits Four (4) (printout of 2014 State return) and Two (2) (2014 Federal tax return). The Taxpayer's 2014 W-2s indicated that he lived in Rhode Island. See Division's Exhibit Three (3) (2014 W-2s from Rhode Island, North Carolina, and New York). In 2015, his tax returns and W-2s also indicated that he lived in Rhode Island. See Division Exhibits 12, 13, and 14 (2015 W-2s and tax returns). He also owned another car that was registered in Rhode Island in 2014. See Division's Exhibit 15 (CarFax).

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).

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.
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> (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 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.

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,[1] there is a presumption that the use of all tangible personal property is subject to the use tax.

E. The Taxpayer Owes Use Tax on the Car

Pursuant to R.I. Gen. Laws § 44-18-20,[2] 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.

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[1] 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.

[2] 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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> (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 § 44-18-30(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.

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 whether that taxpayer was a resident of Rhode Island for title 44 purposes. *McLaughlin* found that the 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*,[3] 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 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 September, 2014, the Taxpayer had sufficient contacts - payment of personal income tax and a car registered in State - 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 issued the Taxpayer a Notice of Deficiency for additional tax owed for 2014 based on the unpaid use tax on the Car.

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[3] 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).

VI. FINDINGS OF FACT

1. On or about December 22, 2016, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. A hearing in this matter was held on January 25, 2017 with the Division presenting evidence. The Taxpayer did not appear for the hearing. As the Taxpayer was adequately notified of the hearing, the hearing was held. The Taxpayer is in default for failing to appear at the hearing.

3. 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 was not a *bona fide* nonresident of Rhode Island in 2014.

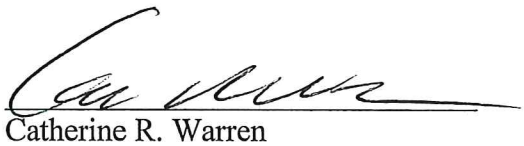
3. Pursuant to R.I. Gen. Laws § 44-18-20 and R.I. Gen. Laws § 44-18-30(13), the Taxpayer is not exempt from paying use tax for the purchase of the Car as he was not a *bona fide* nonresident of Rhode Island in 2014.

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 issued the Taxpayer a Notice of Deficiency for additional tax owed for 2014 based on the unpaid use tax on the Car as he was not a *bona fide* nonresident of Rhode Island in 2014.

Date: 2/20/17



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: 2.24.17

Neena S. Savage
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 24th day of February, 2017 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